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# Federal Register

6–27–06 Tuesday
Vol. 71 No. 123 June 27, 2006

Pages 36477–36660

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# Presidential Documents

**Presidential Determination No. 2006–15 of June 15, 2006**

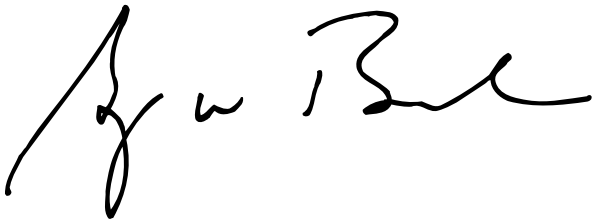
## Suspension of Limitations Under the Jerusalem Embassy Act

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary to protect the national security interests of the United States to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act. My Administration remains committed to beginning the process of moving our Embassy to Jerusalem.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the **Federal Register**.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
*Washington, June 15, 2006.*

Billing code 3195–01–P

## JUSTIFICATION

The President has exercised his authority under the Constitution and the laws of the United States, including the waiver authority granted to him by Section 7(a) of P.L. 104-45. This waiver was necessary to protect critical national security interests, most crucially in preserving our ability to work with the parties and the key states in the region to bring about an end to the violence and terrorism in Israel, the West Bank and Gaza. The President has also taken this action at this time because, absent the waiver, the Act would have denied to the Department of State further access to funds necessary to protect its personnel and missions worldwide so it can continue to pursue vital U.S. objectives.

A key foreign policy and national security goal of the United States is to help the parties end the current violence in Israel, the West Bank, and Gaza. Moving the Embassy now would complicate our ability to play a helpful role in bringing an end to this violence.

Moreover, in this time of substantial terrorist threats to U.S. missions and personnel abroad, the Department of State must also have access to the funds necessary to upgrade the security and operation of its missions worldwide. Sections 3(b) and 7(b) of P.L. 104-45 would prohibit the Department of State access to 50 percent of funds appropriated for its missions abroad. There is a real danger that despite the fact that Congress has directed the use of these funds for just such urgent security purposes, the absence of those funds would hamper our ongoing efforts to protect our personnel and missions abroad.

The Administration is committed to beginning the process of moving our embassy to Jerusalem. However, at this time, it is necessary for the President to exercise his waiver authority in order to protect the national security interests of the United States.

[FR Doc. 06–5776
Filed 6–26–06; 8:45 am]
Billing code 4710–10–C

**Editorial Note:** This determination is being reprinted by the Department of State to include its accompanying justification.

# Presidential Documents

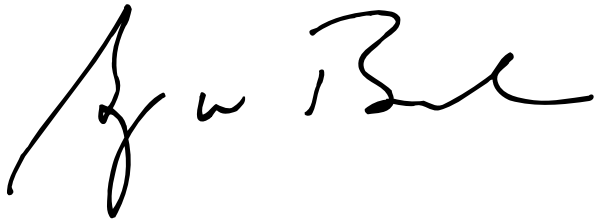
**Presidential Determination No. 2006–16 of June 19, 2006**

## Eligibility of the Kingdom of Swaziland to Receive Defense Articles and Defense Services Under the Foreign Assistance Act and the Arms Export Control Act

**Memorandum for the Secretary of State**

Pursuant to section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311), and section 3(a)(1) of the Arms Export Control Act, as amended (22 U.S.C. 2753), I hereby find that the furnishing of defense articles and defense services to the Kingdom of Swaziland will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination, including the justification, to the Congress and to arrange for the publication of this determination in the **Federal Register**.



THE WHITE HOUSE,

*Washington, June 19, 2006.*

Billing code 3195–01–P

UNCLASSIFIED

JUSTIFICATION FOR PRESIDENTIAL DETERMINATION OF THE ELIGIBILITY OF SWAZILAND TO BE FURNISHED DEFENSE ARTICLES AND DEFENSE SERVICES UNDER THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED, AND THE ARMS EXPORT CONTROL ACT, AS AMENDED

Section 503 of the Foreign Assistance Act of 1961, as amended (FAA), and section 3(a)(1) of the Arms Export Control Act, as amended (AECA), require, in order for the United States to furnish defense articles and defense services (either as military assistance or by sale or lease from the USG), that the President find that the furnishing of such defense articles and defense services to the country or international organization will "strengthen the security of the United States and promote world peace."

The accompanying Presidential Determination would allow the U.S. Government to provide defense articles and defense services directly to Swaziland.

This determination will enable the USG to deliver HIV/AIDS prevention and treatment assistance to the defense force in Swaziland, where the HIV/AIDS prevalence rate is 42.6 percent, the highest in the world. The Umbutfo Swaziland Defense Force (USDF) has been implicated in a number of human rights abuses, and there are no plans to provide defense articles or services beyond HIV/AIDS prevention assistance at this time. Should conditions change in the country, we may consider the provision of defense articles and defense services, including training, to increase the USDF's professionalism and help reduce incidences of abuses, enhance its capacity to take part in African peacekeeping activities, strengthen its ability to control Swaziland's borders, detect terrorists, and deal with humanitarian emergencies.

Any future provision of defense articles or defense services would be considered on a case-by-case basis, including with respect to relevant guidelines and criteria established in the existing Conventional Arms Transfer policy. Each request would also be reviewed to ensure that there are no legal prohibitions or policy prohibitions existing at the time with regard to the sale, lease or other transfer.

UNCLASSIFIED

[FR Doc. 06–5777

Filed 6–26–06; 8:45 am]

Billing code 4710–10–C

**Editorial Note:** This determination is being reprinted by the Department of State to include its accompanying justification.

# Rules and Regulations

Federal Register
Vol. 71, No. 123
Tuesday, June 27, 2006

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–24271; Directorate Identifier 2006–NM–006–AD; Amendment 39–14669; AD 2006–13–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 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 727 airplanes. This AD requires repetitive measurements of the freeplay of the left and right outboard aileron balance tabs and of the upper and lower rudder tabs, and related investigative/corrective actions if necessary. This AD also requires repetitive lubrication of the hinge bearings and rod end bearings of the outboard aileron balance tabs. This AD results from reports of freeplay-induced vibration of the outboard aileron balance tabs and rudder tabs. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in divergent flutter and loss of control of the airplane.

**DATES:** This AD becomes effective August 1, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 1, 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:** Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; 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 727 series airplanes. That NPRM was published in the **Federal Register** on April 5, 2006 (71 FR 17033). That NPRM proposed to require repetitive measurements of the freeplay of the left and right outboard aileron balance tabs and of the upper and lower rudder tabs, and related investigative/corrective actions if necessary. That NPRM also proposed to require repetitive lubrication of the hinge bearings and rod end bearings of the outboard aileron balance tabs.

### Comments

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

### Request for Clarification

Boeing requests that certain wording about the compliance times in the ''Relevant Service Information'' paragraph of the preamble of the NPRM be clarified for consistency purposes with the wording in Boeing Special Attention Service Bulletin 727–27–0234, dated November 10, 2005 (referred to as the appropriate source of service information for doing the actions specified in the NPRM).

We partially agree. We agree that the wording used to describe the compliance times could be clarified as Boeing suggested. However, the ''Relevant Service Information'' paragraph does not reappear in the final rule. Therefore, we find no change to the final rule is necessary in this regard.

Boeing also requests that the words ''aileron balance tabs'' in paragraph (g)(2) of the NPRM be changed to ''outboard aileron balance tabs'' for consistency purposes with the words in Boeing Special Attention Service Bulletin 727–27–0234.

We agree and have revised paragraph (g)(2) 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 with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Costs of Compliance

There are about 944 airplanes of the affected design in the worldwide fleet. 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 | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Freeplay measurement | 8 | $80 | $640, per measurement cycle. | 539 | $344,960, per measurement cycle. |
| Lubrication | 4 | 80 | $320, per lubrication cycle | 539 | $172,480, per lubrication cycle. |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2006–13–16 Boeing:** Amendment 39–14669. Docket No. FAA–2006–24271; Directorate Identifier 2006–NM–006–AD.

**Effective Date**

(a) This AD becomes effective August 1, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 727–27–0234, dated November 10, 2005.

**Unsafe Condition**

(d) This AD results from reports of freeplay-induced vibration of the outboard aileron balance tab and rudder tab. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in divergent flutter and loss of control of the airplane.

**Compliance**

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

**Compliance Times**

(f) Except as provided by paragraph (h) of this AD, at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 727–27–0234, dated November 10, 2005, do the actions specified in paragraph (g) of this AD. Where the service bulletin specifies a compliance time ''from the initial release of this service bulletin,'' this AD requires compliance within the applicable compliance time after the effective date of this AD.

**Freeplay Measurement, Related Investigative and Corrective Actions, and Lubrication**

(g) At the applicable times specified in paragraph (f) of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–27–0234, dated November 10, 2005.

(1) Measure the freeplay of the left and right outboard aileron balance tabs and of the upper and lower rudder tabs, and do applicable related investigative and corrective actions if necessary.

(2) Lubricate the hinge bearings and rod end bearings of the outboard aileron balance tabs.

**Concurrent Repetitive Cycles**

(h) If a freeplay measurement required by paragraph (g)(1) of this AD and a lubrication cycle required by paragraph (g)(2) of this AD are due at the same time or will be done during the same maintenance visit, the freeplay measurement and applicable related investigative and corrective actions must be done before the lubrication.

**Alternative Methods of Compliance (AMOCs)**

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

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

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

**Material Incorporated by Reference**

(j) You must use Boeing Special Attention Service Bulletin 727–27–0234, dated November 10, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the

Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

**Ali Bahrami,**

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

[FR Doc. 06–5652 Filed 6–26–06; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Oxytetracycline

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA revises labeling of oxytetracycline soluble powder with the current genus for the causative bacteria for American foul brood of honeybees.

**DATES:** This rule is effective June 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed a supplement to NADA 8–622 that provides for use of TERRAMYCIN–343 (oxytetracycline HCl) Soluble Powder for treatment of various bacterial diseases of livestock. The supplemental NADA revises labeling with the current genus for the causative bacteria for American foul brood of honeybees. The supplemental NADA is approved as of May 9, 2006, and the regulations in 21 CFR 520.1660d are amended to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

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

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

### List of Subjects in 21 CFR Part 520

Animal drugs.

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

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

### § 520.1660d [Amended]

■ 2. In paragraph (d)(2)(ii) of § 520.1660d, remove ''*Bacillus*'' and add in its place ''*Paenibacillus*''.

Dated: June 7, 2006.

**Steven D. Vaughn,**

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

[FR Doc. E6–10053 Filed 6–26–06; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Part 57

**RIN 1219-AB29**

### Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; corrections.

**SUMMARY:** This document contains corrections to the final rule addressing ''Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners,'' and published in the **Federal Register** on Thursday, May 18, 2006 (71 FR 28924).

**DATES:** The corrections to the preamble are effective June 27, 2006. The correction to § 57.5060(d) is effective August 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939; 202–693–9440 (telephone); or 202–693–9441 (facsimile).

This document is available on the Internet at *http://www.msha.gov/REGSINFO.HTM.*

**SUPPLEMENTARY INFORMATION:** As published, the preamble and rule text contain errors which may be misleading and need to be corrected.

Accordingly, the preamble is corrected as follows:

1. On page 28926, in the second column, in the third full paragraph, at the end of the paragraph, insert ''(70 FR 55019).''

2. On page 28926, in the third column, at the end of the third line, insert ''(71 FR 4331).''

3. On page 28928, in the first column, in the second paragraph, eighth line from the bottom, change ''regulation'' to ''standard.''

4. On page 28929, in Table IV–3, under the column entitled, ''Description,'' in the fourth paragraph, in the last line, change ''PM10'' to ''$PM_{10}$.''

5. On page 28971, in the first column, first full paragraph, in the last line, delete the word ''approach,'' and replace it with the word ''be.''

6. On page 29007, in the second column, in the reference for ''Gavett,'' in the last line, change ''0124(l–3)'' to ''0124(1–3).''

7. On page 29007, in the third column, in the tenth line from the bottom, change ''12(l–2)'' to ''12(1–2).''

8. On page 29008, in the first column, in the eighth line from the bottom, change ''B6C3Fl'' to ''B6C3F1.''

In addition, the rule text is corrected as follows:

### § 57.5060 [Corrected]

■ 1. On page 29012, in the first column, under § 57.5060 paragraph (d), fourth line, delete the ''s'' from the word ''exposures'' so that the sentence now reads, ''The mine operator must install, use, and maintain feasible engineering and administrative controls to reduce a miner's exposure to or below the applicable DPM PEL established in this section.''

Dated: June 21, 2006.

**Patricia W. Silvey,**

*Acting Director, Office of Standards, Regulations and Variances.*

[FR Doc. E6–10084 Filed 6–26–06; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–06–063]**

**RIN 1625–AA00**

## Safety Zone; City Fireworks Celebration, Syracuse, 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 Syracuse Inner Harbor on the southern end of Onondaga Lake during the City Fireworks Celebration on June 30, 2006. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of Onondaga Lake, Syracuse, New York.

**DATES:** This rule will be effective from 9:30 p.m. (local) until 10 p.m. (local) on June 30, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD09–06–063] 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., 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. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

### Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks 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 fireworks 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 Onondaga Lake within a 300 foot radius of the fireworks launch site in approximate position 43°03′37″ N, 076°09′59″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83). 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 the designated on-scene representative. The Captain of the Port of Buffalo, or his designated on-scene representative, has the authority to terminate the event. Entry into, transiting, or anchoring within the 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, 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).

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

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 a portion of the Onondaga Lake during the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect for a very limited duration from 9:30 p.m. (local) until 10 p.m. (local) on the day of the event. Vessel traffic can safely pass outside the safety zone during the event.

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 offered 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**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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 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. 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 record keeping 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. A new temporary § 165.T09–063 is added to read as follows:

**§ 165.T09–063 Safety Zone; City Fireworks Celebration, Syracuse, NY.**

(a) *Location.* The following area is a temporary safety zone: All navigable waters of the Syracuse Inner Harbor on Onondaga Lake within a 300-foot radius of the fireworks launch site in approximate position 43°03′37″ N, 076°09′59″ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

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

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, 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.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his

designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone shall comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: June 16, 2006.

**S.J. Ferguson,**

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

[FR Doc. E6–10062 Filed 6–26–06; 8:45 am]

BILLING CODE 4910–15–P

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 201

**[Docket No. 2006–3]**

## Notice of Termination

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule: technical amendment.

**SUMMARY:** The Copyright Office is making a technical amendment in the regulation regarding notices of termination of transfers and licenses to clarify determination of the date on which notice was served. In instances where first class mail is used, the date on which notice of termination is served is the day on which the notice was mailed.

**DATES:** *Effective Date:* June 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kent Dunlap, Principal Legal Advisor for the General Counsel, Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** Section 201.10 of the Copyright Office's regulations establishes procedures governing the form, content, and manner of service of notices of termination of transfers and licenses under sections 203 and 304 of the copyright law, 17 U.S.C. 203, 304. Regarding service of a notice of termination, § 201.10(d)(1) of the regulations provides that service on each grantee shall be made ''by personal service, or by first-class mail sent to an address which, after a reasonable investigation, is found to be the last known address of the grantee or successor in title.'' In order to record a notice of termination, § 201.10(f)(ii) requires ''[t]he copy submitted for recordation shall be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice.''

With respect to notices served by mail, date of service as referred to in § 201.10(f)(ii) means the day on which the notice of termination is mailed. The Documents Section of the Copyright Office has noted that a number of filings of notices of termination do not specify a single day date, but qualify the statement by saying ''on or about,'' or some other similar qualifier. It is our understanding that the reason some applicants avoid designating a single day date is the belief that the date of service is intended to mean the date on which the grantee receives the notice. In order to clarify this matter, we are adding a sentence at the end of § 201.10(f)(1)(ii) providing: ''[i]n instances where service is made by first-class mail, the date of service shall be the day the notice of termination was deposited with the United States Postal Service.''

Because this amendment is declarative of the Office's existing policy and practices and is being issued simply for purposes of clarification, the Office finds that there is good cause to make it effective immediately.

### List of Subjects in 37 CFR Part 201

Copyright.

### Technical Amendment

■ In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II in the manner set forth below.

## PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

■ 2. Amend § 201.10 (f)(1)(ii) by adding a sentence to the end of the paragraph to read as follows:

**§ 201.10 Notices of termination of transfers and licenses.**

* * * * *

(f) * * *

(1) * * *

(ii) * * * In instances where service is made by first-class mail, the date of service shall be the day the notice of termination was deposited with the United States Postal Service.

* * * * *

Dated: June 20, 2006.

**Marybeth Peters,**

*Register of Copyright.*

Approved by:

**James H. Billington,**

*Librarian of Congress.*

[FR Doc. E6–10091 Filed 6–26–06; 8:45 am]

BILLING CODE 1410–30–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2006–0287; FRL–8189–2]**

## Approval and Promulgation of Implementation Plans; State of Missouri

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) submission by the State of Missouri which revises the Construction Permits Required rule and takes no action on the revisions made to the Emissions Banking and Trading rule. A proposal was published on April 14, 2006, in the **Federal Register**, and no comments were received. As proposed, we are approving most of the revisions to the Construction Permits Required rule because the revisions incorporate, by reference, the Federal New Source Review reforms, published in the **Federal Register** on December 31, 2002. As requested by Missouri, EPA is not acting on portions of the state rule relating to Clean Unit Exemptions, Pollution Control Projects, and a portion of the record keeping provisions for the actual-to-projected-actual emissions projections test.

**DATES:** *Effective Date:* July 27, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2006–0287. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, KS. The Regional Office's official

hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Amy Algoe-Eakin at (913) 551–7942, or by e-mail at *algoe-eakin.amy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What Is the Federal Approval Process for a SIP?
What Is the Background of This Action?
What Is EPA's Final Action on Missouri's Rule to Incorporate NSR Reform?
What Is EPA's Final Action on Missouri's Definition of ''Baseline Area''?
Have the Requirements for Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

## What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the final Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the Clean Air Act (CAA or Act) are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

## What Is the Background of This Action?

The 2002 NSR Reform rules made changes to five areas of the NSR programs. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emission increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs).

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of the 2002 NSR Reform rules, along with portions of EPA's 1980 NSR rules (45 FR 5276, August 7, 1980). On June 24, 2005, the District of Columbia Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d (DC Cir. 2005). In summary, the Court of Appeals for the District of Columbia vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from record keeping, *e.g.*, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules. EPA has not yet responded to the Court's remand regarding record keeping provisions.

In the summer of 2004, Missouri revised Missouri rule 10 CSR 10–6.060, Construction Permits Required, and Missouri rule 10 CSR 10–6.410, Emissions Banking and Trading, to incorporate the changes to the Federal NSR program. These rule revisions were adopted by the Missouri Air Conservation Commission on August 26, 2004, and became effective under state law on December 30, 2004. The rules were submitted to EPA on February 25, 2005, and the submission included comments on the rules made during the state's adoption process, the state's response to comments and other information necessary to meet EPA's completeness criteria. Because Missouri's rule revisions occurred prior to the District of Columbia Court of Appeals decision, Missouri requested in a February 28, 2006, letter that EPA not act on the PCP, Clean Unit Exemption provisions, and the reasonable possibility provision in the recordkeeping provisions for the actual-to-projected-actual emissions projections applicability test.

## What Is EPA's Final Action on Missouri's Rule to Incorporate NSR Reform?

The final action described in this section is identical to the action we proposed in the April 14, 2006, notice of proposed rulemaking (71 FR 19467). We received no comments on any aspect of the proposal, and we are taking final action based on the rationale in the proposal and in this final rule. With the exception of the revisions affected by the Court decision, we are approving revisions to Missouri rule, 10 CSR 10–6.060, Construction Permits Required, into the SIP. This rule incorporates by reference the Federal Prevention of Significant Deterioration (PSD) program in 40 CFR 52.21, including the 2002 NSR Reform rules described above.

In relevant parts, the Missouri rule excludes the public participation requirements in § 52.21(q), in favor of the Missouri public participation process, previously approved in the SIP, in 10 CSR 10–6.060 section (12)(B). The Missouri rule retains a number of tables and appendices, which apply to the state's minor NSR program as well as the PSD program. These include provisions on innovative control technologies (Appendix E), exclusion from increment consumption (Appendix G), and air quality models (Appendix F). As we explained in the proposed rulemaking, to the extent that these provisions or similar provisions are addressed by § 52.21, the provisions of § 52.21 supersede the state provisions for purposes of the PSD program. Other provisions, such as the permit fee provisions in Appendix (A) of 10 CSR 10–6.060, which are not addressed by § 52.21, remain in effect.

Missouri's rule was adopted prior to the *New York* decision described above so it included the vacated and remanded provisions of EPA's rule. However, as mentioned previously, Missouri requested in a February 28, 2006, letter that EPA not act on the PCP and Clean Unit Exemption provisions incorporated into the state rule, and the reasonable possibility provision in the record keeping provisions for the actual-to-projected-actual emissions projections applicability test. In that letter, Missouri explained that it intended to remove the Clean Unit and PCP provisions from its rule, and that it would not apply the remanded portion of the Federal rule until EPA responds to the remand and takes final action on this portion of the Missouri rule. In the interim, all sources which use the actual-to-projected-actual applicability test authorized in the Federal rule

would be required to maintain the records identified in 40 CFR 52.21(r)(6).

Missouri has also clarified that the state commits to following EPA's definition of ''replacement unit'' and will follow EPA's clarification of how baseline emissions for PALs will be calculated (these clarifications to the EPA's rules were promulgated after the incorporation by reference date in the Missouri rule). When Missouri updates the Construction Permits Required rule, 10 CSR 10–6.060, Missouri commits to incorporating EPA's definition of ''replacement unit'' by reference and will include EPA's clarification of how baseline emissions for PALs are to be calculated.

We are taking no action on the revision to rule 10 CSR 10–6.410, Emissions Banking and Trading, because the sole revision to this rule was a change to prevent sources from generating Early Reduction Credits (ERCs) from PCPs that take advantage of the PCP exclusion provisions in EPA's NSR Reform rules. Since the PCP exclusion was vacated, and we are not acting on this provision, as it relates to Missouri rule 10 CSR 10–6.060, we are not acting upon the revision to Missouri rule 10 CSR 10–6.410.

We also note that Missouri clarified section (9)(C)1 of the Construction Permits Required rule. Section 9 outlines Hazardous Air Pollutant permit requirements which are exempt from hazardous air pollutant permit requirements unless they are listed on the source category list established in accordance with section 112(c) of the CAA. We are taking no action on including revisions to section 9, because section 9 addresses hazardous air pollutants under section 112 and is not presently in the SIP.

## What Is EPA's Final Action on Missouri's Definition of ''Baseline Area''?

Missouri's initial NSR reform submission, which largely incorporates 40 CFR 52.21 by reference, retained the state's own definition of ''baseline area,'' in 10 CSR 10–6.060(1)(A)1. Additionally, Missouri requested in the February 28, 2006, letter that we approve the Construction Permits Required rule and retain Missouri's definition of baseline area in section (1)(A)1. Missouri acknowledges that the current Construction Permits Required rule does not contain the statement, ''designated as attainment or classifiable under section 107(d)(1)(D) or (E) of the Act'' consistent with the federal definition of ''baseline area.'' We had previously approved this definition of baseline area with the specification that Missouri redesignate the areas of significant impact as the baseline area (Final rule, 47 FR 7696, and final rule, 47 FR 26833). We are approving Missouri's Construction Permits Required rule, 10 CSR 10–6.060 because Missouri has acknowledged it must make area-specific designation requests, and EPA must approve the redesignation of the area before Missouri could establish new baseline areas under its rule. Missouri also commits to revising the ''baseline area'' definition to clarify it will redesignate the areas of significant impact as baseline areas according to Section 107(d)(1)(D) or (E) of the CAA. Missouri will submit these redesignations to EPA for formal approval before the new baseline area can be used for PSD permitting purposes. While Missouri works to revise the rule, Missouri commits to implementing the baseline area definition consistent with all Federal regulations and will ensure that the air quality increment analysis for permit applications complies with all Federal and state requirements.

## Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained below and in more detail in the technical support document that is part of this document, EPA believes that the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

## What Action Is EPA Taking?

We are approving most of the revisions to Missouri rule, 10 CSR 10–6.060, Construction Permits Required. Per Missouri's request, we are not acting on: (1) Clean Unit Exemptions, (2) Pollution Control Projects, and (3) the ''reasonable possibility'' portion of the record keeping provisions for the actual-to-projected-actual emissions projections test. We are also not acting on revisions to section (9) for Hazardous Air Pollutants in 10 CSR 10–6.060, because section 9 addresses hazardous air pollutants under section 112 and is not presently in the SIP. We are also taking no action on revisions to Missouri rule 10 CSR 10–6.410, Emissions Banking and Trading, because the only revision made to the rule involves Pollution Control Projects.

## Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this Final 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 final 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 the final approvals in this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The final partial disapproval will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's partial disapproval of the submittal does not impose a new Federal requirement. Therefore, the Administrator certifies that this final disapproval action does not have a significant 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 final 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 final 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 final 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.*).

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

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

Dated: June 19, 2006.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, Title 40 of the Code of Federal Regulations 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 AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 6 by revising the entry for ''10–6.060'' to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * | * | * | * | * |
| **Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri** | | | | |
| * | * | * | * | * |
| 10–6.060 ..... | Construction Permits Required. | 12/30/2004 | 6/27/2006 ..... | This revision incorporates by reference elements of EPA's NSR reform rule published December 31, 2002. Provisions of the incorporated reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from record keeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved. This revision also incorporates by reference the other provisions of 40 CFR 52.21 as in effect on July 1, 2003, which supersedes any conflicting provisions in the Missouri rule. Section 9, pertaining to hazardous air pollutants, is not SIP approved. |
| * | * | * | * | * |

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[FR Doc. 06–5713 Filed 6–26–06; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 040610180–6173–03; I.D. 030806A]**

**RIN 0648–AR09**

## Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting; Tagged Pacific Halibut and Tagged Sablefish

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to exclude tagged halibut and tagged sablefish catches from deduction from fishermen's Individual Fishing Quota (IFQ) and from Western Alaska Community Development Quota (CDQ) accounts. This action is necessary to ensure that only halibut and sablefish that are tagged with an external research tag are excluded from IFQ deduction, and to extend the same exclusion to halibut and sablefish harvested under the CDQ Program. This action is intended to improve administration of the IFQ and CDQ Programs, to enhance collection of scientific data from external tags, and to further the goals

and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), and the halibut management program.

**DATES:** Effective July 27, 2006.

**ADDRESSES:** Copies of the Categorical Exclusion, the Regulatory Impact Review, and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from: NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Walsh, Records Officer; NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or the NMFS Alaska Region Web site at *http://www.fakr.noaa.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS at the mailing address above and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Becky Carls, 907–586–7228 or *becky.carls@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone of the BSAI and the Gulf of Alaska are managed by NMFS under the FMPs for these areas. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the ''Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea'' (Convention), was signed at Ottawa, Canada, on March 2, 1953, and was amended by the ''Protocol Amending the Convention,'' signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). The directed commercial Pacific halibut fishery in Alaska is managed under an IFQ Program, as is the fixed gear sablefish fishery. The IFQ Program is a limited access management system. Both species are also a part of the annual apportionment under the CDQ Program. These programs are codified at 50 CFR part 679.

The International Pacific Halibut Commission (IPHC) develops halibut fishery management regulations pursuant to the Convention and submits those regulations to the U.S. Secretary of State for approval. NMFS publishes approved IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. NMFS published the IPHC's current annual management measures on March 3, 2006, at 71 FR 10850. The Halibut Act also authorizes the Council to develop Pacific halibut fishery regulations in and off Alaska that are in addition to, but not in conflict with, the approved IPHC regulations (Halibut Act, section 773c(c)). Regulations developed by the Council pursuant to the Halibut Act are implemented only with the approval of the U.S. Secretary of Commerce.

## Background and Need for Action

The background and need for this action were described in the preamble to the proposed rule published in the **Federal Register** on March 29, 2006 (71 FR 15687). In summary, this final rule will eliminate an inconsistency between Federal and IPHC regulations, and will include the CDQ Program in the exemption from quota deduction of halibut and sablefish tagged with external research tags.

IPHC regulations at section 21(3) require externally tagged halibut and sablefish harvested in commercial fisheries to count against Individual Vessel Quotas (used in Canada), CDQs, IFQs, or daily bag or possession limits ''unless otherwise exempted by state, provincial, or federal regulations.'' Federal regulations at 50 CFR 679.40(g) exempt any tagged halibut and sablefish landed in Federal commercial IFQ fisheries from counting against a person's IFQ. The regulatory language currently included in the Federal exemption is inconsistent with that in the IPHC regulations because it does not specifically identify ''external'' tags for halibut. This Federal regulatory text was written when only external tags were used on Pacific halibut and sablefish. Now, various types of internal and external tags are used to identify these fish for scientific purposes.

This action will amend Federal regulations so only halibut and sablefish that are ''externally'' tagged may be excluded from quota deduction. This regulatory change will eliminate the potential for ambiguity and confusion over the exemption status of these fish. Also, extension of the exemption to the CDQ fisheries will provide an incentive for fishermen operating in these programs to return tags.

## Regulatory Amendments

In § 679.40, paragraph (g) is amended by removing ''Tagged'' and adding in its place ''External research tags for.'' This action specifies that only halibut or sablefish bearing an external research tag issued by any state, Federal, or international agency, are excluded from quota program deduction.

In § 679.40 paragraph (g)(1), the phrase ''a research tag'' is revised to read ''an external research tag'' to ensure that only halibut and sablefish bearing external research tags are exempt from quota deduction.

Paragraph (g)(1)(i) is amended by removing ''pursuant to 50 CFR 300.18'' and adding in its place ''pursuant to § 300.62 of this title and to this part 679.'' The reference to ''50 CFR 300.18'' is an artifact from when the IPHC regulations for annual management measures were codified in the CFR (Code of Federal Regulations). NMFS annually publishes the IPHC regulations as annual management measures in the **Federal Register**, but now does not codify them in the CFR.

Paragraph (g)(1)(ii) is revised to require fishermen to comply with all sablefish regulations at 50 CFR part 679 in addition to turning in a tagged sablefish.

Paragraph (g)(2) is amended by removing ''Tagged halibut and sablefish'' and adding in its place ''Halibut and sablefish bearing an external research tag from any state, Federal, or international agency.'' In addition a reference to 50 CFR 679.5(l) is added concerning the recordkeeping and reporting requirements for the IFQ Program. Language specifying which quotas will not be debited by harvest of externally tagged halibut or sablefish is broken out into two separate paragraphs (g)(2)(i) and (g)(2)(ii). The first addresses halibut IFQ and sablefish IFQ, while the second addresses halibut CDQ and sablefish CDQ.

Additional language is added to paragraphs (g)(1) and (g)(2) to improve the clarity of the regulations.

## Response to Comments

The proposed rule for this action was published in the **Federal Register** on March 29, 2006 (71 FR 15687). NMFS received no public comments on the proposed rule.

## Changes From the Proposed Rule

No changes are made in this final rule from the proposed rule.

## Classification

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

A FRFA was prepared for this action. The FRFA includes a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis (IRFA), NMFS's responses to those comments, and a summary of the analyses completed to support the action. The need for and objectives of this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble. The legal basis for this action also is contained in the preamble. No public comments were received in response to the IRFA or on the economic effects of the rule. A summary of the FRFA follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The entities that will be directly regulated by this action are the Western Alaska CDQ groups that annually receive halibut and sablefish quota, and those entities harvesting halibut and/or sablefish under the IFQ and CDQ Programs. There were six Western Alaska CDQ groups in 2004. Each of these groups is organized as a not-for-profit entity, and none is dominant in its field, thus, each group is considered to be a directly regulated small entity.

In 2004, 1,524 unique vessels harvested halibut and/or sablefish. A total of 1,304 unique vessels were used to harvest IFQ halibut, 199 to harvest CDQ halibut, and 1,489 to harvest IFQ halibut and/or CDQ halibut (i.e., 14 harvested both). A total of 396 unique vessels were used to harvest IFQ sablefish, 18 to harvest CDQ sablefish, and 403 to harvest IFQ and/or CDQ sablefish (i.e., 11 harvested both). Contractual arrangements, ownership information, and any resulting affiliations between such parties are not well documented and are not currently available to agency analysts. Though affiliation status for these entities is not known, vessel operations are believed to be small entities and will be treated as such for the purposes of this action.

This regulation does not impose new recordkeeping or reporting requirements on directly regulated small entities. Small entities targeting halibut and/or sablefish under the IFQ or CDQ Program may choose to ignore external research tags, and are not under any obligation to report them. However, if these small entities wish to avail themselves of the benefits this regulation imparts, they must report the presence of external research tags to IPHC port samplers, to the IPHC directly, to the Alaska Department of Fish and Game, or to NMFS as appropriate.

This action will amend regulations to provide that only halibut or sablefish that are externally tagged with research tags are exempt from deduction from IFQ or CDQ accounts. The exemption is believed to provide an economic incentive for fishermen to take the additional time to notify fishery managers about the tags and about the tagged fish they encounter during their fishing operations. This information is important for the conservation and management of the halibut and sablefish fisheries.

This regulation appears to impose no costs on directly regulated small entities. IFQ fishermen currently voluntarily bear the small burden of collecting and returning tags. Fishermen in the IFQ halibut and IFQ sablefish fisheries are accustomed to exemptions for delivery of externally tagged fish, and will continue to enjoy this benefit, if they so choose. CDQ groups harvesting CDQ halibut and CDQ sablefish now also will have the opportunity to benefit from this exemption. CDQ groups will not be required to return tags, so no costs will be imposed on them. Overall, this action will have no known adverse impacts on the profitability or competitiveness of small, directly regulated entities.

A FRFA should contain ''a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

As stated above, this regulation appears to impose no adverse economic impacts on directly regulated small entities. Therefore, no steps were taken to minimize the effects of this regulatory action on small entities.

This action was selected because it best accomplishes the objectives of eliminating an inconsistency between Federal and IPHC regulations, and expanding the exemption from quota deduction of halibut and sablefish tagged with external research tags to the CDQ Program.

The no action alternative would have no direct impact on small entities. Under this alternative the regulations would not be changed to eliminate the inconsistency between IPHC and Federal regulations, nor would CDQ groups be eligible for exemptions from quota deduction for halibut or sablefish tagged with external tags issued by any state, Federal, or international agency. Therefore, the no action alternative would not meet the objectives of this action (i.e., to eliminate inconsistency in the regulations and to extend the exemption from quota deduction to the CDQ groups).

An alternative that would leave the CDQ Program fisheries out of this action was considered but was rejected. This alternative would not encourage all fishermen that harvest halibut and sablefish in quota-share fisheries to return tagged fish. This alternative, therefore, would not meet the objectives of this action.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget under Control Number 0648–0276. Public reporting burden for tag information is estimated to average five minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by e-mail to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

NMFS will post a small entity compliance guide on the Internet at *http://www.fakr.noaa.gov/index/frules/frules.asp?Yr=2006*. The guide and this final rule will be available upon request (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 21, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. In § 679.40, paragraph (g) is revised to read as follows:

### § 679.40 Sablefish and halibut QS.

* * * * *

(g) *External research tags for halibut and sablefish.* (1) Nothing contained in this part 679 shall prohibit any person at any time from retaining and landing a Pacific halibut or sablefish that bears at the time of capture an external research tag from any state, Federal, or international agency, provided that the halibut or sablefish is one of the following:

(i) A Pacific halibut landed pursuant to § 300.62 of this title and to this part 679; or

(ii) A sablefish landed in accordance with the Tagged Groundfish Research Program, and in compliance with all sablefish requirements of this part 679.

(2) Halibut and sablefish bearing an external research tag from any state, Federal, or international agency, landed pursuant to paragraph (g)(1)(i) or (g)(1)(ii) of this section, and in accordance with § 679.5(l), shall be excluded from IFQ or CDQ deduction as follows:

(i) The fish shall not be calculated as part of a person's IFQ harvest of halibut or sablefish and shall not be debited against a person's halibut IFQ or a person's sablefish IFQ; or

(ii) The fish shall not be calculated as part of the CDQ harvest of halibut or sablefish and shall not be debited against a CDQ group's halibut CDQ or a CDQ group's sablefish CDQ.

[FR Doc. E6–10111 Filed 6–26–06; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 71, No. 123
Tuesday, June 27, 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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 Series Turbofan Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines, with certain low pressure (LP) compressor modules installed. This proposed AD would require an ultrasonic inspection (UI) of LP compressor fan blades for cracks, within 30 days after the effective date of the proposed AD on certain serial number (SN) Tay 650–15 engines. This proposed AD would also require repetitive UIs of LP compressor fan blades on all engines. This proposed AD would also require, for Tay 650–15 and Tay 651–54 engines, UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine. This proposed AD results from a report that a set of LP compressor fan blades failed before reaching the LP compressor fan blade full published life limit. We are proposing this AD to prevent LP compressor fan blades from failing due to blade root cracks, leading to uncontained engine failure and damage to the airplane.

**DATES:** We must receive any comments on this proposed AD by August 28, 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 20590–001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356 for the service information identified in this proposed AD.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD'' in the subject line 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 AD. Using the search function of the DMS 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 AD Docket

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

### Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified us that an unsafe condition may exist on RRD Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines. The LBA advises that a Tay 650 LP compressor fan blade set failed before reaching the LP compressor fan blade full published life limit. The set of fan blades accumulated 14,166 cycles-in-service. An investigation revealed that the set of LP compressor fan blades failed due to cracking in the blade root. Rolls-Royce initially introduced a fluorescent penetrant inspection in the engine manual to detect cracking in the blade root. However, further research indicates that repetitive UIs are most effective in detecting blade root cracks.

### Relevant Service Information

We reviewed and approved RRD Service Bulletin (SB) No. TAY–72–1591, dated May 8, 2003, that describes procedures for UI of LP compressor fan blades for cracks on certain SNs of Tay 650–15 engines with certain LP compressor modules. These engines may have not yet had UI of LP compressor fan blades. We have also reviewed and approved the technical contents of RRD SB No. TAY–72–1442, Revision 3, dated November 26, 2003, that describes procedures for UIs of LP compressor fan blades for all RRD Tay

611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines with certain LP compressor modules. The LBA classified these SBs as mandatory and issued airworthiness directive D–1998–055R3, dated December 15, 2003, in order to ensure the airworthiness of these RRD Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines in Germany. EASA has approved the LBA AD under approval No. 1869 on December 15, 2003.

### FAA's Determination and Requirements of the Proposed AD

These RRD Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines are manufactured in Germany. They are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the LBA kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. For this reason, we are proposing this AD, which would require:

- UI of LP compressor fan blades for cracks, within 30 days after the effective date of the proposed AD on certain serial number (SN) Tay 650–15 engines.
- Repetitive UIs of LP compressor fan blades on all engines.
- For Tay 650–15 and Tay 651–54 engines, UIs of LP compressor fan blades whenever the blade set is removed from one engine and installed on a different engine.
- Removal of the complete LP compressor fan blade set and the LP compressor fan disc from service, if any LP compressor fan blade is cracked.

The proposed AD would require you to use the service information described previously to perform these actions.

### Costs of Compliance

We estimate that this proposed AD would affect about 1,000 RRD Tay 611–8, Tay 620–15, Tay 650–15, and Tay 651–54 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 4 work-hours per engine to perform a proposed inspection, and that the average labor rate is $80 per work-hour. Required parts would cost about $95,000 per LP compressor fan disk and $140,000 per set of LP compressor fan blades. We estimate that 5 percent or 50 engines would require replacing the LP compressor fan disc and LP compressor fan blade set. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $11,750,000.

### Authority for This Rulemaking

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

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

### Regulatory Findings

We have determined that this 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. Would 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. 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.

### The Proposed Amendment

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 airworthiness directive:

**Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce plc):** Docket No. FAA–2006–24777; Directorate Identifier 2006–NE–19–AD.

#### Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 28, 2006.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611–8 and Tay 620–15 turbofan engines with low pressure (LP) compressor module part number (P/N) MO1100AA or P/N MO1100AB installed, and Tay 650–15 and Tay 651–54 turbofan engines with LP compressor module P/N MO1300AA or P/N MO1300AB installed. These engines are installed on, but not limited to, Fokker F.28 Mark 0070 and 0100 airplanes, Supplemental Type Certificate No. SA842SW, Boeing 727 airplanes, and Gulfstream G–IV airplanes.

#### Unsafe Condition

(d) This AD results from a report that a set of LP compressor fan blades failed before reaching the LP compressor fan blade full published life limit. We are issuing this AD to prevent LP compressor fan blades from failing due to blade root cracks, leading to uncontained engine failure and damage to the airplane.

#### Compliance

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

#### Ultrasonic Inspection (UI) of LP Compressor Fan Blades for Certain Tay 650–15 Engines That Have Not Yet Had UI of the LP Compressor Fan Blades

(f) For Tay 650–15 engines, serial numbers 17201, 17202, 17226, 17253, 17341, 17356, 17428, 17450, 17457, 17458, 17497, 17530, 17622, 17643, 17655, 17678, 17709, 17751, 17755, 17805, and 17806 that have not yet had UI of the LP compressor fan blades:

(1) Within 30 days after the effective date of this AD, perform UI of the LP compressor fan blades for cracks.

(2) Use Part 1 of RRD Service Bulletin (SB) No. TAY–72–1591, dated May 8, 2003, to do the inspection.

**UI of LP Compressor Fan Blades Being Installed in a Different Engine; Tay 650–15 and Tay 651–54 Engines**

(g) For Tay 650–15 and Tay 651–54 engines, whenever LP compressor fan blades are removed and are being installed in a different engine:

(1) Perform UI of the LP compressor fan blades for cracks.

(2) Use Part 1 of RRD SB No. TAY–72–1442, Revision 3, dated November 26, 2003, to do the inspection.

**UI of LP Compressor Fan Blades for All Tay Engines**

(h) Perform UI of the LP compressor fan blades for cracks, using Part 2 of RRD SB No. TAY–72–1442, Revision 3, dated November 26, 2003, at the following:

(1) For Tay 650–15 and Tay 651–54 engines, at every engine shop visit for any reason or before reaching every 4,000 flight hours-since-last-fan-blade UI, whichever occurs first.

(2) For Tay 620–15 engines, before reaching every 4,000 flight hours but no later than every 10 years since-last-fan-blade UI, whichever occurs first.

(3) For Tay 611–8 engines, before reaching every 8,000 flight hours but no later than every 10 years since-last-fan-blade UI, whichever occurs first.

**LP Compressor Fan Blades That Are Cracked**

(i) If any LP compressor fan blade is cracked, then remove the complete LP compressor fan blade set and the LP compressor fan disc from service.

**Alternative Methods of Compliance**

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

**Related Information**

(k) Luftfahrt-Bundesamt airworthiness directive D–1998–055R3, dated December 15, 2003, which was approved by EASA under approval No. 1869 on December 15, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on June 21, 2006.

**Thomas A. Boudreau,**

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

[FR Doc. E6–10087 Filed 6–26–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–25192; Directorate Identifier 2006–NM–004–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The existing AD currently requires repetitive detailed and eddy current inspections of the main fittings of the main landing gears (MLG) to detect discrepancies, and related investigative/corrective actions if necessary. The existing AD also requires servicing the shock strut of the MLGs; inspecting the shock strut of the MLGs for nitrogen pressure, visible chrome dimension, and oil leakage; and servicing any discrepant strut. This proposed AD would require installing a new, improved MLG main fitting, which would terminate the repetitive inspection and servicing requirements of the existing AD. This proposed AD results from stress analyses that showed certain main fittings of the MLGs are susceptible to premature cracking, starting in the radius of the upper lug. We are proposing this AD to detect and correct premature cracking of the main fittings of the MLGs, which could result in failure of the fittings and consequent collapse of the MLGs during landing.

**DATES:** We must receive comments on this proposed AD by July 27, 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.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Richard Beckwith, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–25192; Directorate Identifier 2006–NM–004–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 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.

**Discussion**

On June 30, 2004, we issued AD 2004–14–16, amendment 39–13725 (69 FR 41421, July 9, 2004) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires repetitive detailed and eddy current inspections of the main fittings of the main landing gears (MLG) to detect discrepancies, and related investigative/corrective actions if necessary. That AD also requires servicing the shock strut of the MLGs; inspecting the shock strut of the MLGs for nitrogen pressure, visible chrome dimension, and oil leakage; and servicing any discrepant strut. That AD resulted from stress analyses that showed certain main fittings of the MLGs are susceptible to premature cracking, starting in the radius of the upper lug. We issued that AD to detect and correct premature cracking of the main fittings of the MLGs, which could result in failure of the fittings and consequent collapse of the MLGs during landing.

**Actions Since Existing AD Was Issued**

Since we issued AD 2004–14–16, the manufacturer has designed a new MLG main fitting. Installing this new fitting terminates the inspection requirements currently mandated by AD 2004–14–16.

**Other Relevant Rulemaking**

On October 22, 2001, we issued AD 2001–22–09, amendment 39–12488 (66 FR 54658, October 30, 2001), for certain Bombardier Model CL–600–2B19 series airplanes. That AD requires repetitive eddy current inspections for cracking of the MLG main fittings, and replacement with a new or serviceable MLG, if necessary. That AD also requires servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions, if necessary. That AD was prompted by reports of premature failure of the MLG main fitting. We issued that AD to prevent failure of the MLG main fitting, which could result in collapse of the MLG upon landing. AD 2001–22–09 inspects MLG main fittings that are similar to those addressed by this proposed AD. AD 2001–22–09 is relevant to this proposed AD because we are considering superseding AD 2001–22–09 with a new AD that would have the same terminating action as that in this proposed AD.

On September 27, 2004, we issued AD 2004–20–09, amendment 39–13814 (69 FR 59790, October 6, 2004), for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires repetitive inspections for cracks, sealant damage, and corrosion of the main fittings of the MLG, and corrective actions if necessary. That AD was prompted by a report of a cracked main fitting of the MLG. We issued that AD to detect and correct fatigue cracking of the main fitting of the MLG and consequent failure of the main fitting, which could result in the collapse of the MLG. AD 2004–20–09 addresses the same unsafe condition on MLG main fittings that have different part numbers. AD 2004–20–09 is relevant to this proposed AD because we are considering superseding AD 2004–20–09 with a new AD that would have the same terminating action as that in this proposed AD.

**Relevant Service Information**

Bombardier has issued Service Bulletin 601R–32–093, Revision B, dated July 14, 2005. The service bulletin describes procedures for replacing the main fitting of the MLG with a new main fitting having a new part number (P/N).

Bombardier has also issued Alert Service Bulletin 601R–32–088, Revision A, dated June 16, 2005, including Appendices A, B, and C, dated February 20, 2003. The procedures in this service bulletin are essentially the same as those in Bombardier Service Bulletin 601R–32–088, including Appendices A, B, and C, dated February 20, 2003, which was referenced as the appropriate source of service information for doing the actions in AD 2004–14–16. Revision A makes changes that do not affect the technical content of the service bulletin.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, mandated the service information and issued Canadian airworthiness directive CF–2003–09R1, dated September 21, 2005, to ensure the continued airworthiness of these airplanes in Canada.

Bombardier Service Bulletin 601R–32–093 refers to Messier-Dowty Service Bulletin M–DT SB17002–32–25, Revision 1, dated October 17, 2003, as an additional source of service information for replacing the main fittings.

**FAA's Determination and Requirements of the Proposed AD**

This airplane model is manufactured in Canada 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 airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2004–14–16 and retain the requirements of the existing AD. This proposed AD would also require replacing the main fitting of the MLG with a new main fitting having a new P/N. Doing this replacement would terminate the repetitive inspection and servicing requirements of AD 2004–14–16.

**Differences Between the Proposed AD and the Canadian Airworthiness Directive**

Although the Canadian airworthiness directive specifies to report certain information to the manufacturer, and although that action was included in AD 2004–14–16, this proposed AD would not continue to require those reports. We find that the reports are no longer necessary because the purpose of the reports was to help identify and develop a terminating action for the repetitive inspections. That terminating action has been developed and is the subject of this proposed AD.

Although the applicability of the Canadian airworthiness directive does not specify serial numbers (S/Ns) of the affected airplanes, we have included the affected S/Ns in this proposed AD for clarity.

**Changes to Existing AD**

This proposed AD would retain certain requirements of AD 2004–14–16. Since AD 2004–14–16 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2004–14–16 | Corresponding requirement in this proposed AD |
|---|---|
| Paragraph (a) | Paragraph (f). |
| Paragraph (b) | Paragraph (g). |
| Paragraph (c) | Paragraph (h). |
| Paragraph (d) | Paragraph (i). |
| Paragraph (e) | Paragraph (j). |

We have also revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved alternative method of compliance (AMOC) on any airplane to which the AMOC applies.

## Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. There are approximately 278 airplanes of U.S. registry that would be affected by this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per airplane | Fleet cost |
|---|---|---|---|---|
| Inspections (required by AD 2004–14–16) | 4 | None | $320, per inspection cycle | $88,960, per inspection cycle. |
| Replacement (new proposed action) | 46 | $105,732 | $109,412 | $30,416,436. |

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13725 (69 FR 41421, July 9, 2004) and adding the following new airworthiness directive (AD):

**Bombardier, Inc. (Formerly Canadair):** Docket No. FAA–2006–25192; Directorate Identifier 2006–NM–004–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by July 27, 2006.

**Affected ADs**

(b) This AD supersedes AD 2004–14–16.

**Applicability**

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent; certificated in any category; equipped with main landing gear (MLG) main fittings, part numbers (P/N) 601R85001–81 and 601R85001–82 (Messier Dowty Incorporated P/Ns 17064–105 and 17064–106).

**Unsafe Condition**

(d) This AD results from stress analyses that showed certain main fittings of the MLGs are susceptible to premature cracking, starting in the radius of the upper lug. We are issuing this AD to detect and correct premature cracking of the main fittings of the MLGs, which could result in failure of the fittings and consequent collapse of the MLGs during landing.

**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 2004–14–16**

*Detailed Inspection of Main Fittings of the MLGs*

(f) Before the accumulation of 2,500 total flight cycles on the MLGs, or within 250 flight cycles after August 13, 2004 (the effective date of AD 2004–14–16), whichever occurs later: Do a detailed inspection on the main fittings of the MLGs to detect discrepancies (i.e., linear paint cracks or lack of paint (paint peeling), any other paint damage, adhesion, paint bulging, or corrosion), in accordance with Part A of the Accomplishment Instructions of Bombardier Alert Service Bulletin (ASB) A601R–32–088, dated February 20, 2003; or Bombardier ASB 601R–32–088, Revision A, dated June 16, 2005, including Appendices, A, B, and C, dated February 20, 2003. Repeat the inspection thereafter at intervals not to exceed 100 flight cycles until paragraph (k) of this AD is accomplished.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally

supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

*Related Investigative/Corrective Actions*

(g) If any discrepancy is detected during any inspection required by paragraph (f) of this AD, before further flight: Do the related investigative/corrective actions in accordance with Part B or F of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendices A and C, dated February 20, 2003; or Bombardier ASB A601R–32–088, Revision A, dated June 16, 2005, including Appendices A, B, and C, dated February 20, 2003. If an eddy current inspection (a related investigative action specified in Part B) is used to confirm the detailed inspection findings, the next eddy current required by paragraph (h) of this AD must be conducted within 500 flight cycles after the eddy current inspection specified in this paragraph, and thereafter at intervals not to exceed 500 flight cycles until paragraph (k) of this AD is accomplished.

*Eddy Current Inspection of Main Fittings of the MLGs*

(h) At the time specified in paragraph (f) of this AD, do an eddy current inspection on the main fittings of the MLGs to detect cracks in accordance with Part B of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendix A, dated February 20, 2003; or Bombardier ASB A601R–32–088, Revision A, dated June 16, 2005, including Appendixes, A, B, and C, dated February 20, 2003. Repeat the eddy current inspection thereafter at intervals not to exceed 500 flight cycles, until paragraph (k) of this AD is accomplished. If any crack is found, before further flight, replace the affected main fittings of the MLGs with new or serviceable fittings in accordance with paragraph E.(5) of Part B of the Accomplishment Instructions of the service bulletin or in accordance with paragraph (k) of this AD. If any crack is found after the effective date of this AD, do the replacement in accordance with paragraph (k) of this AD.

*Servicing of Shock Struts*

(i) Before the accumulation of 2,500 total flight cycles on the MLGs, or within 500 flight cycles after August 13, 2004, whichever occurs later, service the shock strut of the MLGs in accordance with Part C or D, as applicable, of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendix B, dated February 20, 2003; or Bombardier ASB A601R–32–088, Revision A, dated June 16, 2005, including Appendices A, B, and C, dated February 20, 2003.

*Shock Strut Inspection*

(j) Within 500 flight cycles after completing the servicing required by paragraph (i) of this AD, inspect the shock strut of the MLGs for nitrogen pressure, visible chrome dimension, and oil leakage in accordance with Part E of the Accomplishment Instructions of Bombardier ASB A601R–32–088, including Appendix B, dated February 20, 2003; or Bombardier ASB A601R–32–088, Revision A, dated June 16, 2005, including Appendices A, B, and C, dated February 20, 2003. Repeat the inspection thereafter at intervals not to exceed 500 flight cycles, until paragraph (k) of this AD is accomplished. If the nitrogen pressure and visible chrome dimensions are found outside the limits (the service bulletin refers to the airplane maintenance manual as the source of defined limits) and/or oil leakage is found, before further flight, service the affected shock strut of the MLGs in accordance with Part C or D, as applicable, of the Accomplishment Instructions of the service bulletin.

**New Requirements of This AD**

*Replacement*

(k) Within 39 months after the effective date of this AD: Replace the main fittings of the MLGs, P/Ns 601R85001–81 and 601R85001–82 (Messier Dowty Incorporated P/Ns 17064–105 and 17064–106), with new main fittings, P/Ns 601R85001–83 and 601R85001–84 (Messier Dowty Incorporated P/Ns 17064–107 and 17064–108), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–093, Revision B, dated July 14, 2005. Doing this replacement terminates all requirements of paragraphs (f), (g), (h), (i), and (j) of this AD.

**Note 2:** Bombardier Service Bulletin 601R–32–093, Revision B, refers to Messier Dowty M–DT Service Bulletin SB17002–32–25, Revision 1, dated October 17, 2003, as an additional source of service information for replacing the main fittings.

*Parts Installation*

(l) As of the effective date of this AD, no person may install a main fitting of the MLG, P/Ns 601R85001–81 and 601R85001–82 (Messier Dowty Incorporated P/Ns 17064–105 and 17064–106), on any airplane.

*No Reporting Required*

(m) Although the Accomplishment Instructions of Bombardier ASB A601R–32–088, dated February 20, 2003; and ASB 601R–32–088, Revision A, dated June 16, 2005; specify to report certain information to the manufacturer, this AD does not include that action.

*Actions Accomplished in Accordance With Previous Revisions of Service Bulletin*

(n) Actions accomplished before the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD are acceptable for compliance with the actions in paragraph (k) of this AD.

TABLE 1.—PREVIOUS REVISIONS OF SERVICE BULLETIN

| Bombardier Service Bulletin | Revision level | Date |
|---|---|---|
| 601R–32–093 | Original | October 17, 2003. |
| 601R–32–093 | A | September 21, 2004. |

**Alternative Methods of Compliance (AMOCs)**

(o)(1) The Manager, New York 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.

**Related Information**

(p) Canadian airworthiness directive CF–2003–09R1, dated September 21, 2005, also addresses the subject of this AD.

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

**Kalene C. Yanamura,**

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

[FR Doc. E6–10090 Filed 6–26–06; 8:45 am]

BILLING CODE 4910–13–P

## POSTAL SERVICE

## 39 CFR Part 501

## Revisions to the Requirements for Authority To Manufacture and Distribute Postage Evidencing Systems

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** In this proposed rule, the Postal Service™ proposes to revise the content of Title 39, *Code of Federal Regulations*, Part 501 (39 CFR 501), Authorization to Manufacture and Distribute Postage Meters. This

proposed revision includes updating the regulations, removing obsolete text, and incorporating pertinent portions of the rules for postage meters (Postage Evidencing Systems) formerly contained in section P030 of the *Domestic Mail Manual* (Issue 58). The proposed text for 39 CFR 501 would also rename Part 501 as ''Authorization to Manufacture and Distribute Postage Evidencing Systems'' and integrate the requirements that apply to the distribution and manufacture of PC Postage® products, a type of Postage Evidencing System. In addition, obsolete references to requirements for manually reset and mechanical meters are proposed to be eliminated.

**DATES:** Submit comments on or before July 27, 2006.

**ADDRESSES:** Mail or deliver written comments to the Manager, Postage Technology Management, U.S. Postal Service, 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–5011. Written comments may also be submitted via fax to 703–292–4073. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postage Technology Management office.

**FOR FURTHER INFORMATION CONTACT:** Daniel J. Lord, Manager, Postage Technology Management, U.S. Postal Service, at 703–292–3692.

**SUPPLEMENTARY INFORMATION:** Postage Evidencing Systems are devices or systems of components that a customer uses to print evidence that the prepaid postage required for mailing has been paid. They include, but are not limited to, postage meters and PC Postage® systems. The Postal Service regulates these systems and their use in order to protect postal revenue. Only Postal Service-authorized product service providers may design, produce, and distribute Postage Evidencing Systems.

Since 1995, the Postal Service has been engaged in an ongoing effort to ensure greater protection for postal revenue and to help the mailing industry transition to advanced postage evidencing technology. During this time, the Postal Service has continually worked with postage evidencing system providers and users to plan for and implement the phasing out of certain older style postage meters in favor of more advanced and secure systems. This effort, referred to as Meter Decertification, is systematically phasing out the use of less secure postage meter technology.

As a result of the Postal Service's Meter Decertification efforts, this proposed rule proposes to eliminate obsolete provisions related to manually reset and mechanical meters that are no longer authorized for distribution and use by customers. In addition, this proposed rule proposes a new section to define a decertified Postage Evidencing System and to codify the requirements for their removal from the market.

Another result of the Postal Service's efforts to transition to more secure technology was the introduction of PC Postage products. PC Postage products are commercially offered software or online service products that customers use to apply postage to their mailings using a computer and desktop printer. This proposed rule proposes to incorporate the requirements for the manufacturer and distribution of PC Postage products into all relevant sections of this rule and to outline the Postal Service's PC Postage payment methodology.

This proposed rule proposes to eliminate much of the detailed requirements for processes such as meter destruction, inspections, and lost or stolen meter recovery. In lieu of these detailed requirements, authorized providers of Postage Evidencing Systems will be given greater flexibility to develop their own procedures and submit them for Postal Service approval.

This proposed rule also proposes to eliminate much of the detailed testing and Postage Evidencing System functionality requirements. In place of these requirements, the Postal Service's published Product Submission Procedures and Performance Criteria have been incorporated by reference.

And finally, when the Postal Service redesigned the *Domestic Mail Manual* (DMM) in 2005, a small portion of the overall project involved the removal of most of the rules that apply to Postage Evidencing System providers that were previously contained in DMM P030 (Issue 58). The intent was to move the bulk of these rules into 39 CFR 501, since other federal requirements concerning the manufacture and use of Postage Evidencing Systems already resided there. Therefore, through this proposed rule the Postal Service proposes to move some of the content formerly contained in DMM P030 (Issue 58) into 39 CFR 501.

Although exempt from the notice and comment requirements of the *Administrative Procedure Act* [5 U.S.C. 410(a)], the Postal Service invites public comment on the following proposed revisions to the *Code of Federal Regulations* (see 39 CFR part 501).

**List of Subjects in 39 CFR Part 501**

Postal Service.

Accordingly, 39 CFR Part 501 is proposed to be amended as follows:

## PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

1. The authority citation for 39 CFR Part 501 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

2. Part 501 is revised to read as follows:

## PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

Sec.

501.1 Definitions.
501.2 Postage Evidencing System provider authorization.
501.3 Postage Evidencing System provider qualification.
501.4 Changes in ownership or control, bankruptcy, or insolvency.
501.5 Burden of proof standard.
501.6 Suspension and revocation of authorization.
501.7 Postage Evidencing System requirements.
501.8 Postage Evidencing System test and approval.
501.9 Demonstration or test Postage Evidencing Systems.
501.10 Postage Evidencing System modifications.
501.11 Reporting Postage Evidencing System security weaknesses.
501.12 Administrative sanctions.
501.13 False representations of Postal Service actions.
501.14 Postage Evidencing System inventory control processes.
501.15 Computerized Meter Resetting System.
501.16 PC Postage payment methodology.
501.17 Decertified Postage Evidencing Systems.
501.18 Customer information and authorization.
501.19 Intellectual property.

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

### § 501.1 Definitions.

(a) *Postage Evidencing Systems* regulated by Part 501 produce evidence of prepayment of postage by any method other than postage stamps and permit imprints. A Postage Evidencing System is a device or system of components that a customer uses to print evidence that postage required for mailing has been paid. Postage Evidencing Systems print indicia, such as meter imprints or Information Based Indicia to indicate postage payment. They include but are

not limited to postage meters and PC Postage® systems.

(b) A *postage meter* is a Postal Service approved Postage Evidencing System that uses a device to account for postage purchased and printed. The term *meter* as used in this Part refers to a postage meter.

(c) *PC Postage products* are Postal Service approved Postage Evidencing Systems that use a personal computer as an integral part of the system. PC Postage products may use the Internet to download postage to a mailer's computer from which the postage indicia may then be printed.

(d) A *provider* is a person or entity authorized under this section to manufacture and/or distribute Postage Evidencing Systems to customers.

(e) A *manufacturer* of postage meters produces postage meters.

(f) A *distributor* of postage meters may be a manufacturer who leases postage meters directly to end user customers or may be an independent entity who leases postage meters to end user customers on behalf of the manufacturer.

(g) A *customer* is a person or entity authorized by the Postal Service to use a Postage Evidencing System in accordance with *Domestic Mail Manual* 604 Postage Payment Methods, 4.0 Postage Meters and PC Postage Products (Postage Evidencing Systems).

**§ 501.2 Postage Evidencing System provider authorization.**

(a) The Postal Service considers Postage Evidencing Systems and their respective infrastructure to be essential to the exercise of its specific powers to prescribe postage and provide evidence of payment of postage under 39 U.S.C. 404(a)(2) and (4).

(b) Due to the potential for adverse impact upon Postal Service revenue, the following activities may not be engaged in by any person or entity without prior, written approval of the Postal Service:

(1) Producing or distributing any Postage Evidencing System that generates U.S. postage.

(2) Repairing, distributing, refurbishing, remanufacturing, modifying, or destroying any component of a Postage Evidencing System that accounts for or authorizes the printing of U.S. postage.

(3) Owning or operating an infrastructure that maintains operating data for the production of U.S. postage, or accounts for U.S. postage purchased for distribution through a Postage Evidencing System.

(4) Owning or operating an infrastructure that maintains operating data that is used to facilitate registration with the Postal Service of customers of a Postage Evidencing System.

(c) Any person or entity seeking authorization to perform any activity described in paragraph (b) of this section, or to materially modify any activity previously approved by the Postal Service, must submit a request to the Postal Service in person or in writing. Decisions of the Postal Service upon such requests are effective only if in writing (including electronic mail).

(d) Approval shall be based upon satisfactory evidence of the applicant's integrity and financial responsibility, commitment to the security of the Postage Evidencing System, and a determination that disclosure to the applicant of Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with good business practices within the meaning of 39 U.S.C. 410(c)(2). The Postal Service may condition its approval upon the applicant's agreement to undertakings that would give the Postal Service appropriate assurance of the applicant's ability to meet its obligations under this section, including but not limited to the method and manner of performing certain financial, security, and servicing functions and the need to maintain sufficient financial reserves to guarantee uninterrupted performance of not less than 3 months of operation.

(e) Qualification and approval may be based upon additional conditions agreed to by the Postal Service and the applicant. The applicant is approved in writing to engage in the function(s) for which authorization was sought and approved.

(f) To the extent that any provider manufactures and/or distributes any PC Postage product through any authorized Postage Evidencing System, such provider must adhere to the requirements of these regulations.

(g) The Postal Service office responsible for administration of this Part 501 is the office of Postage Technology Management (PTM) or successor organization. All submissions to the Postal Service required or invited by this Part 501 are to be made to this office in person or via mail to 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6370.

Information updates may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/flash.htm.*

**§ 501.3 Postage Evidencing System provider qualification.**

Any person or entity seeking authorization to manufacture and/or distribute Postage Evidencing Systems must:

(a) Satisfy the Postal Service of its integrity and financial responsibility.

(b) Obtain Postal Service approval under this Part of at least one Postage Evidencing System satisfying the requirements of Postal Service regulations.

(c) As a condition of obtaining authorization under this section, the Postage Evidencing System provider's facilities used for the manufacture, distribution, storage, resetting, or destruction of postage meters and all facilities housing infrastructure supporting Postage Evidencing Systems will be subject to unannounced inspection by representatives of the Postal Service. If such facilities are outside the continental United States, the provider will be responsible for all reasonable and necessary travel-related costs incurred by the Postal Service to conduct the inspections. Travel-related costs are determined in accordance with Postal Service Handbook F–15, *Travel and Relocation.* At its discretion, the Postal Service may continue to fund routine inspections outside the continental United States as it has in the past, provided the costs are not associated with particular security issues related to a provider's Postage Evidencing System or supporting infrastructure, or with the start-up or implementation of a new plant or of a new or substantially changed manufacturing process.

(1) When conducting an inspection outside the continental United States, the Postal Service will make every effort to combine the inspection with other inspections in the same general geographic area in order to enable affected providers to share the costs. The Postal Service team conducting such inspections will be limited to the minimum number necessary to conduct the inspection. All air travel will be contracted for at the rates for official government business, when available, under such rules respecting class of travel as apply to those Postal Service representatives inspecting the facility at the time the travel occurs.

(2) If political or other impediments prevent the Postal Service from conducting security evaluations of Postage Evidencing System facilities in foreign countries, Postal Service approval of the activities conducted in such facilities may be suspended until such time as satisfactory inspections may be conducted.

(d) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of

Postage Evidencing Systems and their replacement or secure disposal or destruction when necessary and appropriate.

**§ 501.4 Changes in ownership or control, bankruptcy, or insolvency.**

(a) Any person or entity authorized under § 501.2 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in its ownership or control including changes in the ownership of an affiliate which exercises control over its Postage Evidencing System operations in the United States. A change of ownership or control within the meaning of this section includes entry into a strategic alliance or other agreement whereby a third party either

(1) Has access to data related to the security of the system or

(2) Is a competitor to the Postal Service. Any person or entity seeking to acquire ownership or control of a person or entity authorized under § 501.2 must provide the Postal Service satisfactory evidence that it satisfies the conditions for approval stated in § 501.2. Early notification of a proposed change in ownership or control will facilitate expeditious review of an application to acquire ownership or control under this section.

(b) Any person or entity authorized under § 501.2 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in the status of its financial condition either through bankruptcy, insolvency, assignment for the benefit of creditors, or other similar financial action. Any person or entity authorized under § 501.2 who experiences a change in the status of its financial condition may, at the discretion of the Postal Service, have its authorization under § 501.2 modified or terminated.

**§ 501.5 Burden of proof standard.**

The burden of proof is on the Postal Service in administrative determinations of suspension and revocation under § 501.6 and administrative sanctions under § 501.12. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance-of-evidence standard.

**§ 501.6 Suspension and revocation of authorization.**

(a) The Postal Service may suspend and/or revoke authorization to manufacture and/or distribute any or all of a provider's approved Postage Evidencing System(s) if the provider engages in any unlawful scheme or enterprise, fails to comply with any provision in this Part 501, fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over Postage Evidencing Systems or if the Postage Evidencing System or infrastructure of the provider is determined to constitute an unacceptable risk to Postal Service revenues.

(b) The decision to suspend or revoke pursuant to paragraph (a) of this section shall be based upon the nature and circumstances of the violation (e.g., whether the violation was willful, whether the provider voluntarily admitted to the violation, or cooperated with the Postal Service, whether the provider implemented successful remedial measures) and on the provider's performance history. Before determining that a provider's authorization to manufacture and/or distribute Postage Evidencing Systems should be suspended or revoked, the procedures in paragraph (c) of this section shall be followed.

(c) Suspension or revocation procedures:

(1) Upon determination by the Postal Service that a provider is in violation of provisions of this Part 501, or that its Postal Evidencing System poses an unreasonable risk to postal revenue, PTM, acting on behalf of the Postal Service shall issue a written notice of proposed suspension citing the specific conditions or deficiencies for which suspension of authorization to manufacture and/or distribute a specific Postage Evidencing System or class of Postage Evidencing Systems may be imposed. Except in cases of willful violation, the provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential revenue risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the provider has failed to correct cited deficiencies within the specified time limit, PTM shall issue a written notice of suspension setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) The notice shall also advise the provider of its right to file a response under paragraph (d) of this section. If a written response is not presented in a timely manner the suspension may go into effect. The suspension shall remain in effect for ninety (90) calendar days unless revoked or modified by PTM.

(4) If, upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (c)(5)(iii) of this section.

(5) At the end of the ninety (90) day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the provider time to correct the problem.

(ii) Make a determination to revoke authorization to manufacture and/or distribute a Postage Evidencing System in part or in whole.

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem.

(d) The provider may present the Postal Service with a written defense to any suspension or revocation determination within thirty (30) calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and state with specificity the reasons why the order should not be imposed.

(e) After receipt and consideration of the defense, PTM shall advise the provider of its decision and the facts and reasons for it. The decision shall be effective on receipt unless provided otherwise. The decision shall also advise the provider that it may be appealed within thirty (30) calendar days of receipt (unless a shorter time frame is deemed necessary). If an appeal is not filed in a timely manner, the decision of PTM shall become a final decision of the Postal Service. The appeal may be filed with the Chief Marketing Officer of the Postal Service and must include all supporting evidence and state with specificity the reasons the provider believes that the decision is erroneous. The decision of the Chief Marketing Officer shall constitute a final decision of the Postal Service.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or entity.

**§ 501.7 Postage Evidencing System requirements.**

(a) A Postage Evidencing System submitted to the Postal Service for approval must meet the requirements of the Performance Criteria for Information-based Indicia and Security Architecture for Open IBI Postage Evidencing Systems published by PTM. The current version of the Performance

Criteria may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/programdoc.html* or requests for copies may be submitted via mail to 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6370.

(b) The provider must affix to all meters a cautionary message providing the meter user with basic reminders on leasing and meter movement.

(1) The cautionary message must be placed on all meters in a conspicuous and highly visible location. PROPERTY OF [NAME OF PROVIDER] as well as the provider's toll-free number must be emphasized by capitalized bold type and preferably printed in red. The minimum width of the message should be 3.25 inches, and the minimum height should be 1.75 inches. The message should read as follows:

RENTED POSTAGE METER—NOT FOR SALE

PROPERTY OF [NAME OF PROVIDER]

(800) ###–####

Use of this meter is permissible only under U.S. Postal Service authorization. Call [Name of Provider] at (800) ###–#### to relocate/return this meter.

WARNING! METER TAMPERING IS A FEDERAL OFFENSE.

IF YOU SUSPECT METER TAMPERING, CALL POSTAL INSPECTORS AT (800) 372–8347

REWARD UP TO $50,000 for information leading to the conviction of any person who misuses postage meters resulting in the Postal Service not receiving correct postage payments.

(2) Exceptions to the formatting of the required message are determined on a case-by-case basis. Any deviation from standardized meter message requirements must be approved in writing by the Postal Service.

(c) The provider must ensure that all images to appear in the ad plate area of an indicia are not obscene, deceptive, or defamatory of any person, entity, or group; do not advocate unlawful action; do not emulate any form of valid postage, government, or other official indicia, or payment of postage; and do not harm the public image, reputation, or good will of the Postal Service. Providers will also have full responsibility for ensuring that a customer acknowledges, agrees and warrants in writing that it bears full responsibility and liability for obtaining authorization to reproduce and otherwise use an image as proposed, and that it, in fact, has the legal authority to reproduce and otherwise use the image as proposed.

**§ 501.8 Postage Evidencing System test and approval.**

(a) To receive Postal Service approval, each Postage Evidencing System must be submitted by the provider and evaluated by the Postal Service in accordance with the *Postage Evidencing Product Submission Procedures* published by PTM. The current version of the Product Submission Procedures may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/programdoc.html* or requests for copies may be submitted via mail to 1735 N. Lynn Street, Room 5011, Arlington, VA 22209–6370. These procedures apply to all proposed Postage Evidencing Systems regardless of whether the provider is currently authorized by the Postal Service to distribute Postage Evidencing Systems. All testing required by the Postal Service will be an expense of the provider.

(b) As provided in § 501.11, the provider has a duty to report security weaknesses to the Postal Service to ensure that each approved Postage Evidencing System protects the Postal Service against loss of revenue at all times. A grant of approval of a system does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the system. After approval is granted to manufacture and/or distribute a Postage Evidencing System, no change affecting its basic features or safeguards may be made except as authorized or ordered by the Postal Service in writing.

**§ 501.9 Demonstration or test Postage Evidencing Systems.**

(a) The following procedures must be followed to implement controls over demonstration or test Postage Evidencing Systems:

(1) A demonstration or test Postage Evidencing System may print only specimen or test indicia. A specimen or test indicia must clearly indicate that the indicia does not represent valid postage.

(2) A demonstration or test Postage Evidencing System must be recorded as such on internal provider inventory records and must be tracked by model number, serial number, and physical location.

(3) A demonstration or test Postage Evidencing System must remain under the provider's direct control. A demonstration or test Postage Evidencing System may not be left in the possession of a customer under any circumstance.

(b) All indicia printed by a demonstration or test Postage Evidencing System must be collected and destroyed daily.

**§ 501.10 Postage Evidencing System modifications.**

(a) An authorized provider must receive prior written approval from the manager, PTM, of any and all changes made to a previously approved Postage Evidencing System. The notification must include a summary of all changes made and the provider's assessment as to the impact of those changes on the security of the Postage Evidencing System and postage funds. Upon receipt of the notification, PTM will review the summary of changes and make a decision regarding the need for the following:

(1) Additional documentation.

(2) Level of test and evaluation required.

(3) Necessity for evaluation by a laboratory accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP).

(b) Upon receipt and review of additional documentation and/or test results, PTM will issue a written acknowledgement and/or approval of the change to the provider.

**§ 501.11 Reporting Postage Evidencing System security weaknesses.**

(a) For purposes of this section provider refers to the Postage Evidencing System provider authorized under § 501.2 and its foreign affiliates, if any, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each authorized provider of a Postage Evidencing System must notify the Postal Service immediately upon discovery of the following:

(1) All findings or results of any testing known to the provider concerning the security or revenue protection features, capabilities, or failings of any Postage Evidencing System sold, leased, or distributed by it that has been approved for sale, lease, or distribution by the Postal Service or any foreign postal administration; or has been submitted for approval by the provider to the Postal Service or other foreign postal administration(s).

(2) All potential security weaknesses or methods of tampering with the Postage Evidencing Systems that the provider distributes of which it knows or should know and the Postage Evidencing System model subject to each such method. Potential security weaknesses include but are not limited to suspected equipment defects, suspected abuse by a customer or

provider employee, suspected security breaches of the Computerized Meter Resetting System (CMRS) or databases housing confidential customer data relating to the use of Postage Evidencing Systems, occurrences outside normal performance, or any repeatable deviation from normal Postage Evidencing System performance.

(c) Within a time limit corresponding to the potential revenue risk to postal revenue as determined by the Postal Service, the provider must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The provider must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The provider must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses and shall provide a copy of such internal reporting procedures and instructions to the Postal Service for review.

(e) Failure to comply with this section may result in suspension of approval under § 501.6 or the imposition of sanctions under § 501.12.

**§ 501.12 Administrative sanctions.**

(a) An authorized Postage Evidencing System provider may be responsible to the Postal Service for revenue losses caused by failure to comply with § 501.11.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the provider knew, or should have known, of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any Postage Evidencing System for which the provider failed to comply with any provision in § 501.11. The Postal Service issues a written demand for reimbursement of any and all such costs and losses (net of any amount collected by the Postal Service from the customers) with interest. The demand shall set forth the facts and reasons on which it is based.

(c) The provider may present the Postal Service with a written defense to the proposed action within thirty (30) calendar days of receipt. The defense must include all supporting evidence and state with specificity the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the provider of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the provider that it may, within thirty (30) calendar days of receiving written notice, appeal that determination to the Chief Marketing Officer of the Postal Service who shall issue a written decision upon the appeal which will constitute the final Postal Service decision.

(e) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or entity.

(f) An authorized Postage Evidencing System provider, who without just cause fails to follow any Postal Service approved procedures, perform adequately any of the Postal Service approved controls or fails to obtain approval of a required process in § 501.14 in a timely fashion, is subject to an administrative sanction under this provision § 501.12.

**§ 501.13 False representations of Postal Service actions.**

Providers, their agents, and employees must not intentionally misrepresent to customers of the Postal Service decisions, actions, or proposed actions of the Postal Service respecting its regulation of Postage Evidencing Systems. The Postal Service reserves the right to suspend and/or revoke the authorization to manufacture or distribute Postage Evidencing Systems throughout the United States or any part thereof pursuant to § 501.6 when it determines that the provider, its agents or employees failed to comply with this section.

**§ 501.14 Postage Evidencing System inventory control processes.**

(a) Each authorized provider of Postage Evidencing Systems must permanently hold title to all Postage Evidencing Systems which it manufactures or distributes except those purchased by the Postal Service or distributed outside the United States.

(b) An authorized provider must maintain sufficient facilities for and records of the distribution, control, storage, maintenance, repair, replacement, and destruction or disposal of all Postage Evidencing Systems and their components to enable accurate accounting and location thereof throughout the entire life cycle of each Postage Evidencing System. A complete record shall entail a list by serial number of all Postage Evidencing Systems manufactured or distributed showing all movements of each system from the time that it is produced until it is scrapped, and the reading of the ascending register each time the system is checked into or out of service. These records must be available for inspection by Postal Service officials at any time during business hours.

(c) To ensure adequate control over Postage Evidencing Systems, plans for the following processes must be submitted for prior approval, in writing, to PTM:

(1) Check in to service procedures for all Postage Evidencing Systems—the procedures are to address the process to be used for new Postage Evidencing Systems as well as those previously leased to another customer.

(2) Transportation and storage of meters—procedures that provide reasonable precautions to prevent use by unauthorized individuals. Providers must ship all meters by Postal Service Registered Mail unless given written permission by the Postal Service to use another carrier. The provider must demonstrate that the alternative delivery carrier employs security procedures equivalent to those for Registered Mail.

(3) Postage meter examination/inspection procedures and schedule—resetting transactions must not be completed by the provider if a meter is not examined by the due date. If necessary, the Postal Service shall notify the customer that the meter is to be removed from service and the authorization to use a meter revoked, following the procedures for revocation specified by regulation. The Postal Service shall notify the provider to remove the meter from the customer's location.

(4) Check out of service procedures for a non-faulty Postage Evidencing System when the system is to be removed from service for any reason.

(5) Postage meter repair process—any physical or electronic access to the internal components of a postage meter, as well as any access to software or security parameters, must be conducted within an approved facility under the provider's direct control and active supervision. To prevent unauthorized use, the provider or any third party acting on its behalf must keep secure any equipment or other component that can be used to open or access the internal, electronic, or secure components of a meter.

(6) Faulty meter handling procedures, including those that are inoperable, mis-registering, have unreadable registers, inaccurately reflect their current status, show any evidence of possible

tampering or abuse, and those for which there is any indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed.

(7) Lost or stolen meter procedures—the provider must promptly report to the Postal Service the loss or theft of any meter or the recovery of any lost or stolen meter. Such notification to the Postal Service will be made by completing and filing a standardized lost and stolen meter incident report within ten (10) calendar days of the provider's determination of a meter loss, theft, or recovery.

(8) Postage meter destruction, when required—the postage meter must be rendered completely inoperable by the destruction process and associated postage-printing dies and components must be destroyed. Manufacturers/distributors of meters must submit the proposed destruction method; a schedule listing the postage meters to be destroyed, by serial number and model; and the proposed time and place of destruction to PTM for approval prior to any meter destruction. Providers must record and retain the serial numbers of the meters to be destroyed, and provide a list of such serial numbers in electronic form in accordance with Postal Service requirements for meter accounting and tracking systems. Providers must give sufficient advance notice of the destruction to allow PTM to schedule observation by its designated representative who shall verify that the destruction is performed in accordance with a Postal Service-approved method or process. These requirements for meter destruction apply to all postage meters, Postage Evidencing Systems, and postal security devices included as a component of a Postage Evidencing System.

(d) If the provider uses a third party to perform functions that may affect Postage Evidencing System security, including, but not limited to repair, maintenance, and disposal of Postage Evidencing Systems, PTM must be advised in advance of all aspects of the relationship, as they relate to the custody and control of Postage Evidencing Systems, and must specifically authorize in writing the proposed arrangement between the parties.

(1) Postal Service authorization of a third party relationship to perform specific functions applies only to the functions stated in the written authorization but may be amended to embrace additional functions.

(2) No third-party relationship shall compromise the security of the Postage Evidencing System, or its components, including, but not limited to, the hardware, software, communications, and security components, or of any security-related system with which it interfaces, including, but not limited to, the resetting system, reporting systems, and Postal Service support systems. The functions of the third party with respect to a Postage Evidencing System, its components, and the systems with which it interfaces are subject to the same scrutiny as the equivalent functions of the provider.

(3) Any authorized third party must keep adequate facilities for and records of Postage Evidencing Systems and their components in accordance with paragraph (b) of this section. All such facilities and records are subject to inspection by Postal Service representatives, insofar as they are used to distribute, control, store, maintain, repair, replace, destroy, or dispose of Postage Evidencing Systems.

(4) The provider must ensure that any party acting in its behalf in any of the functions described in paragraph (b) of this section maintains adequate facilities, records, and procedures for the security of the Postage Evidencing Systems. Deficiencies in the operations of a third party relating to the custody and control of Postage Evidencing Systems, unless corrected in a timely manner, can place at risk a provider's approval to manufacture and/or distribute Postage Evidencing Systems.

(5) The Postal Service reserves the right to review all aspects of any third party relationship if it appears that the relationship poses a threat to Postage Evidencing System security and may require the provider to take appropriate corrective action.

**§ 501.15 Computerized Meter Resetting System.**

(a) *Description.* The Computerized Meter Resetting System (CMRS) permits customers to reset their postage meters at their places of business. Authorized providers, who operate CMRS services, are known as resetting companies (RC).

(b) A customer is required to have funds available on deposit with the Postal Service before resetting a Postage Evidencing System or the provider may opt to provide a funds advance in accordance with paragraph (c) of this section.

(c) If the RC chooses to offer advancement of funds to customers, the RC is required to maintain a deposit with the Postal Service equal to at least one (1) day's average funds advanced. The total amount of funds advanced to customers on any given day shall not exceed the amount the provider has on deposit with the Postal Service. The Postal Service shall not be liable for any payment made by the RC on behalf of a customer that is not reimbursed by the customer, since the RC is solely responsible for the collection of advances made by the RC.

(d) The CMRS customer is permitted to make deposits in one of three ways: Check, electronic funds transfer (or wire transfer), or automated clearinghouse (ACH) transfer. These deposits must be remitted to the Postal Service's designated bank account.

(e) The RC must require each CMRS customer that requests a meter resetting to provide the meter serial number, the CMRS account number and the meter's ascending and descending register readings. The RC must verify that there are sufficient funds in the customer's CMRS account to cover the postage setting requested before proceeding with the setting transaction (unless the RC opts to provide the customer a funds advance).

(f) The Postal Service requires that the RC publicize to all CMRS customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Electronic funds transfers (wire transfers).

(3) Checks.

(g) Returned checks and ACH debits are the responsibility of the Postal Service. The RC must lock the customer account immediately so that the customer is unable to reset the meter until the Postal Service receives payment in full for the check returned.

(h) *Refunds.* The Postal Service issues a refund to a customer for any unused postage in a Postage Evidencing System.

(i) *Security and Revenue Protection.* To receive Postal Service approval to continue to operate systems in the CMRS environment, the RC must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by PTM. All such audits will be an expense of the provider.

(j) *Inspection of records and facilities.* The RC must make its facilities that handle the operation of the computerized resetting system and all records about the operation of the system available for inspection by representatives of the Postal Service at all reasonable times.

(k) The RC is required to incorporate the following language into its meter rental agreements:

**Acknowledgment of Deposit Requirement—Meters**

By signing this meter rental agreement, you the customer represent that you have read the *Acknowledgment of Deposit Requirement—Meters* and are familiar with its terms. You agree that, upon execution of this agreement with the RC, you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement—Meters, as it may be amended from time to time.

**§ 501.16 PC Postage payment methodology.**

(a) The PC Postage customer is permitted to make payments for postage in one of two ways: Automated clearinghouse (ACH) transfer or credit card.

(b) The provider must make payments on behalf of the customer to the Postal Service in accordance with contractual and/or regulatory responsibilities.

(c) The Postal Service requires that the provider publicize to all PC Postage customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Credit cards.

(d) Returned ACH debits and credit card returns are the responsibility of the Postal Service. The RC must lock the customer account immediately so that the customer is unable to reset the account until the Postal Service receives payment in full.

(e) *Refunds.* The provider issues a refund to a customer for any unused postage in a Postage Evidencing System. After verification by the Postal Service, the provider will be reimbursed by the Postal Service for the individual refunds provided to customers by the provider.

(f) *Security and revenue protection.* To receive Postal Service approval to continue to operate PC Postage systems, the provider must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by PTM. All such audits will be an expense of the provider.

(g) Inspection of records and facilities. The provider must make its facilities, which handle the operation of the PC Postage system and all records about the operation of the system, available for inspection by representatives of the Postal Service at all reasonable times.

(h) To the extent that the customer maintains funds on deposit for the payment of postage, the provider is required to incorporate the following language into its agreements with PC Postage customers:

**Acknowledgment of Deposit Requirement—PC Postage**

By signing this agreement with the provider, you represent that you have read the *Acknowledgment of Deposit Requirement—PC Postage* and are familiar with its terms. You agree that, upon execution of this agreement with the provider, you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement—PC Postage, as it may be amended from time to time.

**§ 501.17 Decertified Postage Evidencing Systems.**

(a) A Decertified Postage Evidencing System is a device for which the provider's authority to distribute has been withdrawn by the Postal Service as a result of any retirement plan for a given class of meters published by the Postal Service in the **Federal Register**; a suspension or revocation under § 501.6; or a voluntary withdrawal undertaken by the provider.

(b) A Decertified Postage Evidencing System must be withdrawn from service by the date agreed to by the Postal Service and provider.

(c) To the extent postage meters are involved, the provider must utilize the approved procedures for lost and stolen meters under § 501.14 (c)(7) to locate the meter and remove it from service by the agreed upon date.

(d) Decertified Postage Evidencing Systems that are not submitted to the Postal Service for refund within ninety (90) days of the agreed upon withdrawal from service date will not be eligible for refund of unused postage.

(e) Postage indicia printed by Decertified Postage Evidencing Systems are no longer considered valid postage six (6) months from the agreed upon withdrawal from service date.

**§ 501.18 Customer information and authorization.**

(a) Authorized providers must electronically transmit the necessary customer information to the designated Postal Service central data processing facility, in Postal Service-specified format, in order for the Postal Service to authorize a customer to use a Postage Evidencing System. Postal Service receipt and acceptance of the customer information provides the customer with the authorization to possess or use a Postage Evidencing System in accordance with *Domestic Mail Manual* 604 Postage Payment Methods, 4.0 Postage Meters and PC Postage® Products (Postage Evidencing Systems).

(b) The Postal Service may refuse to issue a customer authorization to use a Postage Evidencing System for the following reasons:

(1) The customer submitted false or fictitious information.

(2) Within five years preceding submission of the information, the customer violated any standard for the care or use of the Postage Evidencing System that resulted in revocation of that customer's authorization.

(3) Or there is sufficient reason to believe that the Postage Evidencing System is to be used in violation of the applicable standards.

(c) The Postal Service will notify the provider of the revocation of a customer's authorization to use a Postage Evidencing System. Within ten (10) days of receipt of the notice of revocation, the provider must cancel any lease or other agreement and remove the Postage Evidencing System from service. A customer's authorization to use a Postage Evidencing system is subject to revocation for any of the following reasons:

(1) A Postage Evidencing System is used for any illegal scheme or enterprise.

(2) The customer's Postage Evidencing System is not used for twelve (12) consecutive months.

(3) Sufficient control of a Postage Evidencing System is not exercised or the standards for its care or use are not followed.

(4) The Postage Evidencing System is kept or used outside the customs territory of the United States or those U.S. territories and possessions where the Postal Service operates.

(5) The customer is in possession of a Decertified Postage Evidencing System.

(d) The provider must electronically transmit any updates to the necessary customer information to the designated Postal Service central data processing facility, in Postal Service-specified format.

(e) No one other than an authorized provider may possess a Postage Evidencing System without a valid rental or other agreement with the provider. Other parties in possession of a Postage Evidencing System must immediately surrender it to the provider or the Postal Service.

(f) The Postal Service may use customer information consistent with the *Privacy Act* and the Postal Service's privacy policies posted on *http://www.usps.com.* Examples include the following:

(1) Communication with customers who may no longer be visiting a traditional Postal Service retail outlet or communication with customers through any new retail channels.

(2) Issuance (including re-authorization, renewal, transfer, revocation or denial, as applicable) of authorization to use a Postage

Evidencing System to a postal patron that uses a Postage Evidencing System, and communications with respect to the status of such authorization.

(3) Disclosure to a meter manufacturer of the identity of any meter required to be removed from service by that meter manufacturer, and any related customer data, as the result of revocation of an authorization to use a Postage Evidencing System, questioned accurate registration of that meter, or de-certification by the Postal Service of any particular class or model of postage meter.

(4) Tracking the movement of meters between a meter manufacturer and its customers and communications to a meter manufacturer (but not to any third party other than the customer) concerning such movement. The term, meter manufacturer, includes a meter manufacturer's dealers and agents.

(5) To transmit general information to all Postage Evidencing System customers concerning rate and rate category changes implemented or proposed for implementation by the Postal Service.

(6) To advertise Postal Service services relating to the acceptance, processing and delivery of, or postage payment for, metered mail.

(7) To allow the Postal Service to communicate with Postal Service customers on products, services and other information otherwise available to Postal Service customers through traditional retail outlets.

(8) Any internal use by Postal Service personnel, including identification and monitoring activities relating to Postage Evidencing Systems, provided that such use does not result in the disclosure of applicant information to any third party or will not enable any third party to use applicant information for its own purposes; except that the applicant information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(9) Identification of authorized Postage Evidencing System providers or announcement of the de-authorization of an authorized provider, or provision of currently available public information, where an authorized provider is identified.

(10) To promote and encourage the use of Postage Evidencing Systems as a form of postage payment, provided that the same information is provided to all Postage Evidencing System customers and no particular Postage Evidencing System provider will be recommended by the Postal Service.

(11) To contact customers in cases of revenue fraud or revenue security.

(12) Disclosure to a Postage Evidencing System provider of applicant information pertaining to that provider's customers that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

(13) To transmit to a Postage Evidencing System provider all applicant and system information pertaining to that provider's customers and systems that may be necessary to permit such provider to synchronize its computer databases with information contained in the computer files of the Postal Service.

(14) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants any information that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes under part 501.

**§ 501.19 Intellectual property.**

Providers submitting Postage Evidencing Systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the Postage Evidencing System. To the extent approval is granted and the Postage Evidencing System is capable of being used in commerce, the provider shall indemnify the Postal Service for use of such intellectual property in both the use of the Postage Evidencing System and the processing of mail bearing indicia produced by the Postage Evidencing System.

**Neva R. Watson,**

*Attorney, Legislative.*

[FR Doc. 06–5675 Filed 6–26–06; 8:45 am]

**BILLING CODE 7710–12–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No.060609159–01; I.D. 060606A]**

**RIN 0648–AU12**

## Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Amendment 18

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

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

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 18 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 18 is intended to respond to a court order by setting the Pacific Fishery Management Council's (Council's) bycatch minimization policies and requirements into the FMP. This rule would implement new standardized bycatch reporting methodology and bycatch minimization requirements for groundfish fisheries off the U.S. West Coast.

**DATES:** Comments on this proposed rule must be received on or before August 8, 2006.

**ADDRESSES:** Amendment 18 is available on the Council's website at: *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery Management/NEPA-Documents/Progammatic-EIS.cfm*.

You may submit comments, identified by I.D. number 060606A by any of the following methods:

- E-mail: *Amendment18.nwr@noaa.gov*. Include the I.D. number 060606A in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–6736, Attn: Yvonne deReynier.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Yvonne deReynier, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

**FOR FURTHER INFORMATION CONTACT:** Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *yvonne.dereynier@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**: *www.gpoaccess.gov/fr/index.html*.

NMFS is proposing this rule to implement Amendment 18 to the FMP, which is intended to set the Council's bycatch minimization polices and requirements into the FMP. Amendment 18 is intended to respond to court orders in *Pacific Marine Conservation Council* v. *Evans*, 200 F.Supp.2d 1194 (N.D. Calif. 2002) [hereinafter *PMCC* v. *Evans*]. The regulations to implement Amendment 18 would: require that groundfish fishery management measures take into account the co-

occurrence ratios of overfished species with more abundant target stocks; require vessels that participate in the open access groundfish fisheries to carry observers if directed by NMFS; authorize the use of depth-based closed areas as a routine management measure for protecting and rebuilding overfished stocks, preventing the overfishing of any groundfish species, minimizing the incidental harvest of any protected or prohibited non-groundfish species, controlling effort to extend the fishing season, minimizing the disruption of traditional commercial fishing and marketing patterns, spreading the available recreational catch over a large number of anglers, discouraging target fishing while allowing small incidental catches to be landed, and allowing small fisheries to operate outside the normal season; and, update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the Groundfish Conservation Areas (GCAs). This proposed rule is based on the recommendations of the Council, under the authority of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. Further detail appears in the Pacific Coast Groundfish Fishery Bycatch Mitigation EIS (69 FR 57277, September 24, 2004; available online at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/Programmatic-EIS.cfm).*

**Background**

The Magnuson-Stevens Act requires that fishery management plans ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority - (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.'' 16 U.S.C. 1853(a)(11). The Magnuson-Stevens Act defines the term bycatch to mean ''fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.'' 16 U.S.C. 1802(2).

Amendment 13 to the FMP, approved in December 2000, was intended to comply with Magnuson-Stevens Act requirements on bycatch monitoring and minimization. However, in *PMCC* v. *Evans*, the court found that Amendment 13 did not adequately address the required provisions of the Magnuson-Stevens Act and the National Environmental Policy Act (NEPA). Specifically, the court found that: (1) Amendment 13 failed to establish adequate bycatch assessment methodology; (2) NMFS did not comply with its duty under the Magnuson-Stevens Act to minimize bycatch and bycatch mortality; (3) NMFS did not take a ''hard look'' at the environmental consequences of Amendment 13, in violation of NEPA; and (4) the Environmental Assessment did not consider a reasonable range of alternatives and environmental consequences, in violation of NEPA.

Following the court's decision and remand order in PMCC v. Evans, NMFS completed a final EIS on a bycatch mitigation program for the West Coast groundfish fisheries (69 FR 57277, September 24, 2004.) The preferred alternative in that final EIS articulates the Council's bycatch minimization policies and requirements. Once the bycatch minimization program EIS was complete, the Council and NMFS began drafting Amendment 18 to bring the preferred alternative from the EIS into the groundfish FMP. Amendment 18 to the FMP articulates the Council's bycatch minimization approach for the groundfish fisheries and provides comprehensive direction for current and future bycatch minimization efforts within Pacific Coast groundfish management. Amendment 18 largely re-wrote Chapter 6 of the FMP, ''Management Measures,'' to focus on bycatch monitoring and minimization.

*Groundfish FMP prior to Amendment 18*

Several FMP amendments and numerous Federal regulations subsequent to Amendment 13 have dealt in some way with bycatch, although none has had bycatch as their only focus. Amendment 14 to the FMP implemented a permit stacking program for the limited entry fixed gear sablefish fishery (66 FR 41152, August 7, 2001.) Amendment 14 reduced vessel participation in the limited entry fixed gear primary sablefish fishery by allowing up to three limited entry permits with sablefish endorsements to be stacked on a single fixed gear vessel. Reducing the number of fishery participants indirectly reduces bycatch by reducing the number of vessels potentially responsible for fishing trips and discard events.

Under Amendment 14, vessel owners with stacked permits are eligible to harvest the tier amounts of sablefish associated with each of the permits registered for use with a vessel (66 FR 41152, August 7, 2001.) Landings limits for species other than sablefish are not stackable; this means that although the tier stacking program maintains a fairly consistent level of sablefish fishing effort, it reduces both the number of fishing vessels and the fishing effort on groundfish species other than sablefish. Amendment 14 also converted the fishery from a brief (<15 days per year) derby fishery to a 7-month annual season. Because vessels are no longer fishing in a fast-paced fishery, they have fewer incentives to discard non-sablefish catch in favor of reserving hold space for the targeted sablefish. Since 2001, the limited entry sablefish fleet has consolidated such that of the 164 sablefish endorsed permits, 155 are registered for use with 72 vessels and 9 are not currently registered for use with a particular vessel (as of January 2006.) Amendment 14's implementation has reduced the limited entry fixed gear sablefish fleet to approximately 50 percent of its 2001 size.

In 2003, enactment of Public Law 108–7 provided NMFS with an opportunity to reduce participation in the West Coast groundfish limited entry trawl fleet. Congress funded a vessel and permit buyback program through a $10 million appropriation, plus a $36 million loan to the fleet, which is to be paid back through landings taxes. During 2003, NMFS developed and implemented the buyback program, which removed 91 vessels and their state and Federal permits from West Coast fisheries. Three trawl permits have been subsequently removed from the fishery via permit combination. The limited entry trawl fleet is currently at 180 permits, down from 274 permits prior to the buyback program, a fleet size reduction of 34 percent. Trawl trip limits for the remaining vessels in the fleet are higher than they would have been under the full-sized fleet; higher limits that are better matched to the capacity of participating vessels reduce the frequency of regulation-induced discard.

Amendment 16–1, which dealt primarily with a framework for implementing overfished species rebuilding plans, revised the FMP at section 6.5.1.2 to read in part, ''The Regional Administrator [of NMFS's Northwest Region] will implement an observer program through a Council-approved Federal regulatory framework....'' At § 303(a)(11), the Magnuson-Stevens Act requires that

fishery management plans ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery....'' The Amendment 16–1 revision to Section 6.5.1.2 was intended to comply with the Maguson-Stevens Act requirement for inclusion of standardized reporting methodologies in FMPs. NMFS has implemented two major rulemakings for placing observers on West Coast groundfish vessels, one in 2001 to require at-sea observer coverage in the catcher-boat fleet, and a second in 2004 to convert and expand observer coverage in the at-sea processor fleet from voluntary to mandatory.

Observers are a uniformly trained group of technicians who collect biological data aboard fishing vessels. They are stationed aboard vessels to gather independent data about the fish that are taken or received by the vessel. Standardized sampling protocol, defined by NMFS to incorporate random sampling theory, is intended to provide statistically reliable data for fleetwide fishery monitoring. The primary duties of an observer include: estimating catch weights; determining catch composition; collecting length and weight measurements, and doing sex determinations. Data collected by observers are compiled for the purpose of estimating overall catches of groundfish; estimating incidental catch of species not allowed to be retained by these vessels; and for assessing stock condition. Observers must meet minimum education and experience requirements and must be trained by NMFS to ensure that they properly apply NMFS's sampling protocol.

In April 2001, NMFS published a final rule to implement a mandatory observer program for the West Coast groundfish fishery (66 FR 20609; April 24, 2001.) NMFS established the West Coast Groundfish Observer Program (WCGOP) in 2001 to collect total catch and discard information from the groundfish fisheries. Vessels are selected for observer coverage under the authority of Federal groundfish observer regulations at 50 CFR 660.314 and in accordance with a coverage sampling plan (See: *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm*. NMFS periodically refines this plan in response to changes in vessel numbers and fishing distribution along the coast.

WCGOP focuses a significant proportion of its sampling effort on the limited entry bottom trawl fleet, because the majority of non-whiting groundfish landings are taken by that sector of the groundfish fleet. While many West Coast groundfish species are taken only by trawl gear, trawl gear is less selective than other West Coast groundfish gears, making the potential for bycatch higher with this gear type. During the period January 2004 through April 2005, WCGOP observed 26 percent of catch landed by the bottom trawl fleet (Observer data report, Table 1, *http://www.nwfsc.noaa.gov/research/divisions/fram/observer/datareport/trawl/datareprtsep2005.cfm)*. This level of coverage equals or surpasses observer coverage levels in other observed fisheries nationwide and meets statistical sampling requirements to monitor and manage the fishery.

In addition to managing coastwide observer coverage of catcher boats, WCGOP also manages observer coverage in the at-sea whiting mothership processing and catcher-processor fishery sectors. Participants in the at-sea whiting fleet had been carrying observers voluntarily since 1991, but NMFS made that coverage mandatory in 2004 (69 FR 31751, June 6, 2004). Through that rulemaking, NMFS also increased observer coverage in the at-sea whiting fleet to 200 percent, meaning that each vessel carries two observers. Although the whiting fishery is the largest-volume single species West Coast groundfish fishery, it has relatively low bycatch rates, making proper observer coverage a challenge because such coverage seeks to quantify rare events.

In 2004, Amendments 16–2 and 16–3 implemented overfished species rebuilding programs for eight overfished species: bocaccio, canary rockfish, cowcod, darkblotched rockfish, lingcod, Pacific ocean perch, widow rockfish, and yelloweye rockfish. Rebuilding plans for overfished species endorsed the use of GCAs to reduce the incidental catch of overfished species in times and areas where they are more likely to occur. GCAs are large areas where specific fishing activities are prohibited or restricted and are used to reduce directed or incidental fishing effort on overfished species. NMFS and the Council had begun using closed areas to reduce the incidental catch of overfished species in 2001, with the implementation of two Cowcod Conservation Areas (CCAs) in the Southern California Bight (66 FR 2338, January 11, 2001.) Their implementation led the way to a series of area closures intended to reduce the catch of other overfished species. In September 2002, NMFS introduced its first large-scale, depth based conservation area, the Darkblotched Rockfish Conservation Area. The Darkblotched Rockfish Conservation Area extended from the U.S./Canada border to Cape Mendocino, CA, between boundary lines approximating the 100 fm (183–m) and 250–fm (457–m) depth contours, with trawling prohibited within the conservation area. NMFS and the Council expanded the use of depth-based area closures beginning in January 2003. This expansion took place at the same time that the Council was developing Amendments 16–2 and 16–3, which later incorporated the use of closed areas as important tools for managing fisheries to stay within overfished species rebuilding OYs.

The terms ''Rockfish Conservation Areas'' and ''RCAs'' refer to gear-specific depth-based closures, most of which stretch along the entire length of the U.S. West Coast, bounded by lines approximating the depth contours that have been shown to enclose areas of higher overfished species abundance. RCAs are gear-specific in order to account for the differing effects that different gear types have on overfished species. For example, Pacific ocean perch and darkblotched rockfish have historically been taken almost exclusively with trawl gear, while yelloweye rockfish is more susceptible to hook-and-line gear in recreational and commercial fisheries. Managers developed a suite of RCAs for trawl gear, non-trawl gear, and recreational fisheries to reduce the impacts of different gears on overfished species. RCAs and the closed-polygon CCAs and Yelloweye Rockfish Conservation Area are implemented in permanent Federal regulations at 50 CFR 660.390 - 660.394.

The GCAs reflect the Council's contemporary approach to groundfish management, which largely focuses on rebuilding overfished species through minimizing total catch of those species. Area closures have moved vessels away from many of the traditional rockfish fishing grounds, where the longer-lived and slow-maturing rockfish are more likely to be found. Fishing fleets have reacted differently to these requirements in terms of how and when they fish and the gear that they use. Trawlers in the northern portion of the West Coast have turned their fishing effort more strongly toward the more abundant and faster-maturing flatfish species managed within the groundfish FMP.

The expansion of area closures has also changed fishing behavior in other ways. In 2003, trawlers began working with the State of Oregon to develop parameters for a trawl net that better targets flatfish while excluding rockfish. NMFS issued the State of Oregon an exempted fishing permit (EFP) to test rockfish-excluding nets in 2003–2004, and the Council developed its 2005–2006 management measures for the

trawl sector in part based on the results of this EFP. Trawlers operating inshore of the Trawl RCA and north of 40°10′ N. lat. are required by regulation to use selective flatfish trawl gear, which is configured to reduce bycatch of rockfish while allowing the nets to retain flatfish. Selective flatfish trawl nets have a flattened ovoid trawl mouth opening that is notably wider than it is tall, with headropes that are recessed from the trawl mouth. This combination of a flattened oval shape and a recessed headrope herds flatfish into the trawl net while allowing rockfish to slip up and over the headrope without entering the net. Selective flatfish trawl gear has been shown to have lower rockfish bycatch rates than more traditional trawl net configurations. By preventing the non-target species from even entering the net, the selective flatfish trawl gear reduces both bycatch and bycatch mortality in the trawl fishery.

At the same time that the Council was developing Amendment 18, it was also working on Amendment 19 to the FMP, which designates West Coast groundfish essential fish habitat (EFH) and implements measures to minimize fishing impacts to EFH. Amendment 19, which NMFS approved on March 8, 2006, establishes 51 ecologically important habitat closed areas (FMP section 6.8.5,) including a bottom trawl closure for waters offshore of the 700–fm (1290–m) depth contour (FMP section 6.8.6) to minimize the adverse effects of fishing on West Coast groundfish EFH (71 FR 27408, May 11, 2008.) Like the CCAs, the habitat closed areas are discrete closed polygons. And, like the RCAs, some of the closed areas apply just to bottom trawling, while others apply to all bottom contact gear. Although the Amendment 19 closures are not specifically intended to prevent bycatch, some or all fishing will be eliminated within the habitat closed areas, reducing opportunities to directly or incidentally take species found within the habitat closed areas.

**Groundfish FMP under Amendment 18**

As mentioned earlier, Amendment 18 significantly revised Chapter 6 of the FMP, ''Management Measures'' to address the bycatch monitoring and minimization requirements of the Magnuson-Stevens Act. At Section 6.5, Amendment 18 revises the FMP to require the use of a three-part bycatch minimization strategy to meet the Magnuson-Stevens Act's bycatch related mandates: ''(1) gather data through a standardized reporting methodology; (2) use Federal/state/tribal agency partners to assess these data through bycatch models that estimate when, where, and with which gear types bycatch of varying species occurs; and (3) develop management measures that minimize bycatch and bycatch mortality to the extent practicable.'' Although NMFS and the Council have been using this strategy for several years, Amendment 18 formalizes it within the FMP and uses it to institute a comprehensive approach to and requirements for bycatch monitoring and minimization.

In addition to the revisions to Chapter 6, which are discussed below, Amendment 18 revises one of the FMP's goals and five of its objectives to place a greater emphasis on reducing bycatch as part of groundfish fishery management. Amendment 18's changes to the FMP are available on the Council's website at: *http://www.pcouncil.org/groundfish/gffmp/gfal8.html*.

Amendment 18 creates a new section 6.4 in the FMP, ''Standardized Total Catch Reporting Methodology and Compliance Monitoring Program.'' Section 6.4 establishes standard reporting mechanisms that provide the Council with total catch estimates and monitoring methods to verify vessel compliance with regulations intended to minimize bycatch and meet other fishery management goals.

In the West Coast groundfish fishery, bycatch reporting is included as part of total catch (landed catch + discard) reporting. Amendment 18 expands the obligations of the Council and its collaborating agencies to contribute to and improve total catch reporting methodologies for West Coast groundfish fisheries. Under Amendment 18, the FMP would: retain the requirement that the Regional Administrator implement an observer program to collect data used for total catch accounting, authorize the use of electronic monitoring equipment (via cameras and other devices) as appropriate, require the use of observer data in the biennial and inseason fishery management processes, and provide for new information on state monitoring programs for recreational fisheries. Amendment 18 particularly addresses the need to increase catch data collection from vessels that may not target groundfish, but which may take groundfish incidentally at section 6.4.1.1, ''All fishing vessels operating in this management unit, which includes catcher/processors, at-sea processors, and those vessels that directly or incidentally harvest groundfish in waters off Washington, Oregon and California may be required to accommodate an observer and/or electronic-monitoring system for the purpose of collecting scientific data or verifying catch and discard used for scientific data collection....''

Section 6.4 also authorizes the use of electronic monitoring programs ''for appropriate sectors of the fishery.'' Since 2004, NMFS has been working with the three states, with Oregon taking the lead, on an experimental program to test electronic monitoring in the shore-based whiting sector. Electronic monitoring is an integrated assortment of electronic components, usually including video recorders, that can be used at-sea to monitor specific fishing behavior at a lower-cost than human observers. Electronic monitoring programs do not replace observer programs, although they can be used to reduce the cost of observer monitoring in some sectors. The Council is scheduled to consider at its September and November 2006 meeting whether to convert the experimental use of at-sea electronic monitoring in the whiting fishery into a longer-term regulatory requirement.

Section 6.4 also updates the FMP's authorizations for implementing a vessel compliance monitoring and reporting system. At the same time that NMFS and the Council were developing the bycatch mitigation EIS, they were also developing a vessel monitoring system (VMS) program to monitor compliance with fishery closed areas. VMS is a tool that allows enforcement agents to monitor a vessel's speed, direction, and location. VMS transceiver units installed aboard vessels automatically determine the vessel's position and transmit that position to a processing center via a communication satellite. At the processing center, the information is validated and analyzed before being disseminated for various purposes, which may include fisheries management, surveillance and enforcement. Prior to Amendment 18, the FMP had authorized a variety of general reporting requirements, but had not linked those requirements to compliance monitoring. Section 6.4.2 reflects the Council's focus on better linking science, management, and enforcement throughout the groundfish management program.

Amendment 18 adds a new section 6.5, ''Bycatch Mitigation Program'' that describes the Council's three-part bycatch strategy, sets processes for developing bycatch minimization measures, authorizes the use of a variety of regulatory programs to minimize bycatch where practicable, and particularly requires the use of several management programs and measures. As mentioned earlier, the second part of the strategy to address bycatch requirements is ''use Federal/state/tribal

agency partners to assess these data through bycatch models that estimate when, where, and with which gear types varying species occur.'' Bycatch models are reviewed in the Council process through the Council's Scientific and Statistical Committee. Managing the fishery with these bycatch models has focused the Council's overfished species rebuilding efforts on the co-occurrence ratios between target species and overfished species. In other words, management measures are designed to take into account information about the rates at which healthy stocks interact with depleted stocks, so that there is less fishing effort during times and within areas where healthy stocks are more likely to co-occur with depleted stocks.

WCGOP began collecting non-whiting observer data in August 2001 and data on the bottom trawl fishery began entering the management process with the 2003 groundfish specifications and management measures. The introduction of non-whiting observer data into the management process changed and improved NMFS's estimates of species co-occurrence ratios within commercial catch. Amendment 18 revises the FMP to require the use of co-occurrence ratios in management measures development at Section 6.5.3 of the FMP, ''During the development of the biennial specifications and management measures, and throughout the year when measures are adjusted, the Council will take into account the co-occurrence rates of target stocks with overfished stocks, and will select measures that will minimize, to the extent practicable, bycatch.''

Amendment 18 implements the third part of the FMP's bycatch strategy, ''develop management measures that minimize bycatch and bycatch mortality to the extent practicable,'' by bringing a variety of management measures and requirements into the FMP. Some of these measures are specific requirements to be implemented, while others articulate the Council's future policy direction on bycatch minimization within groundfish management. Section 6.5.1 states, in part, ''The Council manages its groundfish fisheries to allow targeting on more abundant stocks while constraining the total mortality of overfished and precautionary zone stocks. For overfished stocks, measures to constrain total mortality are primarily intended to reduce bycatch of those stocks....'' Section 6.5.1 requires that the Council use catch restrictions (FMP section 6.7,) time and area closures (FMP section 6.8,) gear restrictions (FMP section 6.6,) and other measures to tailor the catch of more abundant stocks so that incidental catch of depleted stocks is avoided. Section 6.5.3 provides implementation guidance for these bycatch minimization programs, which are to be implemented where practicable: full retention programs, sector-specific total catch limit programs, vessel-specific total catch limit programs, and providing catch allocations to or gear flexibility for gear types with lower bycatch rates.

A full retention program is ''a regulatory regime that requires participants in a particular sector of the fishery to retain either all of the fish that they catch or all of some species or species group that they catch....Full retention requirements also encourage affected fishery participants to tailor their fishing activities so that they are less likely to encounter non-target species.'' NMFS's work with the states to experiment with electronic monitoring in the shore-based whiting fishery is also looking at whether it is practicable to manage that fishery as a full retention program.

A sector-specific total catch limit program is ''one in which a fishery sector would have access to a pre-determined amount of a groundfish FMU [fishery management unit] species, stock, or stock complex that would be allowed to be caught by vessels in that sector. Once a total catch limit is attained, all vessels in the sector would have to cease fishing until the end of the limit period, unless the total catch limit is increased by the transfer of additional limit amounts.'' Because the whiting fishery has a more mature observer and monitoring program than the non-whiting fisheries, NMFS has been able to implement sector-specific bycatch limits for overfished species taken incidentally in the Pacific whiting fishery (50 CFR 660.373.) Whiting fishery participants have expressed an interest in dividing those bycatch limits by sector, so that there are sector-specific limits for the shore-based sector, the catcher-processor sector, and the mothership sector. Sector-specific limits are not practicable until the shore-based retention and monitoring program is more fully developed.

Vessel-specific catch limit programs ''are similar to individual vessel quotas as applied to groundfish FMU species, stocks, or stock complexes and require more intense monitoring than a sector-specific total catch limit program....Under a vessel-specific total catch limit program, the participating vessels would be monitored inseason and each vessel would be prohibited from fishing once it had achieved its total catch limit for a given FMU species, stock or stock complex.'' (FMP at 6.5.3.2.) The Council is developing alternatives for an individual quota (IQ) program for the limited entry trawl fishery. IQs, depending on specific requirements, could include vessel-specific catch limits for bycatch species. One of the objectives the Council has adopted for the design of the program is ''reduce bycatch and discard mortality.'' Amendment 18 revises the FMP to specify that individual fishing quota programs ''would be established for the purposes of reducing fishery capacity, minimizing bycatch, and to meet other goals of the FMP.'' An IQ program with specific bycatch limits would be dependent upon a more intense level of monitoring than is practicable under the current management regime and could be designed using the FMP's guidance on vessel-specific total catch limit programs.

Section 6.5.3.3 allows the allocation of catch or fishing areas to gear types with lower bycatch rates. The Council made this principle mandatory when, beginning in 2005, it required the use of selective flatfish trawl gear for vessels fishing shoreward of the Trawl RCA north of 40°10′ N. lat. The Council is also implementing this principle in using bycatch models that differ by gear type, which in turn means that the management measures developed out of the bycatch models are gear-specific in addressing target species interactions with depleted species.

Section 6.6 of the FMP addresses ''Gear Definitions and Restrictions.'' Amendment 18 primarily updated the FMP with the gear regulations that NMFS has implemented through regulations. Amendment 19 to the FMP, developed on a concurrent time frame, implements prohibitions in section 6.6.1.1 against: fishing with bottom trawl gear with footrope diameter greater than 8 inches (20.5 cm) shoreward of a boundary line approximating the 100–fm (183–m) depth contour, fishing with bottom trawl gear with a footrope diameter greater than 19 inches (48.6 cm) anywhere in the EEZ, fishing with dredge gear, and fishing with beam trawl gear. These measures are specifically intended to protect groundfish EFH, although they will also reduce the access that some gears have to portions of the EEZ, constraining directed and incidental catch by those gears. Amendment 19's trawl footrope prohibitions in the FMP are the culmination of longer-term Council efforts to restrict trawl gear access to habitat areas where incidental catch of sensitive species may occur.

Amendment 18 adds section 6.7 to update the FMP's guidance on ''Catch Restrictions.'' Amendment 18's additions on catch restrictions primarily provide further guidance on the FMP's direct catch limiting tools: quotas, size limits, total catch limits, prohibited species designation, trip limits, and recreational bag limits, boat limits, and catch dressing requirements.

Amendment 18 adds section 6.8, ''Time/Area Closures'' to the FMP, including a variety of time/area closures in the FMP that vary by type both in their permanency and in the size of area closed, explaining: ''When the Council sets fishing seasons [Section 6.8.1,] it generally uses latitude lines extending from shore to the EEZ boundary to close large sections of the EEZ for part of a fishing year to one or more fishing sectors. RCAs [at section 6.8.2,] by contrast, are coastwide fishing area closures bounded on the east and west by lines connecting a series of coordinates approximating a particular depth contour. RCAs are gear-specific and their eastern and western boundaries may vary during the year. RCAs also may be polygons that are closed to fishing for a brief period (less than one year) in order to provide short-term protection for the more migratory overfished or other protected species. Groundfish fishing areas (GFAs) [at section 6.8.3] are enclosed areas of high abundance of a particular species or species group and may be used to allow targeting of a more abundant stock within that enclosed area. Long-term bycatch mitigation closed areas (section 6.8.4) have boundaries that do not vary by season and are not usually modified annually or biennially.''

Since the court's ruling in *PMCC* v. *Evans*, NMFS has implemented a broad suite of marine area closures intended to reduce incidental catch of overfished groundfish species. RCAs have been used as a significant tool in rebuilding overfished groundfish species through reducing opportunities for incidental cath of those species. RCA boundaries can be altered inseason to tailor fishery management measures with the most recently available catch or scientific information, to better ensure that overfished species OYs are not exceeded.

When the Council finalized its recommendations on Amendment 18 at its November 2005 meeting, it recommended expanding the allowable use of depth-based management measures from reducing catch of and rebuilding overfished stocks to: ''protect and rebuild overfished stocks; extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; to reduce discards; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.'' (section 6.2.1.) This expanded allowable use of depth-based management measures makes those measures available for constraining the incidental catch of a broad array of species, not just overfished species.

The wide variety of marine closed areas intended to protect overfished species, protected salmon, and groundfish habitat (closures implemented via Amendment 19) creates a potentially confusing mixture of open and closed areas that apply to various gear types. In order to better enforce the closed areas, NMFS introduced a pilot VMS program on January 1, 2004 (68 FR 62374, November 4, 2003). The pilot VMS regulatory system initially required vessels registered to limited entry permits to carry and use VMS units. When it made its recommendations that NMFS implement this pilot system, the Council stated its intent to expand VMS requirements to cover the open access commercial groundfish fisheries and portions of the recreational fisheries. Over 2004–2005, the Council developed and considered a program to expand VMS requirements to the commercial open access fishery. At its November 2005 meeting, the Council made its final recommendation to require VMS coverage for all open access vessels operating in the EEZ. NMFS is developing a proposed rule to implement the Council's VMS expansion recommendations, which the agency plans to publish in summer 2006. To recognize the need for VMS as a compliance tool for area and/or season closures, the Council recommended including an authorization for its use within the FMP via Amendment 18 at section 6.4.2. Amendment 18 also adds section 6.10, ''Fishery Enforcement and Vessel Safety,'' to provide a more clear framework for evaluating the enforceability of all regulations implementing the FMP, including those related to area closures.

**Regulations Implementing Amendment 18**

As discussed above, NMFS and the Council have implemented a variety of bycatch minimization regulations since Amendment 13. In addition to those measures already in place, the regulations to implement Amendment 18 would: require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; revise Federal observer regulations to authorize NMFS to place observers on vessels that participate in the open access groundfish fisheries; allow the use of depth-based closed areas as a routine management measure for protecting and rebuilding overfished stocks, preventing the overfishing of any groundfish species, minimizing the incidental harvest of any protected or prohibited non-groundfish species, controlling effort to extend the fishing season, minimizing the disruption of traditional commercial fishing and marketing patterns, spreading the available recreational catch over a large number of anglers, discouraging target fishing while allowing small incidental catches to be landed, and allowing small fisheries to operate outside the normal season; and update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the GCAs.

This proposed rule would revise Federal regulations at 50 CFR 660.370 to require species co-occurrence ratios to be taken into account during the setting of harvest specifications and management measures. This action is intended to implement the FMP's requirement under Amendment 18 that bycatch be addressed through modeling interactions between target and bycatch species, and the requirement that management measures be designed to take into account those modeled interactions.

To implement Amendment 18 and to clarify the agency's authority to place observers on open access groundfish vessels, this rule proposes to revise observer coverage requirement regulations at § 660.314(c)(2). Catcher vessels that would be subject to Federal observer coverage requirements would include: (A) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon, or California (0–200 nm offshore); (B) Any vessel that is used to take and retain, possess, or land groundfish in or from the EEZ; (C) Any vessel that is required to take a Federal observer by the applicable state law. WCGOP is working with the three West Coast states to ensure that state law is concurrent with Federal law in permitting Federal observer coverage of vessels that take groundfish. This action is intended to ensure that WCGOP has

access not just to vessels targeting groundfish in Federal waters, but also to open access vessels participating in fisheries that take and retain federally managed groundfish species, even if they are not specifically targeting groundfish.

As mentioned earlier, Amendment 18 expands the use of depth-based management measures beyond protecting and rebuilding overfished stocks. This proposed rule would revise Federal regulations at 50 CFR 660.370 so that routine management measures for all fisheries allow depth-based management measures to be used: ''to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.'' This measure is intended to allow the expanded use of depth-based closed areas both as biennial and inseason management measures to protect a more broad variety of species than just overfished species.

NMFS has primarily used depth-based management in the non-whiting groundfish fisheries. The whiting fishery has been managed with salmon protection zones off the Columbia and Klamath rivers since 1993 (April 20, 1993, 58 FR 21263.) The whiting fishery is also restricted within the Eureka management area (43°00′ to 40°30′ N. lat., approximately Cape Blanco, OR to Cape Mendocino, CA), wherein it is subject to more restrictive trip limits shoreward of the 100–fm (183–m) depth contour. Both the salmon protection zones and the trip limit restrictions within the Eureka management area are intended to reduce bycatch of endangered and threatened salmon taken incidental to the whiting fishery. NMFS is using this Amendment 18 proposed rule to update the boundary designations for the Klamath River and Columbia River Salmon Conservation Zones, and to update the Eureka restriction zone so that it is bounded by the RCA 100–fm (183–m) boundary line, rather than by a bathymetric curve found on a series of NOAA charts. Current regulatory language designating the boundaries of these areas is not as precise as that used for RCAs and other overfished species conservation areas. This proposed rule would revise Federal regulations to define the boundaries of the salmon conservation zones within series of latitude/longitude coordinates, as has been done for the RCAs and other overfished species conservation areas. This proposed rule would also revise Federal regulations to refer to the area affected by more restrictive trip limits as shoreward of the boundary line approximating the 100–fm (183–m) depth contour, as defined for RCAs and other management areas with latitude/longitude coordinates at § 660.393. These measures are intended to improve the enforceability of regulations designed to reduce salmon bycatch in the whiting fishery.

**Continuing Council Efforts in Support of Amendment 18**

In a multi-species fishery like the West Coast groundfish fishery, developing management measures to minimize bycatch is an ongoing effort. When the Council adopted Amendment 18, they discussed next steps for bycatch minimization, particularly looking for practical near-term actions that could swiftly result in bycatch reduction. In addition to the suite of management measures brought into the FMP and Federal regulations via Amendment 18, the Council recommended: (1) investigating the state and Federal total catch data delivery systems with the aim of increasing the frequency with which observer and total catch data is made available to the Council and the public, and (2) implementing a permitting program for the groundfish open access fishery so as to better connect catch with vessels in particular geographic areas.

For the first issue, more timely access to total catch data, the Council asked NMFS to begin a dialogue within the Council process by reporting to the Council on the process for observer data compilation and analysis. The agency's initial sense is that there are several steps in the data aggregation process that need to be reviewed for efficiency: (1) the delivery of fish ticket and port sampler data to the Pacific Fisheries Information Network (PacFIN;) (2) the verification of fish ticket data with observer data to ensure that the correct fish tickets are matched to the correct observed trips; (3) the delivery of finalized trawl logbook data to PacFIN; (4) the analysis of observer data and its expansion to the total fleet; (5) the compilation of observer data into formats compatible with confidentiality laws and the Information Quality Act.

For the second issue, open access fleet permitting, the Council did not specify whether it intended the size of the open access fleet to be reduced. When recommending permits for open access fishery participants, Council members expressed a desire to have more complete data on catch attributable to vessels landing groundfish outside of the limited entry fishery. NMFS's draft Environmental Assessment on expanding VMS coverage to the open access fishery found that 1,000 - 1,500 vessels participate in the open access fishery each year. Amendment 18 revises the second objective of the FMP to place a higher priority on managing harvest capacity so that it is better matched to available groundfish resources. NMFS supports the Council's desire to permit the open access fleet so as to provide better vessel-specific tracking of landings in that sector. However, the agency also supports bringing the capacity within the open access fishery into line with the resources available to that fleet, and will be urging the Council to consider management alternatives to reduce open access fleet size. The Council is initially scheduled to consider this issue at its September 10–15, 2006, meeting in Foster City, CA.

Beyond these two issues, the Council is considering a variety of management programs that include reducing bycatch as management goals: additional area closures to protect both overfished species and protected salmon as part of the 2007–2008 groundfish harvest specifications and management measures; a trawl IQ program intended, in part, to minimize discard; a full retention and electronic monitoring program for the shorebased whiting fishery; and a groundfish allocation EIS that would establish allocations between the trawl and fixed gear sectors of the limited entry fleet, and between the commercial and recreational fisheries, in order to allow the development and consideration of a trawl IQ program, and sector-specific and/or vessel-specific total catch limit programs.

Because technology and economic considerations change over time, the practicability of effectively using different bycatch minimization measures also changes over time. Amendment 18 to the groundfish FMP contains measures to both minimize bycatch to the extent practicable at this time, and to foster fishery management programs that will expand the array of management measures that are practicable in the future. Bycatch minimizing management tools that might not now be available to manage the fleet may become available in the future. Amendment 18 provides a

framework for implementing bycatch minimization measures that are impracticable at this time, but which may become practicable in the future.

**Classification**

At this time, NMFS has not determined whether Amendment 18, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

NMFS prepared a final EIS a bycatch minimization program in the Pacific Coast groundfish fisheries. Amendment 18 would implement the Council's preferred alternative from that EIS. A notice of availability for the final EIS was published on September 24, 2004 (69 FR 57277.) A copy of the final EIS is available online at: *http://www.nwr.noaa.gov/groundfish-Halibut/Groundfish-Fishery-Management/NEPA-Documents/Programmatic-EIS.cfm.*

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

This action contains a variety of proposed revisions to Federal regulations. With respect to the Regulatory Flexibility Act (RFA), the revisions to observer regulations proposed by this action are within the scope of the analysis conducted for the initial implementation of the observer program: the EA/RIR/IRFA on ''An Observer Program for Catcher Vessels in the Pacific Coast Groundfish Fishery''(2000). NMFS summarized the Final Regulatory Flexibility Analysis for that action in the preamble to the final rule published on April 24, 2001 (66 FR 20609.) For the remainder of the regulatory actions proposed in this rule, NMFS prepared an updated initial regulatory flexibility analysis (IRFA) as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A summary of the analysis follows.

As discussed earlier in this document, regulations beyond those applying to the observer program would: require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; allow the use of depth-based closed areas as a routine management measure for preventing the overfishing of any groundfish species by minimizing the direct or incidental catch of that species (in addition to the current use of depth-based management measures to protect overfished species;) allow the use of depth-based closed areas as a routine management measure for minimizing the bycatch of any prohibited or protected species taken incidentally in the groundfish fishery, for controlling effort to extend the fishing season, for minimizing the disruption of traditional fishing seasons and marketing patterns, for allowing the recreational catch to be available to the largest number of anglers, for discouraging target fishing while allowing small incidental catches to be landed, and for allowing small fisheries to operate outside of the normal fishing season, and; update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area to use latitude and longitude coordinates in a style similar to that of the GCAs.

Approximately 1,511 vessels participated in the West Coast commercial groundfish fisheries in 2003. Of those, about 498 vessels were registered to limited entry permits issued for either trawl, longline, or pot gear. All but 10–20 of the 1,511 vessels participating in the groundfish fisheries are considered small businesses by the Small Business Administration. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast, and 415 charter vessels active on the California coast. Although some charter businesses, particularly those in or near large California cities, may not be small businesses, all are assumed to be small businesses for purposes of this discussion.

The regulations that require that groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks, allow the use of depth-based closed areas as a routine management measure for preventing the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, and allow the use of depth-based closed areas a routine management measure for minimizing the bycatch of any prohibited or protected species taken incidentally in the groundfish fishery apply to all 1,700 vessels participating in the West Coast commercial groundfish fisheries. The regulations that update the boundary definitions of the Klamath and Columbia River Salmon Conservation Zones and Eureka nearshore area apply to the 40–50 vessels that annually participate in the West Coast Pacific whiting fishery.

NMFS and the Council developed these proposed regulations in order to implement Amendment 18, which brings the Council's bycatch minimization program into the FMP. As discussed earlier in this document, the Council developed Amendment 18 from its preferred alternative in a September 2004 final EIS on a bycatch minimization program in the West Coast groundfish fisheries. The EIS analyzed seven alternatives for a long-term bycatch minimization program: (1) Status quo, control bycatch by trip limits that vary by gear, depth, fishing area, and season; (2) reduce effort in the fishery to allow for larger trip limits; (3) shorten the commercial fishing season to allow for larger trip limits; (4) establish sector catch and mortality caps; (5) establish an individual quota program for the commercial fishery; (6) close large marine areas to fishing, implement more strict gear restrictions, establish individual bycatch caps, and; (7) preferred, include all current bycatch minimization program elements in the FMP, develop and adopt sector-specific caps for overfished and depleted groundfish species where practicable; support the future use of Individual Fishing Quota programs for appropriate sectors of the fishery; improve baseline accounting of bycatch by sector for to better meet future bycatch program goals.

Each of the alternatives analyzed in the EIS was expected to have different overall effects on the economy. Because of the length of time necessary to complete an EIS of this magnitude, many of the actions contemplated in the preferred alternative and elsewhere in the EIS were analyzed and implemented via some separate earlier action. For example, the large-scale marine area closures off the West Coast known as RCAs were first implemented coastwide as part of the 2004 groundfish harvest specifications and management measures. The actions contemplated in the preferred alternative that have not yet been implemented and which are not proposed to be implemented via this rule, such as vessel-specific bycatch caps, are not practicable at this time. All of the requirements in this action do not increase the costs associated with reporting, record-keeping, or other compliance requirements directly. These requirements are: (1) groundfish fishery management measures take into account the co-occurrence ratios of overfished species with more abundant target stocks; (2) the allowance of the use of depth-based closed areas a routine management measure for

preventing the overfishing of any groundfish species by minimizing the direct or incidental catch of that species; and 3) the allowance of the use of depth-based closed areas as a routine management measure for minimizing the bycatch of any prohibited or protected species taken incidentally in the groundfish fishery. However, rules based on these provisions will, at some future time, result in compliance requirements. When this occurs, those management measures will be analyzed as part of the applicable rulemaking process. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal ESA section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior ''no jeopardy'' conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

There are four groundfish treaty tribes operating off the U.S. West Coast: Makah, Quileute, Hoh, and Quinault. Representatives of these tribes participate in the Pacific Council process, and were part of the development of Amendment 18 to the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In accordance with E.O. 13175, this proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Pacific Council and with the tribal officials from the four groundfish treaty tribes affected by this action. NMFS consulted and collaborated with tribal officials on this action both within the Pacific Council process, and externally to that process.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: June 21, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

## PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.314, paragraphs (c)(2), and (f)(1)(v)(B) are revised to read as follows:

### § 660.314 Groundfish observer program.

* * * * *

(c) * * *

(2) *Catcher vessels.* When NMFS notifies the vessel owner, operator, permit holder, or the vessel manager of any requirement to carry an observer, the vessel may not be used to fish in the EEZ without carrying an observer.

(i) For the purposes of this section, catcher vessels include all of the following vessels:

(A) Any vessel registered for use with a Pacific Coast groundfish limited entry permit that fishes in state or Federal waters seaward of the baseline from which the territorial sea is measured off the States of Washington, Oregon, or California (0–200 nm offshore).

(B) Any vessel that is used to take and retain, possess, or land groundfish in or from the EEZ.

(C) Any vessel that is required to take a Federal observer by the applicable state law.

(ii) *Notice of departure Basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) *Optional notice Weather delays.* A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (c)(2)(i) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) *Optional notice Back-to-back fishing trips.* A vessel that intends to

make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (c)(2)(i)) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(iii) *Cease fishing report*. Withing 24 hours of ceasing fishing, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit.

* * * * *

(f) * * *

(1) * * *

(v) * * *

(B) *Annual general endorsements*. Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any fishing year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

* * * * *

3. In § 660.370, paragraphs (b) and (c)(3) are revised to read as follows:

**§ 660.370 Specifications and management measures.**

* * * * *

(b) *Biennial actions*. The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks. Management measures will be designed to take into account the co-occurrence ratios of target species with overfished species, and will select measures that will minimize bycatch to the extent practicable.

(c) * * *

(3) *All fisheries, all gear types, depth-based management measures*. Depth-based management measures, particularly the setting of closed areas known as Groundfish Conservation Areas, may be implemented in any fishery that takes groundfish directly or incidentally. Depth-based management measures are set using specific boundary lines that approximate depth contours with latitude/longitude waypoints found at § 660.390–.394. Depth-based management measures and the setting of closed areas may be used: to protect and rebuild overfished stocks, to prevent the overfishing of any groundfish species by minimizing the direct or incidental catch of that species, to minimize the incidental harvest of any protected or prohibited species taken in the groundfish fishery, to extend the fishing season; for the commercial fisheries, to minimize disruption of traditional fishing and marketing patterns; for the recreational fisheries, to spread the available catch over a large number of anglers; to discourage target fishing while allowing small incidental catches to be landed; and to allow small fisheries to operate outside the normal season.

* * * * *

4. In § 660.373, paragraphs (c)(1), (c)(2), and (d) are revised to read as follows:

**§ 660.373 Pacific whiting (whiting) fishery management.**

* * * * *

(c) * * *

(1) *Klamath River Salmon Conservation Zone*. The Klamath River Salmon Conservation Zone is an area off the northern California coast intended to protect salmon from incidental catch in the whiting fishery. The Klamath River Conservation Zone is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(i) 41°38.80′ N. lat., 124°07.49′ W. long.;

(ii) 41°38.80′ N. lat., 124°23.00′ W. long.;

(iii) 41°26.80′ N. lat., 124°19.26′ W. long.;

(iv) 41°26.80’ N. lat., 124°03.80′ W. long.; and connecting back to 41°38.80′ N. lat., 124°07.49′ W. long.

(2) *Columbia River Salmon Conservation Zone*. The Columbia River Salmon Conservation Zone is an area off the northern Oregon and southern Washington coast intended to protect salmon from incidental catch in the whiting fishery. The Columbia River Salmon Conservation Zone is defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed:

(i) 46°18.00′ N. lat., 124°04.50′ W. long.;

(ii) 46°18.00′ N. lat., 124°13.30′ W. long.;

(iii) 46°11.10′ N. lat., 124°11.00′ W. long.;

(iv) 46°13.58′ N. lat., 124°01.33′ W. long.; and connecting back to 46°18.00′ N. lat., 124°04.50′ W. long.

(d) *Eureka area trip limits*. Trip landing or frequency limits may be established, modified, or removed under § 660.370 or § 660.373, specifying the amount of Pacific whiting that may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip within the Eureka management area (from 43°00.00’’ to 40°30.00’’ N. lat.) and shoreward of a boundary line approximating the 100 fm (183 m) depth contour, as defined with latitude/longitude coordinates at § 660.393.

* * * * *

[FR Doc. E6–10114 Filed 6–26–06; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 71, No. 123

Tuesday, June 27, 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

### Forest Service

### Forest Counties Payments Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Forest Counties Payments Committee has scheduled a business meeting to discuss how it will provide Congress with the information specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. The meeting is open to the public.

**DATES:** The meeting will be held on July 18, 2006, from 9 a.m. until 5 p.m. and on July 19, 2006, from 9 a.m. until 12 p.m.

**ADDRESSES:** The meeting will be held at the Doubletree Hotel and Executive Meeting Center, 1000 N.E. Multnomah, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Randle G. Phillips, Executive Director, Forest Counties Payments Committee, at (202) 208–6574 or via e-mail at *rphillips01@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Section 320 of the Interior and Related Agencies Appropriations Act of 2001 created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. The Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands, which are Federal responsibilities; and monitor payments and implementation of The Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393).

Dated: June 20, 2006.

**Timothy DeCoster,**

*Director, Legislative Affairs.*

[FR Doc. E6–10080 Filed 6–26–06; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Rehabilitation of Floodwater Retarding Structure No. 6a of the Martinez Creek Watershed, Bexar County, TX

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure No. 6A of the Martinez Creek Watershed, Bexar County, Texas.

**FOR FURTHER INFORMATION CONTACT:** Larry D. Butler, PhD, State Conservationist; Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682; Telephone (254) 742–9800.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Larry D. Butler, PhD, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure No. 6A to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the site will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will consist of raising the top of dam 3.1 feet, installation of an additional principal spillway (36″ hooded inlet type with an impact basin), and widening both auxiliary spillways 50′ to accommodate the construction of splitter dikes. All disturbed areas will be planted to adapted native and/or introduced species. The proposed work will not have a significant affect on any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project cost is estimated to be $1,627,100, of which $1,151,500 will be paid from the Small Watershed Rehabilitation funds and $475,600 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Larry D. Butler, PhD, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

June 20, 2006.

**Norman P. Bade,**

*Acting State Conservationist.*

[FR Doc. E6–10102 Filed 6–26–06; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1453]**

### Grant of Authority for Subzone Status, Northern Imports, LLC(Magnesium and Aluminum Diecasting), Harbor Springs and Newberry, Michigan

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, the City of Sault Sainte Marie, Michigan, grantee of Foreign-Trade Zone 16, has made application for authority to establish special-purpose subzone status at the magnesium and aluminum diecasting facilities of Northern Imports, LLC, located in Harbor Springs and Newberry, Michigan (Docket 3-2005, filed 1-7-2005);

*Whereas,* notice inviting public comment was given in the Federal Register (70 FR 2997, 1-19-2005); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to restriction;

*Now, therefore*, the Board hereby grants authority for activity related to magnesium and aluminum diecasting at the manufacturing facilities of Northern Imports, LLC, located in Harbor Springs and Newberry, Michigan (Subzone 16A), as described in the application and Federal Register notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction requiring that all foreign-origin magnesium alloy products not subject to U.S. antidumping or countervailing duty orders must be admitted to the subzone under privileged foreign status (19 CFR §146.41) when used to manufacture finished products for the U.S. market.

Signed at Washington, DC, this 31st day of May 2006.

**David M. Spooner,**

*Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. E6–10106 Filed 6–26–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket T–2–2006]**

### Foreign–Trade Zone 52 - Suffolk County, New York, Application for Temporary/Interim Manufacturing Authority, TKD Industries, Inc. (Cosmetic Kitting), Ronkonkoma, New York

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by the Town of Islip (New York), operator of foreign–trade zone (FTZ) 52, requesting temporary/interim manufacturing (T/IM) authority within FTZ 52, at the facility of TKD Industries, Inc. (TKD) located in Ronkonkoma, New York. The application was filed on June 20, 2006.

The TKD facility (85 employees) is located within FTZ 52 at 200 Trade Zone Drive in Ronkonkoma, New York. Under T/IM procedures, the company has requested authority to manufacture cosmetic kits (HTS 3303.00, 3304.10, 3304.20, 3304.91, and 3305.10; these products enter the United States duty free). The company may source the following input items from abroad for manufacturing the finished products under T/IM authority, as delineated in TKD's application: pre–shave/after–shave (HTS 3307.10); deodorants/antiperspirants (3307.20); bath products (3307.30); plastic boxes (3923.10); plastic bottles (3923.30); plastic caps (3923.50); plastic displays (3923.90); dust covers (3926.90); glass containers (7010.90); and applicators (9616.20). Duty rates on these inputs range from 2.5% to 4.9% *ad valorem*. T/IM authority could be granted for a period of up to two years. TKD has also submitted a request for permanent FTZ manufacturing authority (for which Board filing is pending), which includes one additional input.

FTZ procedures would allow TKD to elect the finished–product duty rates for the ten imported production inputs listed above. The company indicates that it would also realize logistical/paperwork savings and duty–deferral savings under FTZ procedures.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at: Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 1115, 1401 Constitution Ave. NW., Washington, DC 20230.The closing period for their receipt is July 27, 2006.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above.

Dated: June 20, 2006.

**Andrew McGilvray,**

*Acting Executive Secretary.*

[FR Doc. E6–10104 Filed 6–26–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket No. 060615167–6167–01]**

### Correction to Notices of Antidumping and Countervailing Duty Decisions

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notices; correction.

**SUMMARY:** From September 7, 2005, through November 10, 2005, the Department of Commerce issued notices of antidumping and countervailing duty decisions in which the title of the official signing the notice was incorrect. This document corrects the title of the officials that signed notices during that period.

**FOR FURTHER INFORMATION CONTACT:** Paige Rivas, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–0651.

### Background

The Deputy Assistant Secretary for Antidumping and Countervailing Duty Policy and Negotiation (DAS/IA) began serving as the Acting Assistant Secretary for Import Administration on January 9, 2005, when the position became vacant. The DAS/IA assumed this position under the Vacancies Reform Act (VRA) because he is the first principal to the Assistant Secretary. The VRA, however, only permits an individual to serve in an ''Acting'' capacity for a certain number of days after a vacancy has occurred. In this case, the DAS/IA was permitted to serve in an ''Acting'' capacity until September 7, 2005. After that time, he/she must revert to his/her original title, but may perform the non-exclusive duties of the vacant office. Through an oversight, the DAS/IA did not cease using the title ''Acting'' after September 7, 2005. From September 7, 2005 through November 10, 2005, the DAS/IA continued to sign various antidumping and countervailing duty decisions as ''Acting Assistant Secretary for Import Administration.'' The DAS/IA also, on occasion, delegated those duties to other individuals within the Import Administration, who then signed

decisions as ''Acting Assistant Secretary for Import Administration. On November 10, 2005, the President nominated an Assistant Secretary for Import Administration. Under the VRA the DAS/IA was authorized to resume (and did resume) service as Acting Assistant Secretary for Import Administration until the Assistant Secretary for Import Administration was sworn into office on January 3, 2006.

Decisions issued by Import Administration from September 7, 2005, through November 10, 2005, were signed by individuals incorrectly using the title ''Acting Assistant Secretary for Import Administration''. The Under Secretary for International Trade, on June 19, 2006, designated all of the individuals who signed items in the capacity of Acting Assistant Secretary for Import Administration from September 7, 2005, through November 10, 2005, as ''Acting Deputy Under Secretary for International Trade'' for purposes of signing those decisions.

### Correction

For all notices published by the Import Administration, International Trade Administration, Department of Commerce, in the **Federal Register** between September 14, 2005 through November 21, 2005,[1] that were dated September 7, 2005, through November 10, 2005, wherever the title ''Acting Assistant Secretary for Import Administration'' appears in the signature line, correct the title to read ''Acting Deputy Undersecretary for International Trade''.

Dated: June 21, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–10108 Filed 6–26–06; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] These dates account for the lag time between signature date and date of publication in the **Federal Register**.

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–583–815]**

## Certain Welded Stainless Steel Pipe from Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jun Jack Zhao or Gene Calvert, 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) 482–1396 or (202) 482–3586, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 1, 2005, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain welded stainless steel pipe from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). On December 30, 2005, Froch Enterprise (''Froch''), stating that it was formerly Jaung Yuann Enterprise Co., Ltd., timely requested that the Department conduct an administrative review of Froch. The Department published a notice of the initiation of the antidumping duty administrative review of certain welded stainless steel pipe from Taiwan for the period December 1, 2004, through November 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006). On June 5, 2006, Froch withdrew its request for an administrative review.

### Rescission of Review

The Department's regulations at section 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws its request at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. Although Froch withdrew its request after the 90-day deadline, the Department finds it reasonable to extend the withdrawal deadline because the Department has not yet devoted any significant time and resources to this review, and Froch was the only party to request a review.[1] Further, we find that Froch's withdrawal does not constitute an abuse of our procedures. Therefore, we are rescinding this review of the antidumping duty order on certain welded stainless steel pipe from Taiwan covering the period December 1, 2004, through November 30, 2005. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of this rescission.

[1] *See, e.g., Persulfates from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review*, 71 FR 13810 (March 17, 2006); *See also, Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42032 (July 21, 2005).

### Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 21, 2006.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E6–10107 Filed 6–26–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## National Conference on Weights and Measures: Annual Meeting

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of public meeting of the Conference in July 2006.

**SUMMARY:** The Annual Meeting of the 91st National Conference on Weights and Measures (NCWM) will be held July 9 to 13, 2006, in Chicago, Illinois. This meeting is open to the public. Detailed meeting agendas and information on registration requirements, fees and hotel information can be found at *http://www.ncwm.net*. The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, Federal Agencies, and private sector representatives. This meeting brings together government officials and representatives of business, industry, trade associations, and consumer

organizations to consider subjects related to the field of weights and measures technology, administration, and enforcement. Pursuant to (15 U.S.C. 272(b)(6)), the National Institute of Standards and Technology supports the National Conference on Weights and Measures in order to promote uniformity among the States in the complexity of laws, regulations, methods, and testing equipment that comprises regulatory control by the states of commercial weighing and measuring.

Publication of this notice by the NIST on the NCWM's behalf is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the proposals contained in the notice.

**DATES:** July 9–13, 2006.

**ADDRESSES:** The Chicago Marriott, Chicago, Illinois.

**SUPPLEMENTARY INFORMATION:** The NCWM has the following topics scheduled for discussion and development at its Annual Meeting. At this stage, the items are proposals. This meeting includes work sessions in which Committees take public comments and finalize recommendations for possible adoption at the meeting.

Committees may also withdraw or carryover items that need additional development. Please see NCWM Publication 16, which is available on the NCWM Web site at *http://www.ncwm.net* for additional information. The following are brief descriptions of some significant agenda items that will be considered at the meeting. Comments will be taken on these items during the public comment sessions to be held at the meeting.

The Specifications and Tolerances Committee will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44).'' Those items address weighing and measuring devices that may be used in commercial measurement applications, that is, devices that are normally used to buy from or sell to the general public or used for determining the quantity of products sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology and engine fuel quality (NIST Handbook 130).'' This notice contains information about significant items on the NCWM Committee agendas, and they are not presented in consecutive order.

**NCWM Specifications and Tolerances Committee**

The following items are proposals to amend NIST Handbook 44.

*General Code*

Item 310–1. Software for Not-Built for Purpose Devices: This is a proposal to require manufacturers to display information on the version of software that is currently in use in a commercial measuring device.

*Scales Code*

Item 320–1. Zero Indication; Requirements for Markings or Indications for Other than Digital Zero Indications: This proposal would clarify the requirement's original intent for marking zero indications on scales and point-of-sale systems where a zero is represented by other than a digital indication of zero.

Item 320–3. Revise Shift Test for Scales: This proposal would modify requirements for the placement of test weights and test loads on weighing devices.

Item 320–4. Minimum Test Weights and Test Loads for Scales: This proposal would modify requirements for the minimum amount of test weights and test loads that must be used to verify the accuracy of commercial weighing devices.

Item 320–6. Time Dependence Tests: This is a proposal to align the type approval requirements for the time dependence (creep) test for scales and load cells with OIML requirements.

Item 320–8. Computing Scale Interfaced to an Electronic Cash Register (ECR): This proposal is intended to clarify requirements for computing scales with ECRs and to specify how each component must display transaction information, function in taking tare, and operate with Price-Look-Up (PLU) capability.

Item 320–9. Vehicle Scale Approaches: This is a proposal to clarify that vehicle scales may have one or more approaches to allow vehicles to move onto and off of the load receiving elements.

Item 320–11. Acceptable International Symbols: This is a proposal to include a list of accepted international symbols for marking operational controls, indications and features on scales in NIST Handbook 44.

*Belt-Conveyor Scale Systems*

Item 321–1. Official and As-found Tests: This is a proposal to improve the accuracy of these weighing systems by encouraging users to conduct random as-found tests and to improve their recordkeeping concerning scale maintenance and performance.

*Liquid-Measuring Devices*

Item 330–4. Diversion of Measured Flow: This is a proposal to revise requirements for valves and piping on liquid measuring devices so that they are consistent throughout NIST Handbook 44.

*Cryogenic Liquid Measuring Devices*

Item 334–1. Provision for Security Seals: This is a proposal to add a requirement that these meters have electronic security seals.

**NCWM Laws and Regulations Committee**

The following item is a proposal to amend NIST Handbook 130.

*Method of Sale of Commodities Regulation*

Item 232–2. Biodiesel and Fuel Ethanol Labeling: This item requires the identification and labeling of biodiesel fuels and blends at retail service stations.

**FOR FURTHER INFORMATION CONTACT:** Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. Telephone (301) 975–5507, or e-mail: *Carol.Hockert@nist.gov*.

Dated: June 19, 2006.

**Hratch G. Semerjian,**

*Deputy Director.*

[FR Doc. E6–10098 Filed 6–26–06; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcement of a Meeting To Explore Feasibility of Establishing a NIST/Industry Consortium on Metrological Aspects of X-Ray Diffraction and X-Ray Reflectometry Analysis

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) invites interested parties to attend a pre-consortium meeting to be held on August 10, 2006 in conjunction with the 55th Annual Denver X-Ray Conference at the Denver Marriott Tech Center Hotel, in Denver, CO. The objective of this meeting is to evaluate industry interest in a NIST/Industry Consortium on metrological aspects of X-Ray

Diffraction and X-Ray Reflectometry analysis.

The goals of this consortium include the development of standardized terminology and modeling methods, which will facilitate parameter comparisons between different instrument software and improve customer confidence in X-ray characterization techniques. The approach will compare results from industrial X-ray modeling and refinement approaches with NIST X-ray metrology-based approaches to establish consistency in parameter determination and in uncertainty analysis. The long-term goal of this collaboration will be NIST recommendations for X-ray data measurement and analysis methods. Recommended measurement and analysis methods in conjunction with future Standard Reference Materials will establish SI traceability between X-ray measurement and structural model parameters.

NIST staff members along with at least one technical representative from each participating member company will conduct X-ray software data refinements. Membership in the Consortium is open to the X-ray instrument vendor community, particularly equipment manufacturers with commercially available X-ray analysis software applicable to the comparative study. The term of the consortium is intended to be 5 years.

**DATES:** The meeting will take place on Thursday, August 10, 2006 from 5:30 p.m. to 6:30 p.m. Interested parties should contact NIST at the address, telephone number or FAX number shown below to confirm their interest in attending this meeting.

**ADDRESSES:** The meeting will take place at the Denver Marriott Tech Center Hotel, 4900 S. Syracuse Street, Denver, CO 80237, Room: Evergreen Ballroom.

**FOR FURTHER INFORMATION CONTACT:** Donald Windover or James P. Cline, Ceramics Division, National Institute of Standards and Technology (NIST), 100 Bureau Drive, MS 8520, Gaithersburg, MD 20899. Telephone: (301) 975–6102 or (301) 975–5793, FAX: 301 975–5334; e-mail: *donald.windover@nist.gov* or *james.cline@nist.gov*.

**SUPPLEMENTARY INFORMATION:** Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which provides Federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities but no funds to the cooperative research program. This is not a grant program.

Dated: June 19, 2006.

**Hratch G. Semerjian,**

*Deputy Director.*

[FR Doc. E6–10099 Filed 6–26–06; 8:45 am]

**BILLING CODE 3510–13–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061406C]**

### Endangered Species; File No. 1557

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that Molly Lutcavage, Department of Zoology, 177 A Spaulding Hall, University of New Hampshire, Durham, NH 03824–2617, has been issued a permit to take leatherback (*Dermochelys coriacea*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

**FOR FURTHER INFORMATION CONTACT:** Patrick Opay or Kate Swails, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On January 6, 2006, notice was published in the **Federal Register** (71 FR 916) that a request for a scientific research permit to take leatherback sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The primary purpose of the proposed research is to investigate leatherback sea turtle regional behavior and movements in near-shore waters off the northeastern United States and to identify their dispersal in relation to oceanographic conditions and fishing activities. The research will also help establish baseline health assessments, genetic identities, sex ratios, and stable isotope composition of leatherback sea turtle tissues and prey. Researchers will conduct research on up to 12 leatherback sea turtles annually. Researchers will use animals that have been disentangled from fishing gear by the stranding network or they will capture the animals using a breakaway hoopnet. Turtles will be measured, weighed, photographed and video taped, flipper and passive integrated transponder (PIT) tagged, blood sampled, cloacal swabbed, nasal swabbed, skin sampled, tagged with electronic instruments (e.g., satellite transmitters), and released. The research permit is issued for 5 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 21, 2006.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E6–10113 Filed 6–26–06; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Admittance To Practice and Roster of Registered Patent Attorneys and Agents Admitted To Practice Before the United States Patent and Trademark Office (USPTO)

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), 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 the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 28, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

*E-mail: Susan.Brown@uspto.gov.* Include ''0651–0012 comment'' in the subject line of the message.

*Fax:* 571–273–0112, marked to the attention of Susan Brown.

*Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

*Federal e-Rulemaking Portal: http://www.regulations.gov*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Christine Nucker, U.S. Patent and Trademark Office, Mail Stop OED, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–6071; or by e-mail at *http://www.oed@uspto.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This collection of information is required by 35 U.S.C. 2(b)(2)(D), which permits the United States Patent and Trademark Office (USPTO) to establish regulations governing the recognition and conduct of agents, attorneys or other persons representing applicants or other parties before the USPTO. This statute also permits the USPTO to require information from applicants that shows that they are of good moral character and reputation and have the necessary qualifications to assist applicants with the patent process and to represent them before the USPTO.

The USPTO administers the statute through 37 CFR 1.21, 10.14 and 11.5 to 11.11. These rules address the requirements to apply for the examination for registration and to demonstrate eligibility to be a registered attorney or agent before the USPTO, including the fee requirements. The Office of Enrollment and Discipline (OED) collects information to determine the qualifications of individuals entitled to represent applicants before the USPTO in the preparation and prosecution of applications for a patent. The OED also collects information to administer and maintain the roster of attorneys and agents registered to practice before the USPTO. Information concerning registered attorneys and agents is published by the OED in a public roster that can be accessed through the USPTO Web site.

The information in this collection is used by the USPTO to review applications for the examination for registration and to determine whether an applicant may be added to, or an existing practitioner may remain on, the Register of Patent Attorneys and Agents.

There are five forms associated with this information collection. Fourteen new requirements and three new forms are being introduced into this collection. The three new forms are Annual Practitioner Registration Fee (Form PTO–2126), Sponsor Application for USPTO CLE Course Approval (PTO–2149), and Certification of Attendance at USPTO Approved CLE Training (PTO–2150).

## II. Method of Collection

By mail to the USPTO when the individual desires to participate in the information collection.

## III. Data

*OMB Number:* 0651–0012.

*Form Number(s):* PTO–158, PTO–158A, PTO/275, PTO–107A and PTO–1209. New forms being introduced into the collection are PTO–2126, PTO–2149 and PTO–2150.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; business or other for-profit; the Federal Government; and state, local or tribal governments.

*Estimated Number of Respondents:* 72,122 responses per year.

*Estimated Time per Response:* The USPTO estimates that it will take the public approximately 5 minutes to 40 hours, depending upon the complexity of the situation, to gather, prepare, and submit the various documents in this information collection.

*Estimated Total Annual Respondent Burden Hours:* 89,475 hours per year.

*Estimated Total Annual Respondent Cost Burden:* 20,707,900. The cost to respondents for taking the registration examination is estimated to be at the rate of 39 per hour, for a cost burden of 955,500. The USPTO estimates that the remaining items in this collection will be prepared by associate attorneys in private firms. Using the professional hourly rate of 304 per hour for associate attorneys in private firms, the USPTO estimates 19,752,400 per year in respondent cost burden associated with the remaining items in this information collection.

| Item | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Application for Registration to Practice Before the United States Patent and Trademark Office (includes both the computerized exam and the USPTO-administered exam): Form PTO–158. | 30 minutes .. | 3,500 | 1,750 |
| Application for Registration to Practice Before the United States Patent and Trademark Office (former examiners; examination waived): Form PTO–158. | 30 minutes .. | 100 | 50 |
| Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 11.6(c) by a Foreign Resident (applicant does not take the exam): Form PTO–158A. | 30 minutes .. | 100 | 50 |
| Registration Examination to Become a Registered Practitioner | 7 hours ..... | 3,500 | 24,500 |
| Undertaking under 37 CFR 11.10(b): PTO/275 | 20 minutes .. | 520 | 172 |
| Data Sheet—Register of Patent Attorneys and Agents (individuals passing the registration exam): PTO–107A. | 10 minutes .. | 1,995 | 339 |
| Data Sheet—Register of Patent Attorneys and Agents (Foreign applicants): PTO–107A | 10 minutes .. | 100 | 17 |
| Data Sheet—Register of Patent Attorneys and Agents (former examiners seeking registration): PTO–107A. | 10 minutes .. | 100 | 17 |
| Oath or Affirmation: PTO–1209 | 5 minutes .... | 2,195 | 176 |
| Reinstatement to the Register: PTO–107A | 10 minutes .. | 60 | 10 |
| Written Request for Reconsideration and Further Review of Disapproval Notice of Application | 90 minutes .. | 5 | 8 |
| Petitions to the Director of the Office of Enrollment and Discipline | 45 minutes .. | 2 | 2 |
| Petition for Reinstatement after Disciplinary Removal | 40 hours ..... | 4 | 160 |
| Annual Practitioner Registration Fee: Form PTO–2126 | 10 minutes .. | 24,920 | 4,236 |
| Annual Fee, Limited Recognition: Form PTO–2126 | 10 minutes .. | 200 | 34 |
| Voluntary Inactive Status: Form PTO–2126 | 10 minutes .. | 2,000 | 340 |
| Request for Restoration to Active Status from Voluntary Inactive Status: Form PTO–2126 | 10 minutes .. | 700 | 119 |
| Balance Due on Restoration to Active Status from Voluntary Inactive Status: Form PTO–2126 | 10 minutes .. | 700 | 119 |
| Delinquency Fee: Form PTO–2126 | 10 minutes .. | 2,100 | 357 |

| Item | Estimated time for response | Estimated annual responses | Estimated annual burden hours |
|---|---|---|---|
| Reinstatement Fee: (fee required to be paid after the due date of the required annual fee): Form PTO–2126. | 10 minutes .. | 420 | 71 |
| Sponsor Application for USPTO Continuing Legal Education (CLE): Form PTO–2149 | 1 hour | 350 | 350 |
| Certification of Attendance at USPTO-approved CLE Training: Form PTO–2150 | 1 hour | 350 | 350 |
| Practitioner Request for Paper Version of CLE | 5 minutes | 100 | 8 |
| On-line Version of the Seminar CLE | 2 hours | 28,000 | 56,000 |
| Paper Version of the CLE | 2 hours | 100 | 200 |
| Practitioner's supporting documentation for a motion to hold in abeyance a disciplinary proceeding because of a current disability or addiction. | 40 hours | 1 | 40 |
| Total | | 72,122 | 89,475 |

*Estimated Total Annual (non-hour) Respondent Cost Burden:* 3,940,412. There are no capital start-up or maintenance costs associated with this information collection. There are, however, non-hour costs due to record keeping requirements, filing fees, and postage costs.

There are record keeping costs as a result of the Oath which includes a notary public requirement. The average fee for having a document notarized is 2. The USPTO estimates that it will receive 2,195 responses to this information collection per year as a result of this notary requirement, for a total cost of 4,390 per year.

There are also filing fees associated with this collection. The application fees for registration to practice before the USPTO vary depending on whether the applicant is a current applicant, a former examiner, or a foreign resident. The fee for administration of the computerized examination to become a registered patent practitioner also varies depending on how the examination is administered. The total annual non-hour cost burden associated with filing fees is 3,919,900.

| Item | Responses (a) | Filing fee ($) (b) | Total non-hour cost burden (a) × (b) (c) |
|---|---|---|---|
| Application for Registration to Practice Before the United States Patent and Trademark Office | 3,500 | $40.00 | $140,000.00 |
| Registration examination fee for administration of computerized examination to become a registered patent practitioner administered by the USPTO (USPTO-administered exam) | 25 | 450.00 | 11,250.00 |
| Registration examination fee for administration of computerized examination to become a registered patent practitioner administered by a commercial entity (Computer exam) | 3,475 | 200.00 | 695,000.00 |
| Application for Registration to Practice Before the United States Patent and Trademark Office, as applicable when used for registration fees only (former examiners; examination waived) | 100 | 40.00 | 4,000.00 |
| Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 11.6(c) by a Foreign Resident (examination waived) | 100 | 40.00 | 4,000.00 |
| Undertaking under 37 CFR 11.10(b) | 520 | 0 | 0.00 |
| Data Sheet—Register of Patent Attorneys and Agents (includes applicants that passed the examination, former examiners, and foreign applicants) | 2,195 | 100.00 | 219,500.00 |
| Oath or Affirmation | 2,195 | 0 | 0.00 |
| Reinstatement to the Register | 60 | 40.00 | 2,400.00 |
| Written Request for Reconsideration and further review of Disapproval Notice of Application | 5 | 130.00 | 650.00 |
| Petition to the Director of the Office of Enrollment and Discipline | 2 | 130.00 | 260.00 |
| Petition for Reinstatement after Disciplinary Removal | 4 | 1,600.00 | 6,400.00 |
| Annual Practitioner Registration Fee | 24,920 | 100.00 | 2,492,000.00 |
| Annual Fee, Limited Recognition | 200 | 100.00 | 20,000.00 |
| Voluntary Inactive Status | 2,000 | 25.00 | 50,000.00 |
| Request for Restoration to Active from Voluntary Inactive Status | 700 | 50.00 | 35,000.00 |
| Balance Due on Restoration to Active from Voluntary Inactive Status | 700 | 75.00 | 52,500.00 |
| Delinquency Fee (fee paid after the due date and for CLE) | 2,100 | 50.00 | 105,000.00 |
| Reinstatement Fee (required to be paid after the due date of the required annual fee or CLE) | 420 | 100.00 | 42,000.00 |
| Sponsor Application for USPTO CLE | 350 | 60.00 | 21,000.00 |
| Certification of Attendance at USPTO-approved CLE Training | 350 | 0 | 0.00 |
| Practitioner request for paper version of CLE program and furnished narrative | 100 | 75.00 | 7,500.00 |
| Online version of the Seminar CLE | 28,000 | 0 | 0.00 |
| Paper version of the CLE | 100 | 0 | 0.00 |
| Practitioner's supporting documentation for a motion to hold in abeyance a disciplinary proceeding because of a current disability or addiction | 1 | 11,440.00 | 11,440.00 |
| Total | 72,122 | | 3,919,900.00 |

The General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases before the USPTO states that all business with the USPTO should be transacted in writing. The actions of the OED will be based exclusively on the written record in the USPTO (37 CFR 1.2). Personal attendance is

unnecessary. All documents may be submitted to the USPTO by first-class mail through the United States Postal Service. Mailed submissions should include a certificate of mailing for each piece of correspondence enclosed, stating the date of deposit or transmission to the USPTO. The USPTO estimates that the average first-class postage cost for responses to this collection will vary from 39 cents for one ounce to $4.05, depending on the individual submission. The total annual non-hour cost burden associated with postage costs is $16,122.

| Item | Responses (a) | Postage cost ($) (b) | Total non-hour cost burden (a) × (b) (c) |
|---|---|---|---|
| Application for Registration to Practice Before the United States Patent and Trademark Office (includes both the computerized exam and the USPTO-administered exam) | 3,500 | $0.63 | $2,205.00 |
| Application for Registration to Practice Before the United States Patent and Trademark Office (former examiners; examination waived) | 100 | 0.63 | 63.00 |
| Application for Registration to Practice Before the United States Patent and Trademark Office Under 37 CFR 11.6(c) by a Foreign Resident (applicant does not take the exam) | 100 | 0.39 | 39.00 |
| Registration Examination to become a Registered Practitioner | 3,500 | 0 | 0.00 |
| Undertaking under 37 CFR 11.10(b) | 520 | 0 | 0.00 |
| Data Sheet—Register of Patent Attorneys and Agents (includes applicants that passed the examination, former examiners, and foreign applicants) | 2,195 | 0.39 | 856.00 |
| Oath or Affirmation | 2,195 | 0 | 0.00 |
| Reinstatement to the Register | 60 | 0.39 | 23.00 |
| Written Request for Reconsideration and further review of Disapproval Notice of Application | 5 | 0.63 | 3.00 |
| Petition to the Director of the Office of Enrollment and Discipline | 2 | 1.59 | 3.00 |
| Petition for Reinstatement after Disciplinary Removal | 4 | 0.87 | 3.00 |
| Annual Practitioner Registration Fee | 24,920 | 0.39 | 9,719.00 |
| Annual Fee, Limited Recognition | 200 | 0.39 | 78.00 |
| Voluntary Inactive Status | 2,000 | 0.39 | 780.00 |
| Request for Restoration to Active from Voluntary Inactive Status | 700 | 0.39 | 273.00 |
| Balance Due on Restoration to Active from Voluntary Inactive Status | 700 | 0.39 | 273.00 |
| Delinquency Fee (fee paid after the due date and for CLE) | 2,100 | 0.39 | 819.00 |
| Reinstatement Fee (required to be paid after the due date of the required annual fee or CLE) | 420 | 0.39 | 164.00 |
| Sponsor Application for USPTO CLE | 350 | 1.59 | 557.00 |
| Certification of Attendance at USPTO Approved CLE Training | 350 | 0.63 | 221.00 |
| Practitioner request for paper version of CLE program and furnished narrative | 100 | 0.39 | 39.00 |
| On-line version of the Seminar CLE | 28,000 | 0 | 0.00 |
| Paper version of the CLE | 100 | 0 | 0.00 |
| Practitioner's supporting documentation for a motion to hold in abeyance a disciplinary proceeding because of a current disability or addiction | 1 | 4.05 | 4.00 |
| Total | 72,122 | ..... | 16,122.00 |

The USPTO estimates that the total (non-hour) respondent cost burden for this collection in the form of record keeping costs, filing fees, and postage costs is $3,940,412.

## 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 or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 20, 2006.

**Susan K. Brown,**

*Records Officer, USPTO, Office of the Chief Information Officer, Architecture, Engineering and Technical Services, Data Architecture and Services Division.*

[FR Doc. E6–10085 Filed 6–26–06; 8:45 am]

BILLING CODE 3510–16–P

## THE COMMISSION OF FINE ARTS

### Notice of Rescheduled Meeting

The next meeting of the Commission of Fine Arts, which was previously scheduled for July 20, 2006, is rescheduled for July 27, 2006 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquires regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, June 20, 2006.

**Thomas Luebke,**

*Secretary.*

[FR Doc. 06–5700 Filed 6–26–06; 8:45 am]

BILLING CODE 6330–01–M

## CONSUMER PRODUCT SAFETY COMMISSION

**[Petition HP 06–2]**

### Petition for Labeling Exemption for Mini Sparklers

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The United States Consumer Product Safety Commission (Commission or CPSC) has received a petition (HP 06–2) requesting that the Commission exempt mini sparkler tubes from the labeling requirement for sparklers that states that they must say ''For Outdoor Use Only.''

**DATES:** The Office of the Secretary must receive comments on the petition by August 28, 2006.

**ADDRESSES:** Comments on the petition may be filed by e-mail to *cpsc-os@cpsc.gov.* Comments may also be filed by facsimile to (301) 504–0127, or delivered or mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7923. Comments should be captioned ''Petition HP 06–2, Petition Requesting Labeling Exemption for Mini Sparklers.'' The petition is available on the CPSC Web site at *http://www.cpsc.gov.* A request for a hard copy of the petition may be directed to the Office of the Secretary.

**FOR FURTHER INFORMATION CONTACT:** Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:** The Commission has received correspondence from Octavius Hunt requesting that the Commission exempt mini sparkler tubes from the labeling requirement for sparklers that states that they must say ''For Outdoor Use Only.'' The request for the labeling exemption was docketed as petition number HP 06–2 under the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278.

Octavius Hunt states that its mini sparklers are designed and safety-tested for indoor use according to the British Standard 7114 Part 2 1988. According to Octavius Hunt, mini sparklers are classed as hand-held sparklers under the British Standard, whereby the total net explosive content is less than or equal to 1.5 g per sparkler, which must burn completely. Octavius Hunt claims the testing requirements for indoor hand-held sparklers are more stringent than the requirements for outdoor hand-held sparklers, and that these stringent tests mean that these sparklers are suitable for hand held indoor use. Octavius Hunt claims the mini sparklers are designed in order to ensure composition does not drop off from the sparkler and that sparks do not emit from the burning sparkler.

Interested parties may obtain a copy of the petition on the CPSC Web site at *http://www.cpsc.gov* or by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Dated: June 22, 2006.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E6–10097 Filed 6–26–06; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[No. USAF–2006–0007]**

### Proposed Collection; Comment Request

**AGENCY:** Department of Defense Medical Examination Review Board.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Defense Medical Examination Review Board announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 28, 2006.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: Department of Defense Medical Examination Review Board (DoDMERB), 8034 Edgerton Drive, Suite 132, USAF Academy, CO 80840–2200, Attention: CMSgt Fred Wade.

*Title; Associated Form; and OMB Number:* DoDMERB Report of Medical Examination; DD Forms 2351, 2369, 2370, 2372, 2374, 2378, 2379, 2380, 2381, 2382, 2489, and 2492; OMB Number 0704–0396.

*Needs and Uses:* The information collection requirement is necessary to determine the medical qualification of applicants to the five Service academies, the four-year Reserve Officer Training Corps College Scholarship Program, Uniformed Services University of the Health Sciences, and the Army, Navy, and Air Force Scholarship and Non-Scholarship Programs. The collection of medical history of each applicant is to determine if applicants meet medical standards outlined in the Department of Defense Directive 6130.3, Physical Standards for Appointment, Enlistment or Induction.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 45,000.

*Number of Respondents:* 45,000.

*Responses per Respondent:* 1.

*Average Burden Per Response:* 60 minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are individuals who are interested in applying to attend one of the five Service academies, the four-year Reserve Officer Training Corps Scholarship Program, Uniformed Services University of the Health Sciences, or Army, Navy, and Air Force Scholarship and Non-Scholarship Programs.

The completed forms are processed through medical reviewers representing

their respective services to determine a medical qualification status. Associated forms may or may not be required depending on the medical information contained in the medical examination. If the medical examination and associated forms, if necessary, are not accomplished, individuals reviewing the medical examination cannot be readily assured of the medical qualifications of the individual. Without this process the individual applying to any of these programs could not have a medical qualification determination. It is essential that individuals have a medical qualification determination to ensure compliance with the physical standards established for each respective military service program.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 06–5699 Filed 6–26–06; 8:45 am]

**BILLING CODE 5001–06–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8189–4]**

### Public Law-105–270, The Federal Activities Inventory Reform Act (FAIR) of 1998; Notice of Public Availability of EPA Revised 2005 Inventory of Activities That Are Not Inherently Governmental and of Activities That Are Inherently Governmental

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the FAIR Act, agency revised inventories of activities that are not inherently governmental are now available to the public from the Environmental Protection Agency. The FAIR Act requires that the agency publish an announcement of public availability of the 2005 agency inventories of activities that are not inherently governmental when the FAIR Act Challenge Process results in a change to an agency inventory.

This is the second release of the 2005 FAIR Act inventories. The EPA has made the revised 2005 FAIR Act inventories available for review through *http://www.epa.gov/oarm/inventory/2005/2005inventory.html*.

**ADDRESSES:** Questions may be directed to Barbara Stearrett at: *Stearrett.Barbara@epa.gov*. U.S. Environmental Protection Agency, OARM/Office of Competitive Sourcing (Mail Code: 3101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Barbara Stearrett at (202) 566–1970.

Dated: June 22, 2006.

**Susan Kantrowitz,**

*Team Leader, Information and Human Resources Team, Office of Policy and Resources Management.*

[FR Doc. E6–10101 Filed 6–26–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8189–3; Docket ID No. EPA–HQ–ORD–2006–0500]**

### Draft Toxicological Review of Dibutyl Phthalate (Di-n-Butyl Phthalate): In Support of the Summary Information in the Integrated Risk Information System (IRIS)

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

**ACTION:** Notice of peer-review workshop and public comment period.

**SUMMARY:** EPA is announcing that the Oak Ridge Institute of Science and Education (ORISE), under an Interagency agreement between the Department of Energy and EPA, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, Toxicological Review of Dibutyl Phthalate (Di-n-Butyl Phthalate): In Support of Summary Information in the Integrated Risk Information System (IRIS) (NCEA–S–1755). The EPA also is announcing a public comment period for the draft document. EPA will consider comments and recommendations from the public and the expert panel meeting when EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. In addition to consideration by EPA, all public comments submitted in accordance with this notice will also be forwarded to EPA's contractor for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

ORISE invites the public to register to attend this workshop as observers. In addition, ORISE invites the public to give brief oral comments at the workshop regarding the draft document under review. The draft document and EPA's peer-review charge are available via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. When finalizing the draft document, EPA will consider ORISE's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives in accordance with this notice.

**DATES:** The peer-review panel workshop will begin on July 28, 2006, at 9 a.m. and end at 4 p.m. The public comment period begins June 27, 2006 and ends July 21, 2006. Technical comments should be in writing and must be received by EPA by July 21, 2006. Comments from the public received by July 14, 2006, will be submitted to the panel prior to the workshop.

**ADDRESSES:** The peer-review workshop will be held at The American Geophysical Union, 2000 Florida Avenue, NW., Washington, DC 20009–1277. The EPA contractor, ORISE, is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by July 11, 2006, by calling ORISE at 865–241–5784, sending a facsimile to 865–241–3168, or sending an e-mail to Leslie Shapard, *shapardl@orau.gov*. You may also register via the Internet at *http://www.orau.gov/dibutyl_phthalate*. You must register by July 11, 2006, if you wish to provide brief oral comments at the workshop.

The draft Toxicological Review of Dibutyl Phthalate (Di-n-Butyl Phthalate): In Support of Summary Information in the Integrated Risk Information System (IRIS) is available via the Internet on the National Center for Environmental Assessment(s (NCEA) home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea*. A limited number of paper copies are available from NCEA(s Technical Information Staff. Please contact the Technical Information Staff by telephone at 202–564–3261 or by facsimile at 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from ORISE.

Comments may be submitted electronically via *http://www.regulations.gov*, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the peer review workshop, contact Leslie Shapard, ORISE, P.O. Box 117, MS 17, Oak Ridge, TN 37831–0117, at 865–241–5784 or 865–241–3168 (facsimile), *shapardl@orau.gov* (e-mail).

For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

If you have questions about the document, contact Jamie C. Benedict, IRIS Staff, National Center for Environmental Assessment, (8601D), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 202–564–3386; facsimile: 202–565–0075; *benedict.jamie@epa.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

## I. Summary of Information About the Integrated Risk Information System (IRIS)

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities use IRIS to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

## II. Workshop Information

Members of the public may attend the workshop as observers, and there will be a limited time for comments from the public. Please let ORISE know if you wish to make oral comments during the workshop prior to the meeting. Space is limited, and reservations will be accepted on a first-come, first-served basis.

## III. How To Submit Technical Comments to the Docket at www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2006–0500 by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: ORD *Docket@epa.gov*.
- Fax: 202–566–1753.
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, 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 Public Reading Room is 202–566–1744. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0500. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

*Docket:* Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: June 21, 2006.

**Peter W. Preuss,**

*Director, National Center for Environmental Assessment.*

[FR Doc. E6–10103 Filed 6–26–06; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[Docket # EPA–RO4–SFUND–2006–0511; FRL–8189–1]**

## Romarc Industries Superfund Site; Williston, Levy County, FL; Notice of Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlements.

**SUMMARY:** Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLS), the United States Environmental Protection Agency has entered into a proposed settlement for the reimbursement of past response costs concerning the Romarc Industries Superfund Site located in Williston, Levy County, Florida.

**DATES:** The Agency will consider public comments on the settlements until July 27, 2006. The Agency will consider all

comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate.

**ADDRESSES:** Copies of the settlements are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0511 or Site name Romarc Industries Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov*
- Fax: 404/562–8842/Attn Paula V. Batchelor
- Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

*Instructions:* Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0511. 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 am until 6:30 pm. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** Paula V. Batchelor at 404/562–8887.

Dated: June, 6, 2006.

**Rosalind H. Brown,**

*Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.*

[FR Doc. E6–10096 Filed 6–26–06; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R01–OW–2006–0567; FRL–8189–6]**

## Maine Marine Sanitation Device Standard—Notice of Determination

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

**ACTION:** Notice.

**SUMMARY:** I, the Regional Administrator of the Environmental Protection Agency—New England Region, have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Casco Bay area covered under this determination.

**ADDRESSES:** *Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copy-righted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, Mailcode-COP, Boston, MA 02114–2023. Telephone: (617) 918–0538, Fax number: (617) 918–1505; e-mail address: *Rodney.ann@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This Notice of Determination is for Casco Bay, Maine. The area of the Bay to be included in the designation includes all contiguous waters north and east of 43°33′56.04″ N–70°11′48.22″ W at Cape Elizabeth Light in Cape Elizabeth, to a point 43°42′17.65″ N–69°51′17.70″ W at Bald Point in Phippsburg. The area also includes the navigable reaches of the Fore River, Presumpscot River, Royal River, Cousins River, Harraseeket River, and the New Meadows River.

On February 17, 2006, notice was published that the State of Maine had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Casco Bay, the area includes all contiguous waters north and east of 43°33′56.04″ N–70°11′48.22″ W at Cape Elizabeth Light in Cape Elizabeth, to a point 43°42′17.65″ N–69°51′17.70″ W at Bald Point in Phippsburg. The area also includes the navigable reaches of the Fore River, Presumpscot River, Royal River, Cousins River, Harraseeket River, and the New Meadows River.

The petition was filed pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a ''No Discharge Area'' (NDA).

Section 312(f)(3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

The information submitted to me by the State of Maine certifies that there are 20 pumpout facilities located within the proposed area. A list of the facilities, with phone numbers, locations, and hours of operation is appended at the end of this determination.

Based on the examination of the petition and its supporting documentation and information from site visits by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination. The area of the Bay to be included in the designation includes all contiguous waters north and east of 43°33′56.04″ N–70°11′48.22″ W at Cape Elizabeth Light in Cape Elizabeth, to a point 43°42′17.65″ N–69°51′17.70″ W at Bald Point in Phippsburg. The area also includes the navigable reaches of the Fore River, Presumpscot River, Royal River, Cousins River, Harraseeket River, and the New Meadows River.

This determination is made pursuant to section 312(f)(3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4.

EPA has prepared a response to the eight comments it received during the 45-day comment period, which may be requested from EPA by writing to: Ann Rodney, U.S. EPA New England, One Congress Street, Suite 1100, mail code-COP, Boston, MA 02114–2023.

LIST OF PUMPOUTS IN THE AREA

| Location/waterbody | Name/company | Contact information | Hours of operation | Minimum depth |
|---|---|---|---|---|
| New Meadows River, Brunswick. | New Meadows Marina | 207–443–6277 VHF CH 9 | June–Sept 8 a.m.–5 p.m. M–F Weekend by appt.. | 4′ |
| Merepoint Bay, Brunswick | Paul's Marina | 207–729–3067 VHF 9 | June–Sept Self Serve 24/7 | 10′ |
| Casco Bay, Falmouth | Falmouth Public Landing | 207–781–7317 VHF 9 | June–Sept Self Serve 24/7 | 10′ |
| Casco Bay, Falmouth | Handy Boat | 207–781–5110 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 4′ |
| Casco Bay, Freeport | Brewers South Freeport Marine. | 207–865–3181 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Casco Bay, Freeport | Strouts Point Wharf | 207–865–3899 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Potts Harbor, Harpswell | Dolphin Marine Services | 207–833–6000 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Orrs Harbor, Harpswell | Great Island Boatyard | 207–729–1639 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Sebasco Harbor, Phippsburg | Sebasco Harbor Resort | 207–389–1161 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 6′ |
| Di a.m.ond Cove, Portland | Di a.m.ond Cove Marina | 207–766–5850 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 6′ |
| Portland Harbor, Portland | DiMillos Old Port Marina | 207–773–7632 VHF 9 | May–Oct. 8 a.m.–8 p.m. 7 days. | 10′ |
| Portland Harbor, Portland | Maine Yacht Center | 207–842–9000 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Portland Harbor, Portland | Portland Yacht Services | 207–774–1067 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Fore River, South Portland | City of South Portland | 207–767–3201 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 6′ |
| Casco Bay, South Portland | Friends Of Casco Bay | 207–776–0136 VHF 9 | June–Sept. By apt. | 10′ |
| Portland Harbor, South Portland. | South Port Marine | 207–799–8191 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 4′ |
| Portland Harbor, South Portland. | Spring Point Marina | 207–767–3213 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Portland Harbor, South Portland. | Sunset Marina | 207–767–4729 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 6′ |
| Portland Harbor, South Portland. | Aspasia Marina | 207–767–3010 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |
| Royal River, Yarmouth | Yankee Marina | 207–846–4326 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 6′ |
| Royal River, Yarmouth | Yarmouth Boat Yard | 207–846–9050 VHF 9 | June–Sept. 8 a.m.–8 p.m. 7 days. | 10′ |

Dated: June 21, 2006.

**Robert W. Varney,**

*Regional Administrator, Region 1.*

[FR Doc. E6–10092 Filed 6–26–06; 8:45 a.m.]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act; Deletion of Agenda Items From June 21, 2006, Open Meeting

June 21, 2006.

The following items have been deleted from the list of Agenda items scheduled for consideration at the Wednesday, June 21, 2006, open meeting and previously listed in the Commission's Notice of Wednesday, June 14, 2006.

| Item No. | Bureau | Subject |
|---|---|---|
| 1 | *Media* | *Title:* Cable Carriage of Digital Television Broadcast Signals (CS Docket No. 98–120). |

| Item No. | Bureau | Subject |
|---|---|---|
| 4 | *International* | *Summary:* The Commission will consider a Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking concerning the mandatory carriage of digital broadcast television signals by cable operators.<br>*Title:* The Establishment of Policies and Service Rules for the Broadcasting Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Broadcasting Satellite Service Operating Bi-directionally in the 17.3–17.7 GHz Frequency Band.<br>*Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning processing and service rules for the 17/24 GHz Broadcasting Satellite Service (BSS). |

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06–5745 Filed 6–23–06; 12:01 pm]

BILLING CODE 6712–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Semi-Annual and Final Reporting Requirements for the Older Americans Act Title IV Discretionary Grant Program

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by July 27, 2006.

**ADDRESSES:** Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Brenda Aguilar, Desk Officer for AoA.

**FOR FURTHER INFORMATION CONTACT:** Greg Case at (202) 357–3442 or *greg.case@aoa.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

*Title of Information Collection:* Performance Progress Reports for Title IV Grantees.

*Type of Request:* Revision of Performance Reporting Guidelines and Format. *Use:* Revision of reporting guidelines and format for use by Title IV grantees in reporting on activities of their Title IV Discretionary Funds Projects as required under Title IV of the Older Americans Act, as amended.

AoA estimates the burden of this collection of information as follows:

*Frequency:* Semi-annual Performance Reports and a Final Report.

*Respondents:* States, public agencies, private nonprofit agencies, institutions of higher education, and organizations including tribal organizations.

*Estimated Number of Responses:* 300.

*Total Estimated Burden Hours:* 12,000.

Dated: June 22, 2006.

**Josefina G. Carbonell,**

*Assistant Secretary for Aging.*

[FR Doc. E6–10100 Filed 6–26–06; 8:45 am]

BILLING CODE 4154–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion 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 Cancer Institute Special Emphasis Panel, Cancer Genome Characterization Centers.

*Date:* August 8–9, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

*Contact Person:* Thomas M. Vollberg, PhD., Scientific Review Administrator, Special Review and Logistics Branch, Division Of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, 301/594–9582, *vollbert@mail,nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institute of Health, HHS)

Dated: June 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5689 Filed 6–26–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Alternative Medicine Special Emphasis Panel, Planning Grants to Develop CAM Research at Minority Serving Institutions.

*Date:* July 6, 2006.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Center for Complementary and Alternative Medicine, NIH, 6707 Democracry Boulevard, Suite 401, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Dale L. Birkle, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov*.

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:* National Center for Complementary and Alternative Medicine Special Emphasis Panel, Clinical Research.

*Date:* July 7, 2006.

*Time:* 8 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jeanette M. Hosseini, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–9096, *jeanetteh@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: June 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5690 Filed 6–26–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommittee.

*Date:* July 10–11, 2006.

*Time:* 9 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Washington, Pennsylvania Ave. at 15th Street, NW., Washington, DC 20004.

*Contact Person:* Marita R. Hopmann, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 16, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5683 Filed 6–26–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, ''Stress and Aging''.

*Date:* July 6, 2006.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health/NIA, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, 301–496–9666, *markowsa@nia.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:* National Institute on Aging Special Emphasis Panel, Aging and Bone.

*Date:* July 10, 2006.

*Time:* 8 a.m. to 11 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Anemia and Aging.

*Date:* July 11–12, 2006.

*Time:* 4 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Alicja L. Markowska, PhD., DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, ''Aging Cognitive Decline and Ad''.

*Date:* July 11–12, 2006.

*Time:* 7 p.m. to 11 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite 2C–212, Bethesda, MD 20892, (301) 496–7705, *hsul@exmur.nia.nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Clinical Trials.

*Date:* July 12, 2006.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 28014 (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Clinical Trials.

*Date:* July 12, 2006.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Clinical Trials.

*Date:* July 12, 2006.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov*.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Health and Aging.

*Date:* July 25, 2006.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 28014 (Telephone Conference Call).

*Contact Person:* William Cruce, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C–212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 19, 2006.

**Linda Payne,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5685 Filed 6–26–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NEUROAIDS SNRP UPR.

*Date:* June 22–23, 2006.

*Time:* 7:30 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel El Confento, 100 Cristo Street, Old San Juan, Puerto Rico 00901.

*Contact Person:* Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 14, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5686 Filed 6–26–06; 8:45am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Biomedical imaging and bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, ZEB1 OSR C 01 2006 Quantum Grants.

*Date:* July 17–18, 2006.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Prabha L. Atreya, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging, and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Dated: June 14, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5688 Filed 6–26–06; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Lymphocyte Survival and Death.

*Date:* July 21, 2006.
*Time:* 10 a.m. to 1 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3121, Bethesda, MD 20817 (Telephone Conference Call).
*Contact Person:* Paul A. Amstad, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5691 Filed 6–26–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Burn Injury and Alcohol Exposure: Neuroimmunoendocrine Interations.
*Date:* July 12, 2006.
*Time:* 12 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institute of General Medical Sciences, Office of Scientific Review, 45 Center Drive, 3AN18, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Brian R. Pike PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

*Name of Committee:* Minority Programs Review Committee, MBRS Review Subcommittee B.
*Date:* July 13, 2006.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Clarion Hotel Bethesda Park, 8400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 16, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5692 Filed 6–26–06; 8:45am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, HCV and Immune Response.
*Date:* July 11, 2006.
*Time:* 6:30 p.m. to 7:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

*Name of Committee*: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Limited Competition for Urinary Incontinence Trials Network.
*Date:* July 24, 2006.
*Time:* 9 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Contact Person:* Carol J. Goter-Robinson, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Short Term Training.
*Date:* July 26, 2006.
*Time:* 1 p.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Molecular Mechanisms of Cholesterol Absorption.
*Date:* July 27, 2006.
*Time:* 2 p.m. to 5 p.m.
*Agenda:* To review and evaluate applications.
*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Dan Matsumoto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Study, Prevention, and Treatment of Kidney Diseases.
*Date:* July 27, 2006.
*Time:* 12 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael W. Edwards, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, *edwardsm@extra.niddk.nih.gov.*

Catalogue of Federal Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: June 16, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5693 Filed 6–26–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Prescription Opioid Use and Abuse in the Treatment of Pain.

*Date:* July 27–28, 2006.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Westin Grand, 2350 M Street, NW., Washington, DC 20037.

*Contact Person:* Mark R. Green, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 84301, 6101 Executive Boulevard, Bethesda, MD 20892–8401. (301) 435–1431. *mgreen1@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs. National Institutes of Health, HHS)

Dated: June 16, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5694 Filed 6–26–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Development and Manufacture of Pharmaceutical Products for Addiction Treatment.

*Date:* July 12, 2006.

*Time:* 9:30 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Scientific Meeting and Conference Services.

*Date:* July 18–19, 2006.

*Time:* 9 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard by Marriott Rockville, 2500 Research Boulevard, Rockville, MD 20850.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1439, *lf33c.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 16, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5695 Filed 6–26–06; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of 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 meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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:* Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

*Date:* September 18, 2006.

*Closed:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

*Date:* September 19, 2006.

*Open:* 7:30 a.m. to 8:45 a.m.

*Agenda:* Outreach Activities.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* September 19–20, 2006.

*Open:* September 19, 2006, 9 a.m. to 4:30 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* September 19, 2006, 4:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* September 20, 2006, 9 a.m. to 12:00 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 304–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine, Planning Subcommittee.

*Date:* September 20, 2006.

*Time:* 7:30 a.m. to 8:45 a.m.

*Agenda:* Long-Range Planning Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nim.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 16, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5684 Filed 6–26–06; 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 Center for Scientific Review Special Emphasis Panel, July 6, 2006, 8 a.m. to July 6, 2006, 4:30 p.m., Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001 which was published in the **Federal Register** on June 9, 2006, 71 FR 33472–33474.

The meeting will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814. The meeting date and time remain the same. The meeting is closed to the public.

Dated: June 14, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5687 Filed 6–26–06; 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, ZRG1 DIG F(02) Member Conflict.

*Date:* June 27, 2006.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call(.

*Contact Person:* Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892. (301) 435–2359. *sahyiqr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bioengineering.

*Date:* June 28, 2006.

*Time:* 11 a.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:* Rass M. Shayiq, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892. (301) 435–2359. *shayiqr@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:* Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

*Date:* June 29–30, 2006.

*Time:* 9 a.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, Microbial Vaccine Development..

*Date:* July 10–11, 2006.

*Time:* 8:30 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

*Contact Person:* Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892. 301–435–1187. *jh377p@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Microbial Vaccine Development.

*Date:* July 11, 2006.

*Time:* 10 a.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

*Contact Person:* Jin Huang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892. 301–435–1187. *jh377p@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cardiovascular Sciences Small Business Activities.
*Date:* July 13, 2006.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892. (301) 435–8367. *boerboom@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Program Project Supplement: Adolescent Health.
*Date:* July 13, 2006.
*Time:* 11:30 a.m. to 1:30 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:* Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 435–3554. *durrantv@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR: Psychopathology and Adult Disorders.
*Date:* July 17, 2006.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
*Contact Person:* Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892. 301–435–2309. *pluded@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Review of Behavioral and Social HIV/AIDS SBIR Applications.
*Date:* July 19, 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:* 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, Prothesis Bioengineering Research Partnership (PAR–04–023).
*Date:* July 24, 2006.
*Time:* 8:30 a.m. to 10:45 a.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892. 301/435–1743. *sipej@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business Grant Applications: Immunology.
*Date:* July 24–25, 2006.
*Time:* 8:30 a.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
*Contact Person:* Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892. 301–435–1222. *nigidas@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Shared Instrumentation (PAR–06–093).
*Date:* July 24, 2006.
*Time:* 11 a.m. to 2 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:* Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892. 301/435–1743. *sipej@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Genomic and Genetic Analysis in Xenopus.
*Date:* July 25, 2006.
*Time:* 8 a.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The River Inn, 924 25th Street, NW., Washington, DC 20037.
*Contact Person:* Barbara J. Thomas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2220, MSC 7890, Bethesda, MD 20892. 301–435–0603. *bthomas@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Oligodendrocyte Development and Myelin Modeling.
*Date:* July 25, 2006.
*Time:* 1 p.m. to 2 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:* Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892. (301) 435–1248. *jelsemac@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Neurobiology of Sleep and Circadian Rhythms.
*Date:* July 25, 2006.
*Time:* 2 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:* Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892. (301) 435–1018. *debbasg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–E (02) Member Conflict-Cortex.
*Date:* July 25, 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:* Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242. *driscolb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Myocardial Ischemia and Reperfusion.
*Date:* July 26, 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:* Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. (301) 435–1212. *kumarra@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Renal and Urological Sciences Bioengineering Research Partnerships (PAR 04–023).
*Date:* July 26, 2006.
*Time:* 3 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Jean Dow Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892. (301) 435–1743. *sipej@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Nanotechnology Review.
*Date:* July 27–28, 2006.
*Time:* 8:30 a.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Crowne Plaza Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
*Contact Person:* Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892. 301–435–1728. *radtkem@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Addiction Related Behaviors and Interventions.

*Date:* July 27, 2006.

*Time:* 1:30 p.m. to 2:30 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:* Claire E. Gutkin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892. 301–594–3139. *gutkincl@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Sarcomere Function.

*Date:* July 27, 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, Mental Health Epidemiology.

*Date:* July 28, 2006.

*Time:* 9:30 a.m. to 12 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:* Fungai F. Chanetsa, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892. 301–435–1262. *chanetsaf@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Drug Development.

*Date:* July 31, 2006.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sofitel Layayette Square, 806 15th Street NW., Washington, DC 20005.

*Contact Person:* Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892. 301–435–1164. *custerm@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Bioengineering.

*Date:* July 31, 2006.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Khalid Masood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892. 301–435–2392. *masoodk@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 15, 2006.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 06–5696 Filed 6–26–06; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Proposed Project: National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program: Phase V—New**

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center of Mental Health is responsible for the national evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program that will collect data on child mental health outcomes, family life, and service system development and performance. Data will be collected on 25 service systems, and roughly 7,864 children and families.

The data collection for this evaluation will be conducted over a 5-year period. The core of service system data will be collected every 18 to 24 months throughout the 5-year evaluation period, with a sustainability survey conducted in selected years. Service delivery and system variables of interest include the following: maturity of system of care development, adherence to the system of care program model, and client service experience. The length of time that individual families will participate in the study ranges from 18 to 36 months depending on when they enter the evaluation. Child and family outcomes of interest will be collected at intake and during subsequent follow-up interviews at 6-month intervals. Client service experience information is collected at these follow-up interviews. Measures included in an outcome interview are determined by the type of assessment (intake or follow-up), child's age, and whether the respondent is the caregiver or a youth.

The outcome measures include the following: child symptomatology and functioning, family functioning, material resources, and caregiver strain. The caregiver interview package includes the Caregiver Information Questionnaire, Child Behavior Checklist, Behavioral and Emotional Rating Scale (BERS), Education Questionnaire, Columbia Impairment Questionnaire, Living Situations Questionnaire, Family Life Questionnaire, and Caregiver Strain Questionnaire (caregivers of children under age 6 complete the Vineland Screener to assess development, and do not complete the BERS) at intake, and also complete the Multi-service Sector Contacts Form, Culturally Competence and Service Provision Questionnaire and the Youth Services Survey (a national outcome measurement tool). The Youth Interview package includes the Youth Information Questionnaire, Revised Children's Manifest Anxiety Scale, Reynolds Depression Scale, BERS (youth version), Delinquency Survey, Substance Use Survey, GAIN–Quick: Substance Dependence Scale, and Youth Services Survey (youth version).

In addition, the evaluation will include two special studies: (1) An evidence-based practices study will examine provider use of evidence-based practices, community readiness and implementation of evidence-based practices, and consumer experience with these practices; (2) A cultural and linguistic competence study will examine the extent to which the cultural and linguistic characteristics of communities influence program implementation and provider adaptation of evidence-based treatments, and provider service delivery decisions based on provider culture and language. The national evaluation measures address the national outcome measures for mental health programs as currently established by SAMHSA.

Internet-based technology will be used for data entry and management, and for collecting data using Web-based surveys. The average annual respondent burden with detail provided about burden contributed by specific measures

is estimated below. The estimate reflects the expected number of respondents in each respondent category, the total average number of responses per respondent over 5 years, the average length time it will take for each response, and the total average annual burden for each category of respondent and for all categories of respondents combined.

ESTIMATE OF RESPONDENT BURDEN

[Note: Total burden is annualized over a 5-year period.]

| Instrument | Respondent | Number of respondents | Total average number of responses per respondent | Hours per response | Total burden hours | 5 Year average annual burden hours |
|---|---|---|---|---|---|---|
| System-of-care Assessment: | | | | | | |
| Interview Guides and Data Collection Forms | Key site informants | 525 | 3 | 1.00 | 1,575 | 315 |
| Interagency Collaboration Scale (IACS) | Key site informants | 525 | 3 | 0.13 | 210 | 42 |
| Child and Family Outcome Study: | | | | | | |
| Caregiver Information Questionnaire (CIQ–IC) | Caregiver | 7,864 | 1 | 0.283 | 2,226 | 445 |
| Caregiver Information Questionnaire Followup (CIQ–FC). | Caregiver | 7,864 | 5 | 0.200 | 7,864 | 1,573 |
| Caregiver Strain Questionnaire (CGSQ) | Caregiver | 7,864 | 6 | 0.167 | 7,880 | 1,576 |
| Child Behavior Checklist (CBCL)/Child Behavior Checklist 1½–5 (CBCL 11/2–5). | Caregiver | 7,864 | 6 | 0.333 | 15,712 | 3,142 |
| Education Questionnaire–Revised (EQ–R) | Caregiver | 7,864 | 6 | 0.333 | 15,712 | 3,142 |
| Living Situations Questionnaire (LSQ) | Caregiver | 7,864 | 6 | 0.083 | 3,916 | 783 |
| The Family Life Questionnaire (FLQ) | Caregiver | 7,864 | 6 | 0.050 | 2,359 | 472 |
| Behavioral and Emotional Rating Scale-Second Edition, Parent Rating Scale (BERS–2C). | Caregiver | 6,945 | 6 | 0.167 | 6,958 | 1,392 |
| Columbia Impairment Scale (CIS) | Caregiver | 6,945 | 6 | 0.083 | 3,472 | 694 |
| The Vineland Screener (VS) | Caregiver | 365 | 5 | 0.250 | 456 | 91 |
| Delinquency Survey-Revised (DS–R) | Youth | 4,718 | 6 | 0.167 | 4,728 | 946 |
| Behavioral and Emotional Rating Scale-Second Edition, Youth Rating Scale (BERS–2). | Youth | 4,718 | 6 | 0.167 | 4,728 | 946 |
| Gain-Quick Substance Related Issues (Gain Quick–R). | Youth | 4,718 | 6 | 0.083 | 2,350 | 470 |
| Substance Use Survey-Revised (SUS–R) | Youth | 4,718 | 6 | 0.100 | 2,831 | 566 |
| Revised Children's Manifest Anxiety Scales (RCMAS). | Youth | 4,718 | 6 | 0.050 | 1,416 | 283 |
| Reynolds Adolescent Depression Scale-Second Edition (RADS–2). | Youth | 4,718 | 6 | 0.050 | 1,416 | 283 |
| Youth information Questionnaire-Baseline (YIQ–I). | Youth | 4,718 | 1 | 0.167 | 788 | 158 |
| Youth information Questionnaire-Follow-up (YIQ–F). | Youth | 4,718 | 5 | 0.167 | 3,940 | 788 |
| Service Experience Study: | | | | | | |
| Multi-Sector Service Contacts-Revised (MSSC–R). | Caregiver | 7,864 | 5 | 0.250 | 9,830 | 1,966 |
| Evidence-Based Practice Measure (EBPEM) | Caregiver | 7,864 | 5 | 0.167 | 6,553 | 1,311 |
| Cultural Competence and Service Provision Questionnaire (CCSP). | Caregiver | 7,864 | 5 | 0.167 | 6,553 | 1,311 |
| Youth Services Survey-Family (YSS–F) | Caregiver | 7,864 | 5 | 0.117 | 4,600 | 920 |
| Youth Services Survey (YSS) | Youth | 4,718 | 5 | 0.083 | 1,958 | 392 |
| Evidence-Based Practices Study | | | | | | |
| Evidence-Based Practices Survey-Revised (EBP–R). | Provider | 1,125 | 3 | 0.333 | 1,124 | 224 |
| Evidence-Based Provider Attitudes Survey (EBPAS). | Provider | 1,125 | 3 | 0.083 | 280 | 56 |
| Organizational Readiness for Change Scale-Staff (ORC–S). | Provider | 1,125 | 3 | 0.417 | 1,407 | 281 |
| Organizational Readiness for Change Scale-Program Director (ORC–D). | Administrator/Manager | 75 | 3 | 0.417 | 94 | 19 |
| Sustainability Study: | | | | | | |
| Sustainability Survey—Caregiver | Caregiver | 25 | 3 | 0.500 | 38 | 8 |
| Sustainability Survey—Provider | Provider/Administrator | 75 | 3 | 0.500 | 112 | 23 |

SUMMARY OF ANNUALIZED BURDEN ESTIMATES FOR 5 YEARS

| | Number of distinct respondents | Number of response per respondent | Average nurden per response (hours) | Total average annual burden (hours) |
|---|---|---|---|---|
| Caregivers | 7,864 | 76 | 2.30 | 94,130 |

SUMMARY OF ANNUALIZED BURDEN ESTIMATES FOR 5 YEARS—Continued

| | Number of distinct respondents | Number of response per respondent | Average nurden per response (hours) | Total average annual burden (hours) |
|---|---|---|---|---|
| Youth | 4,718 | 36 | 0.71 | 17,468 |
| Providers/Administrators | 1,725 | 21 | 0.93 | 4,803 |
| Total Summary | 14,307 | 133 | | 116,401 |
| Total Annual Average Summary | 2,861 | 27 | | 23,280 |

Written comments and recommendations concerning the proposed information collection should be sent by July 27, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: June 17, 2006.

**Anna Marsh,**

*Director, Office of Program Services.*

[FR Doc. E6–10088 Filed 6–26–06; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[CGD13–06–028]**

### Letter of Recommendation, Proposed LNG Project, Jordan Cove Energy Project, LP, Coos County, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Request for comments; notice of public meeting.

**SUMMARY:** The U.S. Coast Guard Captain of the Port (COTP) Portland, Oregon is preparing a Letter of Recommendation (LOR) as to the suitability of Coos Bay for liquefied natural gas (LNG) marine traffic. This LOR will encompass the marine safety and security aspects associated with the proposed Jordan Cove Energy Project, L.P. (Jordan Cove) LNG facility. The COTP Portland, OR is soliciting written comments and related material, and will join FERC in holding a public meeting seeking comments, pertaining specifically to maritime safety and security aspects of the proposed LNG facility. This process will assess the safety and security aspects of the facility, adjacent port areas, and navigable waterways.

**DATES:** All written comments and related material must reach the Coast Guard on or before July 21, 2006. In addition, a public meeting will be held Tuesday, July 11, 2006, at 7 p.m. The comment period associated with the public meeting will remain open for ten days following the meeting. The meeting location is: Southwestern Oregon Community College, Hales Performing Arts Center, 1988 Newmark Ave., Coos Bay, OR 97420. 541–888–2525.

**ADDRESSES:** You may submit written comments to Commanding Officer, U.S. Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217. Sector Portland maintains a file for this notice. Comments and material received will become part of this file and will be available for inspection and copying at Sector Portland between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, contact Lieutenant Shadrack Scheirman at Sector Portland by one of the methods listed below:

(1) Phone at (503) 240–9307

(2) E-mail at *Shadrack.L.Scheirman@uscg.mil*

(3) Fax to (503) 240–2586

**SUPPLEMENTARY INFORMATION:**

#### Request for Written Comments

We encourage you to submit written comments and related material pertaining specifically to marine safety and security aspects associated with the proposed Jordan Cove LNG facility. If you do so, please include your name and address, identify the docket number for this notice ([CGD13–06–028]), and give the reason for each comment. You may submit your comments and related material by mail, or hand delivery, as described in **ADDRESSES**, or you may send them by fax or e-mail using the contact information under **FOR FURTHER INFORMATION CONTACT**. To avoid confusion and duplication, please submit your comments and material by only one means.

If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached U.S. Coast Guard Sector Portland, please enclose a stamped, self-addressed postcard or envelope.

#### Public Meeting

Due to the scope and complexity of this project, we have decided to hold a joint public meeting with FERC to allow the public the opportunity to comment on the proposed LNG facility. FERC will issue a separate notice for the public meeting listed under **DATES** above, regarding the public's opportunity to comment on the environmental aspects of the facility siting.

Organizations and members of the public may provide oral statements regarding the suitability of Coos Bay for LNG vessel traffic. In the interest of time and use of the public meeting facility, oral statements should be limited to five minutes. Written comments may be submitted at the meeting or to the Docket up to July 21, 2006.

#### Background and Purpose

In accordance with the requirements of 33 CFR 127.007, Jordan Cove submitted a Letter of Intent (LOI) on April 10, 2006, to operate an LNG facility on the North Spit of Coos Bay, Coos County, Oregon. The Letter of Recommendation (LOR) is in response to this LOI submitted by Jordan Cove. In preparation for issuance of an LOR and the completion of certain other regulatory mandates, the COTP Portland, OR will consider comments received from the public as input into a formalized risk assessment process.

Because the proposed LNG facility would be located in State waters, the Federal Energy Regulatory Commission (FERC) is the lead Federal agency for this proposed project and will prepare the Environmental Impact Statement (EIS) mandated by the National Environmental Policy Act (NEPA). To help FERC make sure that the EIS covers

the Coast Guard's LOR and other actions under this proposal, the Coast Guard will serve as a cooperating agency.

The proposed terminal is an LNG import, storage, re-gasification and power generation facility. LNG carriers (ships) would berth at a new pier and LNG would be transferred by pipeline from the carriers to one of two storage tanks, each with a net capacity of 160,000 cubic meters ($m^3$). The LNG would then be re-gasified and metered into natural gas pipelines. LNG would be delivered to the terminal in double-hulled LNG carriers ranging in capacity from 89,000 $m^3$ to 160,000 $m^3$. The larger carriers would measure up to approximately 935 feet long with up to approximately a 148 foot wide beam, and draw approximately 39 feet of water. The Jordan Cove Gas terminal would handle approximately 80 vessels per year, depending upon natural gas demand, and carrier size, with shipments arriving about every five days.

The U.S. Coast Guard exercises regulatory authority over LNG facilities which affect the safety and security of port areas and navigable waterways under Executive Order 10173, the Magnuson Act (50 U.S.C. 191), the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221, *et seq.*) and the Maritime Transportation Security Act of 2002 (46 U.S.C. 701). The Coast Guard is responsible for matters related to navigation safety, vessel engineering and safety standards, and all matters pertaining to the safety of facilities or equipment located in or adjacent to navigable waters up to the last valve immediately before the receiving tanks. The Coast Guard also has authority for LNG facility security plan review, approval, and compliance verification as provided in title 33 CFR Part 105, and recommendation for siting as it pertains to the management of vessel traffic in and around the LNG facility.

Upon receipt of an LOI from an owner or operator intending to build a new LNG facility, the Coast Guard COTP conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the State and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically, the letter of recommendation addresses the suitability of the waterway based on:

- The physical location and layout of the facility and its berthing and mooring arrangements.
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility.
- Commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility.
- Density and character of marine traffic on the waterway.
- Bridges or other manmade obstructions in the waterway.
- Depth of water.
- Tidal range.
- Natural hazards, including rocks and sandbars.
- Underwater pipelines and cables.
- Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410).

The Coast Guard will also provide input to other Federal, State, and local government agencies reviewing the project. Under an interagency agreement, the Coast Guard will provide input to, and coordinate with FERC, the lead Federal agency for authorizing the siting and construction of onshore LNG facilities, on safety and security aspects of the Jordan Cove project, including both the marine and land-based aspects of the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the COTP Portland, OR will be conducting a formal risk assessment, evaluating various safety and security aspects associated with Jordan Cove's proposed project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input into the risk assessment process.

**Additional Information**

Additional information about the project is available from the FERC's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and the FERC's Docket Number PF06–25, and follow the instructions. Searches may also be done using the phrases ''Jordan Cove'' or ''Coos Bay LNG'' in the ''Text Search'' field. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Jordan Cove has also established an Internet Web site for its project at *http://www.jordancoveenergy.com.* The Web site includes a project overview, contact information, regulatory overview, and construction procedures.

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, contact Lieutenant Shadrack Scheirman listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 10, 2006.

**Patrick G. Gerrity,**

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

[FR Doc. E6–10065 Filed 6–26–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2006–25096]**

### Towing Safety Advisory Committee; Notice of Open Teleconference Meetings

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meetings.

**SUMMARY:** This notice announces a teleconference of the Towing Safety Advisory Committee (TSAC). The purpose of this teleconference is for TSAC to present its comments to the Coast Guard on the joint Transportation Security Administration's (TSA) and Coast Guard's Transportation Worker's Identification Credential (TWIC) proposed rule and on the Coast Guard's Merchant Mariner Credential (MMC) proposed rule.

**DATES:** The teleconference call will take place on Wednesday, July 12th, 2006, from 12:30 p.m. until 2:30 p.m. EDT. The meeting may adjourn early if all business is finished.

**ADDRESSES:** Members of the public may participate by dialing 1–202–366–3920, pass code 4803. Public participation is welcomed; however, the number of teleconference lines is limited and available on a first-come, first-served basis. Members of the public may also participate by coming to Room 3317, U.S. Coast Guard Headquarters, 2100

Second Street, SW., Washington, DC 20593–0001.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Mr. Gerald Miante, Assistant Executive Director TSAC, telephone 202–372–1401, fax 202–372–1926, or e-mail *gmiante@comdt.uscg.mil.*

**SUPPLEMENTARY INFORMATION:** TSAC advises, consults with, and makes recommendations to the Secretary DHS on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended). The subject proposed rulemakings are available on the Internet at *http://dms.dot.gov* under the docket numbers 24191 (TSA TWIC), 24196 (USCG TWIC), and 24371 (USCG MMC). Once on the DMS Web site, click ''simple search'' and enter the appropriate number.

**Tentative Agenda**

- Welcome and Opening Remarks—TSAC Chairman.
- Discussion, presentation and voting of the Committee's comments to the Coast Guard on the Transportation Security Administration's (TSA) Transportation Worker's Identification Credential (TWIC) proposed rules and on the Coast Guard's Merchant Mariner Credential (MMC) proposed rule.
- Public comment period (as time permits).
- Meeting adjourned—1430.

**Procedural**

This meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify Mr. Miante no later than July 5, 2006.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Mr. Miante as soon as possible.

Dated: June 19, 2006.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety Security & Environmental Protection.*

[FR Doc. E6–10063 Filed 6–26–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4922–N–18]**

## Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Department of Homeland Security, Federal Emergency Management Agency (FEMA).

**SUMMARY:** Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is announcing a new matching program involving comparisons between income data provided by applicants or participants in HUD's assisted housing programs and applicants for FEMA disaster assistance. The matching program will be carried out to detect inappropriate (excessive or insufficient) housing assistance under the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act of 1998.

The matching program will be accomplished by comparing income, family size, family address, family identity, and benefit data for individuals participating in HUD's assisted housing programs and subsidized multifamily housing programs with disaster emergency assistance data maintained by FEMA in its systems of records known as Disaster Assistance Recovery Files (FEMA/REG–2), last published at 69 FR 65615 (November 15, 2004). Specifically, HUD will compare the FEMA identity, income, family size, and benefit data to tenant-reported data included in HUD's system of records known as: (1) the Tenant Housing Assistance and Contract Verification Data (HUD/H–11), last published at 62 FR 11909 (March 13, 1997); and (2) the Public and Indian Housing Information Center (HUD/PIH–4), last published at 67 FR 20986 (April 29, 2002). The tenant comparisons will identify, based on criteria established by HUD, tenants whose incomes, family size, address, or benefit levels, etc. that require further verification to determine if the tenants received appropriate levels of rental assistance. The program also provides for the verification of the matching results and the initiation of appropriate administrative or legal actions.

**DATES:** *Effective Date:* Computer matching is expected to begin July 27, 2006 unless comments are received which will result in a contrary determination, or 40 days after a copy of the underlying matching agreement is signed, approved by HUD and FEMA Data Integrity Boards, and sent to both Houses of Congress, whichever is later.

*Comments Due Date:* July 27, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** *For Privacy Act:* Jeanette Smith, Departmental Privacy Act Officer, Room P8001, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–2374. A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

*For further information from recipient agency:* Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410, (202) 708–1613.

**SUPPLEMENTARY INFORMATION:** The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. 552a), OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the CMPPA of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal Memorandum No. 4, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In compliance with the CMPPA and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and

OMB's Office of Information and Regulatory Affairs.

## I. Authority

This matching program is being conducted pursuant to the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006 (Pub. L. 109–148); section 3003 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66); section 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)); the Inspector General Act of 1978 (5 U.S.C. App. 3); Computer Matching and Privacy Protection Act of 1988 (Pub. Law 100–53); and 65 FR 24732 and 64 FR 54930.

Chapter 9, Title I, of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, requires HUD to provide Tenant-Based Rental Assistance only for tenants who received housing assistance prior to the hurricanes and to ''those which were homeless or in emergency shelters in the declared disaster area prior to Hurricanes Katrina or Rita.'' It also requires, with respect to Community Development Fund assistance, that HUD establish procedures to prevent recipients from receiving any duplication of benefits.

Section 3003 of the Budget Reconciliation Act authorizes HUD to require applicants and participants in assisted housing programs to sign a consent form authorizing the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release the Federal tax information. The final rule regarding participants' consent to the release of information was published by HUD in the **Federal Register** on March 20, 1995 (61 FR 11112).

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and Public Housing Agencies (but not private owners/management agents for subsidized multifamily projects (hereafter collectively referred to as ''POAs'')) to request wage and claim information from State Wage Information Collection Agencies (SWICAs) responsible for administering State unemployment laws in order to undertake computer matching. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the POA to request wage and claim information from the SWICAs.

The Housing and Community Development Act of 1987 authorizes HUD to require applicants and participants (as well as members of their household six years of age and older) in HUD-administered programs involving rental assistance to disclose to HUD their SSNs as a condition of initial or continuing eligibility for participation in the programs.

The Quality Housing and Work Responsibility Act of 1998 (QHWRA), section 508(d), 42 U.S.C. 1437a(f) authorizes the Secretary of HUD to require disclosure by the tenant to the public housing agency of income information received by the tenant from HUD as part of income verification procedures of HUD. The QHWRA was amended by Public Law 106–74, which extended the disclosure requirements to participants in Section 8, Section 202, and Section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participants' eligibility or level of benefits.

The Inspector General Act authorizes the HUD Inspector General to undertake programs to detect and prevent fraud and abuse in all HUD programs.

The FEMA, pursuant to section 312 of the Stafford Act, 42 U.S.C. 5155, must assure that no person or entity receiving disaster assistance receives assistance ''with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.''

## II. Objectives To Be Met by the Matching Program

HUD's primary objective in implementing the computer matching program is to increase the availability of rental assistance to individuals who meet the requirements of the rental assistance programs. Other objectives include determining the appropriate level of rental assistance, and deterring and correcting abuse in assisted housing programs. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437a(f) to ensure that income data provided to POAs by household members is complete and accurate, and under 42 U.S.C. 5155 to avoid the duplication of Federal assistance payments.

HUD's various assisted housing programs, available through POAs, require that applicants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report the amounts and sources of their income at least annually. However, under the QHWRA of 1998, public housing agencies may now offer tenants the option to pay a flat rent, or an income-based rent. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the Changes to the Admissions and Occupancy Final Rule (65 FR 16692; March 29, 2000) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

The matching program identifies tenants receiving inappropriate (excessive or insufficient) rental assistance resulting from under or over-reported household income (including other Federal assistance) or composition. When excessive rental assistance amounts are identified, some tenants move out of assisted housing units; other tenants agree to repay excessive rental assistance. These actions may increase rental assistance or the number of units available to serve other beneficiaries of HUD programs. When tenants continue to be eligible for rental assistance, but at a reduced level, the tenants will be required to increase their contributions toward rent.

## III. Program Description

This computer matching program, to the extent that it involves the use of SSA, IRS or SWICA data is fully described at 69 FR 11033. With respect to FEMA data, the matching program will be accomplished by comparing income, family size, family address, family identity, and benefit data for individuals participating in HUD's assisted housing programs and subsidized multifamily housing programs with disaster emergency assistance data maintained by FEMA in its systems of records known as Disaster Assistance Recovery Files (FEMA/REG–2), last published at 69 FR 65615 (November 15, 2004). Specifically, HUD will compare the FEMA identity, income, family size, and benefit data to tenant-reported data included in HUD's system of records known as: (1) The Tenant Housing Assistance and Contract Verification Data (HUD/H–11), last published at 62 FR 11909 (March 13, 1997); and (2) the Public and Indian Housing Information Center (HUD/PIH–4), last published at 67 FR 20986 (April

29, 2002). The tenant comparisons will identify, based on criteria established by HUD, tenants whose incomes, family size, address, or benefit levels, etc., that require further verification to determine if the tenants received appropriate levels of rental assistance. The program also provides for the verification of the matching results and the initiation of appropriate administrative or legal actions.

*A. Income Verification*

Any match (*i.e.*, a ''hit'') will be further reviewed by HUD, the POA, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the POA is correct and complies with HUD and POA requirements. Specifically, current or prior wage information and other data will be sought directly from employers.

*B. Administrative or Legal Actions*

Regarding all the matching described in this notice, HUD anticipates that POAs will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

POAs must compute the rent in full compliance with all applicable occupancy regulations. POAs must ensure that they use the correct income and correctly compute the rent.

The POAs may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) The tenant has received notice from the POA of its findings and informing the tenant of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, POAs will resolve income discrepancies in consultation with tenants.

Additionally, serious violations, which POAs, HUD Program staff, or HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

**IV. Records To Be Matched**

This computer matching program, to the extent that it involves the use of SSA, IRS or SWICA data is fully described at 69 FR 11033. With respect to FEMA data, the match will involve tenant records obtained directly from POAs and subsidized multifamily projects included in the Tenant Housing Assistance and Contract Verification Data (HUD/H–11) and the Public and Indian Housing Information Center (HUD/PIH–4). These records contain information about individuals who are participants in the Federal low income and Section 8 housing assistance programs. Specifically, the tenant records include these data elements: (1) SSNs for each family member; (2) family control number to identify each tenant with a particular family; (3) Head of Household Indicator; (4) Last Name, First Name, Middle Initial, and Address for household; (5) Sex; (6) Birth Date; (7) Reported Income by source, description and amount; (8) Program Code; and (9) Recertification Date.

The FEMA will provide HUD with extract files from the FEMA/REG–2 system. The notice for this system was published at 69 FR 65615. The disclosure from FEMA/REG–2 will be made in accordance with routine use ''a(1).'' HUD will match the tenant records to the FEMA records on disaster assistance applicants to compare tenant reported income.

For matched employees SSNs (*i.e.*, ''hits''), HUD will extract the following information from FEMA/REG–2: SSN, Date of Birth, Name, Sex, Income Information, Household Size and Composition, Address, Insurance Coverage Information, and Temporary Housing Assistance Eligibility Determinations.

**V. Period of the Match**

The computer matching program will be conducted according to an agreement between HUD and the FEMA. The computer matching agreement for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first.

The agreement may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and

(2) All parties certify that the program has been conducted in compliance with the agreement. The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: June 20, 2006.

**Bajinder N. Paul,**

*Deputy Chief Information Officer for IT Operations.*

[FR Doc. E6–10070 Filed 6–26–06; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4922–N–16; HUD–2006–0179]**

## Privacy Act of 1974; Establishment of a New System of Records

**AGENCY:** Department of Housing and Urban Development, HUD.

**ACTION:** Notification of the Establishment of a New Privacy Act System of Records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the Department of Housing and Urban Development HUD is giving notice that it proposes to establish a new system of records entitled: HUD Central Accounting and Program System (HUDCAPS, A–75). The information in this system will be used to monitor payments and collections from HUD employees and persons doing business with HUD.

**DATES:** *Effective Date:* This action will be effective without further notice on July 27, 2006 unless comments are received that would result in a contrary determination.

*Comments Due Date:* July 27, 2006.

**ADDRESSES:** Interested persons are invited to submit comments regarding this new system of records to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374, or Gail B. Dise, Assistant Chief Financial Officer for Systems, Telephone Number (202) 708–0614, x3749. (These are not toll free numbers.) A telecommunications device for hearing and speech-impaired persons (TTY) is available at (800) 877–8339 (Federal Information Relay Services). (This is a toll-free number).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, notice is given that HUD proposes to establish a new system of records identified as HUD Central Accounting and Program System (HUDCAPS–A75). Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new record system. The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted to the Committee on Homeland Security and Governmental Affairs of the United States Senate, the Committee on Government Reform of the House of Representatives and the Office of Management Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated June 25, 1993 (58 FR 36075, July 2, 1993).

**Authority:** 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: May 30, 2006.

**Lisa Schlosser,**

*Chief Information Officer.*

## HUD/CFO/01

### SYSTEM NAME:

HUD Central Accounting and Program System (HUDCAPS, A–75).

### SYSTEM LOCATION:

HUD Headquarters and field offices. For a complete listing of these offices, with addresses, see Appendix A.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant, subsidy, project, and loan recipients; HUD personnel; vendors; brokers; bidders; managers; individuals within Disaster Assistance Programs: builders, developers, contractors, and appraisers; subjects of audits.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Funds control records, receivable records; purchase order and contract records; travel records including orders, vouchers, and advances; payment vouchers records; deposit and receipt records; disbursement and cancelled check records, general ledger records.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950 31 U.S.C. 66a. (Pub. L. 81–784).

### PURPOSE(S):

The purpose of this system of records is to affect and account for payments to and collections from HUD employees and persons doing business with HUD.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, other routine uses are as follows:

(a) To the U.S. Treasury—for disbursements and adjustments thereof;

(b) To the Internal Revenue Service—for reporting payments for goods and services and for reporting of discharge indebtedness;

(c) To the Department of the Treasury to conduct computer matching programs for the purpose of identifying individuals who are receiving federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government in order to collect the debts under the provisions of the Debt Collection Improvement Act of 1996 (Pub. Law 104–134) by administrative or salary offset procedures;

(d) To any other federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by the agency or receiving or eligible to receive some benefit payments from the agency when HUD as a creditor has a claim against that person;

(e) To the Internal Revenue Service by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by HUD against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718;

(f) To a credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file on an individual for use in the administration of debt collection;

(g) To the U.S. Government Accountability Office (GAO), Department of Justice, United States Attorney, or other federal agencies for further collection action on any delinquent account when circumstances warrant;

(h) To a debt collection agency for the purpose of collection services to recover monies owned to the U.S. Government under certain programs or services administered by HUD;

(i) To any other federal agency including, but not limited to the Internal Revenue Service (IRS) pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor for a delinquent debt owned to the U.S. Government by the debtor;

(j) To the Resolution Trust Corporation—to prescreen potential contractors for bad debts prior to acquiring their services;

(k) To other federal agencies—for the purpose of debt collection.

### DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from the record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address and taxpayer identification number (Social Security Number); the amount, status, and history of the claim, and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a credit report.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Electronic files on magnetic tape/disc/drum.

### RETRIEVABILITY:

By Social Security number; name; schedule number; control number; receipt number; voucher number; contract number.

### SAFEGUARDS EMPLOYED INCLUDE:

Background screening, limited authorizations and access, security guards; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records; access to automated systems by authorized users by passwords and code identification cards.

### RETENTION AND DISPOSAL:

Are in accordance with GSA schedules of retention and disposal.

### SYSTEM MANAGER(S)AND ADDRESS:

Assistant Chief Financial Office for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

### NOTIFICATION PROCEDURE:

For information assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR part 16. A list of all locations is given in Appendix A.

**RECORD ACCESS PROCEDURES:**

The Department's rule for providing access to records to the individual concerned appears in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

**CONTESTING RECORD PROCEDURES:**

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

**RECORD SOURCE CATEGORIES:**

Subject individuals; other individuals; financial institutions, private corporations or firms doing business with HUD; federal and non-federal governmental agencies; HUD personnel.

**EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. E6–10082 Filed 6–26–06; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–964–1410–HY–P; AA–6708–E and AA–6708–I]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Alaska Peninsula Corporation, Successor in Interest to Ugashik Native Corporation for lands in the vicinity of Ugashik, Alaska, and located in:

**Seward Meridian, Alaska**

T. 32 S., R. 48 W.,
Secs. 3, 4, and 9;
Sec. 10;
Secs. 16 and 21;
Secs. 28 and 29;
Secs. 32, 33, and 34.
Containing 6,568.34 acres.

Notice of the decision will also be published four times in the Anchorage Daily News.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 27, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Rosaline Holland,**

*Land Law Examiner, Branch of Adjudication II.*

[FR Doc. E6–10059 Filed 6–26–06; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK964–1410–HY–P; F–14920–A]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Arviq, Incorporated, for lands in the vicinity of Platinum, Alaska, and described as:

U.S. Survey No. 9545, Alaska.
Containing 54.96 acres.

Notice of the decision will also be published four times in the Tundra Drums.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 27, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**K.J. Mushovic,**

*Supervisory Realty Specialist, Branch of Adjudication II.*

[FR Doc. E6–10054 Filed 6–26–06; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–964–1410–HY–P; F–14841–A, F–14841–B, F–14841–C, F–14841–D]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Brevig Mission Native Corporation for lands at Brevig Mission, Alaska, and located in:

**Kateel River Meridian, Alaska**

T. 2 S., R. 36 W.,
Tracts C, F, G, and H;
Secs. 9, 15, 22, 27, and 36.
Containing approximately 5,458 acres.

T. 3 S., R. 36 W.,
Secs. 2, 3, and 10.
Containing approximately 42 acres.

T. 2 S., R. 37 W.,
Tracts 37 and 38;
Secs. 25, 30, and 31.
Containing approximately 425 acres.

T. 2 S., R. 38 W.,
Sec. 23.
Containing 3.95 acres.

T. 1 S., R. 40 W.,

Tract B.

Containing approximately 70 acres.
Aggregating approximately 5,999 acres.

Notice of the decision will also be published four times in the Nome Nugget.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 27, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Erika L. Reed,**

*Land Law Examiner, Branch of Adjudication II.*

[FR Doc. E6–10057 Filed 6–26–06; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–964–1410–KC–P; F–14905–A]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chinuruk Incorporated for lands at Nightmute, Alaska, described as Lot 1, U.S. Survey No. 4053, located in Sec. 33, T. 5 N., R. 88 W., Seward Meridian, containing 4.96 acres. Notice of the decision will also be published four times in the Tundra Drums.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 27, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Dina L. Torres,**

*Land Law Examiner, Branch of Adjudication II.*

[FR Doc. E6–10055 Filed 6–26–06; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK964–1410–HY–P; AA–8103–2]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited, for lands in the vicinity of Nikolai, Alaska, and located in:

**Kateel River Meridian, Alaska**

T. 28 S., R. 22 E.,
Secs. 2 to 7, inclusive;
Secs. 18, 19, and 27;
Secs. 32 to 36, inclusive.

Containing approximately 7,632 acres.

T. 26 S., R. 24 E.,
Secs. 13 and 14;
Secs. 21, 22, and 23;
Secs. 28 to 31, inclusive.

Containing 5,710.56 acres.

T. 28 S., R. 26 E.,
Secs. 5 and 31.

Containing 1,233.34 acres.

**Seward Meridian, Alaska**

T. 33 N., R. 25 W.,
Secs. 3, 4, and 5;
Secs. 10 to 13, inclusive.

Containing 4,400.02 acres.

T. 34 N., R. 28 W.,
Secs. 32 and 33.

Containing 980.68 acres.

T. 33 N., R. 29 W.,
Secs. 2, 19, and 30.

Containing 1,909.85 acres.
Aggregating approximately 21,866 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 27, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Barbara Opp Waldal,**

*Land Law Examiner, Branch of Adjudication II.*

[FR Doc. E6–10056 Filed 6–26–06; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–964–1410–KC–P; F–14869–A, F–14869–A2]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for

conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Inalik Native Corporation for lands in the vicinity of Little Diomede Island and Wales, Alaska, and located in:

**Kateel River Meridian, Alaska**

T. 1 N., R. 41 W.,
Tracts 39 to 42, inclusive.
Containing 94.58 acres.

T. 3 N., R. 42 W.,
Secs. 19, 30, and 31.
Containing approximately 1,834 acres.

T. 3 N., R. 48 W.,
Secs. 30 and 31.
Containing 26.32 acres.

**Aggregating approximately 1,955 acres.**

Notice of the decision will also be published four times in the Nome Nugget.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 27, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION, CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Renee Fencl,**

*Land Law Examiner, Branch of Adjudication II.*

[FR Doc. E6–10060 Filed 6–26–06; 8:45 am]

**BILLING CODE 4310–$$–P**

## DEPARTMENT OF THE INTERIOR

**[ID–400–1150–CB–241A]**

### Bureau of Land Management

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Address Changes for Cottonwood Field Office and Coeur d'Alene Office, Idaho.

**SUMMARY:** The mailing address for the Bureau of Land Management (BLM), Cottonwood Field Office, has changed due to implementation of the 911 system. The new address is: 1 Butte Drive, Cottonwood, ID 83522–5200. The physical and mailing address for the BLM Coeur d'Alene Office will be changing on June 5, 2006. This office will be collocating with the Idaho Panhandle National Forest Supervisor's Office and the new address will be: 3815 Schreiber Way, Coeur d'Alene, ID 83815. All telephone numbers for both offices will remain the same.

**DATES:** These address changes will be effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Snook at the BLM Coeur d'Alene Office at (208) 769–5044.

**SUPPLEMENTARY INFORMATION:** The BLM Coeur d'Alene Office includes staff from the Coeur d'Alene District and Field Office. Both of these offices will be collocating with the Idaho Panhandle National Forests Supervisor's Office.

Dated: May 30, 2006.

**Jenifer Arnold,**

*Acting District Manager.*

[FR Doc. E6–10058 Filed 6–26–06; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### California Bay-Delta Public Advisory Committee Public Meeting Cancellation

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** The California Bay-Delta Public Advisory Committee meeting noticed in the **Federal Register** on June 15, 2006 (71 FR 34643) has been cancelled. The subject meeting will be rescheduled at a later date which is yet to be determined.

**DATES:** The meeting was scheduled for Thursday, July 13, 2006, from 9 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Diane Buzzard, U.S. Bureau of Reclamation, at 916–978–5022 or Julie Alvis, California Bay-Delta Authority, at 916–445–5551.

Dated: June 20, 2006.

**Diane A. Buzzard,**

*Acting Special Projects Officer, Mid-Pacific Region, U.S. Bureau of Reclamation.*

[FR Doc. 06–5701 Filed 6–26–06; 8:45 am]

**BILLING CODE 4310–MN–M**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

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 Arts Advisory Panel (Media Arts application review) to the National Council on the Arts will be held by teleconference at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 from 3 p.m. to 4 p.m. (EDT) on July 7, 2006. This meeting will be closed.

Closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 23, 2006.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. E6–10198 Filed 6–26–06; 8:45 am]

**BILLING CODE 7537–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

*Music (application review):* July 11–12, 2006 in Room 714. A portion of this meeting, from 3:30 p.m. to 5 p.m. on July 12th, will be open to the public for a discussion entitled ''A 40-Year Partnership—The Arts Endowment & Music Organizations.'' The remainder of the meeting, from 9 a.m. to 6 p.m. on July 11th and from 9 a.m. to 3:30 p.m. and from 5 p.m. to 5:30 p.m. on July 28th, will be closed.

*Music (application review):* July 17–21, 2006 in Room 714. A portion of this meeting, from 12 p.m. to 12:50 p.m. on July 20th, will be open to the public for a presentation by composer William Bolcom (in Room 527). The remainder of the meeting, from 9 a.m. to 6 p.m. on July 17th, from 8:30 a.m. to 5:30 p.m. on July 18th and 19th, from 8:30 a.m. to 12 p.m. and 12:50 p.m. to 5:30 p.m. on July 20th, and from 9 a.m. to 2:30 p.m. on July 21st, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, on a space available basis, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. Seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Kathy Plowitz-Worden seven (7) days in advance of the meeting at (202) 682–5560. 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, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 19, 2006.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. E6–10199 Filed 6–26–06; 8:45 am]

BILLING CODE 7537–01–P

## NATIONAL TRANSPORTATION BOARD

### Notice of Meeting; Sunshine Act

### Agenda

**TIME:** 9:30 a.m., July 6, 2006.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTER TO BE CONSIDERED:**

7675A *Railroad Accident Report*—Collision of Union Pacific Train MHOTU–23 With BNSF Railway Company Train MEAP–TUL–126–D With Subsequent Derailment and Hazardous Materials Release, Macdona, Texas, June 28, 2004.

*News Media Contact:* Ted Lopatkiewicz, Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by June 30, 2006.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

**FOR FURTHER INFORMATION CONTACT:** Vicky D'Onofrio, (202) 314–6410.

Dated: June 23, 2006.

**Vicky D'Onofrio,**

*Federal Register Liaison Officer.*

[FR Doc. 06–5779 Filed 6–23–06; 2:57 pm]

BILLING CODE 7533–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–61;EA–06–115]**

### In the Matter of Florida Power and Light Company, St. Lucie Nuclear Plant Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Order for Implementation of Additional Security Measures Associated with Access Authorization.

**FOR FURTHER INFORMATION, CONTACT:** Christopher M. Regan, Senior Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 415–1179; fax number: (301) 415–8555; e-mail: *CMR1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Pursuant to 10 CFR 2.106, the NRC (or The Commission) is providing notice, in the matter of St. Lucie Nuclear Plant Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

### II. Further Information

NRC issued a license to Florida Power and Light Company (FP&L), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50 and 10 CFR part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require FP&L to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment, to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence

community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order, in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further, because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that FP&L is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, FP&L's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately*, that your general license is modified as follows:

A. FP&L shall comply with the requirements described in Attachment 1 to this Order, except to the extent that a more stringent requirement is set forth in FP&L's security plan. FP&L shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than November 30, 2006, with the exception of the additional security measure B.4, which shall be implemented no later than May 31, 2007. In any event, FP&L shall complete implementation of all additional security measures prior to the first day that spent fuel is initially placed in the ISFSI.

B. 1. FP&L shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1; (2) if compliance with any of the requirements is unnecessary in its specific circumstances; or (3) if implementation of any of the requirements would cause FP&L to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide FP&L's justification for seeking relief from or variation of any specific requirement.

2. If FP&L considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, FP&L must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, FP&L must supplement its response to Condition B.1, of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications as required under Condition B.1.

C. 1. FP&L shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. FP&L shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. All measures implemented, or actions taken, in response to this Order, shall be maintained until the Commission determines otherwise.

FP&L's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, NMSS, may, in writing, relax or rescind any of the above conditions, on FP&L's demonstration of good cause.

In accordance with 10 CFR 2.202, FP&L must, and any other entity adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other entity adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; to the Regional Administrator for NRC Region II, at Sam Nunn Atlanta Federal Center, Suite 23T85, 61 Forsyth Street, SW., Atlanta, GA 30303; and to the licensee, if the answer or hearing request is by an entity other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission, to 301–415–1101, or by e-mail, to *hearingdocket@nrc.gov*, and also to the

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

Office of General Counsel (OGC), either by means of facsimile transmission, to 301–415–3725, or by e-mail, to *OGCMailCenter@nrc.gov*. If an entity other than FP&L requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If FP&L or an entity whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the hearing's time and place. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), FP&L may, in addition to demanding a hearing at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 15th day of June 2006.

**Jack R. Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6–10077 Filed 6–26–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–59; EA–06–117]**

## In the Matter of Entergy Nuclear Vermont Yankee, LLC.; Vermont Yankee Nuclear Power Station; Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of order for implementation of additional security measures associated with access authorization.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Regan, Senior Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 415–1179, fax number: (301) 415–8555; e-mail: *CMR1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Pursuant to 10 CFR 2.106, the NRC (or The Commission) is providing notice in the matter of Vermont Yankee Nuclear Power Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

### II. Further Information

NRC has issued a general license to Entergy Nuclear Vermont Yankee, LLC. (Entergy), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954 and Title 10 of the Code of Federal Regulations (10 CFR) part 50 and 10 CFR part 72. Commission regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Entergy to have a safeguards contingency plan to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. This Order has been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs to put the actions taken in response to the Advisories in the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment, to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1[1] of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order, in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at the licensee's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures, and these measures must be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that Entergy is implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Entergy's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately*, that your general license is modified as follows:

A. Entergy shall comply with the requirements described in Attachment 1 to this Order, except to the extent that a more stringent requirement is set forth in Entergy's security plan. Entergy shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than November 30, 2006, with the exception of the additional security measures B.4, which shall be implemented no later than May 31, 2007. In any event, Entergy shall complete implementation of all additional security measures prior to the first day that spent fuel is initially placed in the ISFSI.

B. 1. Entergy shall, within twenty (20) days of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in Attachment 1; (2) if compliance with any of the requirements is unnecessary in its specific circumstances; or (3) if implementation of any of the requirements would cause Entergy to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide Entergy's justification for seeking relief from, or variation of, any specific requirement.

2. If Entergy considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Entergy must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirements in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Entergy must supplement its response to Condition B.1, of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. Entergy shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Entergy shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Entergy's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled, in accordance with 10 CFR 73.21.

The Director, NMSS, may, in writing, relax or rescind any of the above conditions, on Entergy's demonstration of good cause.

In accordance with 10 CFR 2.202, Entergy must, and any other entity adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other entity adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region I at 475 Allendale Road, King of Prussia, PA 19406–1415; and to the licensee, if the answer or hearing request is by an entity other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission, to 301–415–1101, or by e-mail, to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel (OGC), either by means of facsimile transmission, to 301–415–3725, or by e-mail, to *OGCMailCenter@nrc.gov.* If an entity other than Entergy requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If Entergy, or an entity, whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the hearing's time and place. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Entergy may, in addition to demanding a hearing at the time the answer is filed, or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 15th day of June 2006.

**Jack R. Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6–10073 Filed 6–26–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–59; EA–06–116]**

## In the Matter of Entergy Nuclear Vermont Yankee, LLC. Vermont Yankee Nuclear Power Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Issuance of Order for Implementation of Interim Safeguards and Security Compensatory Measures.

**FOR FURTHER INFORMATION, CONTACT:** Christopher M. Regan, Senior Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 415–1179; fax number: (301) 415–8555; e-mail: *CMR1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Pursuant to 10 CFR 2.106, the NRC (or The Commission) is providing notice in the matter of Vermont Yankee Nuclear Power Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

### II. Further Information

NRC has issued a general license to Entergy Nuclear Vermont Yankee, LLC. (Entergy), authorizing storage of spent fuel in an ISFSI, in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, and 10 CFR part 72. This Order is being issued to Entergy which has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of part 72. The Commission's regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require Entergy to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment, to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on Entergy which has indicated near-term plans to store spent fuel in an ISFSI under the general license provisions of part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at Entergy's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. Entergy's general license issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately*, that your general license is modified as follows:

A. Entergy shall comply with the requirements described in Attachment 1 to this Order, except to the extent that a more stringent requirement is set forth in its security plan. Entergy shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before November 30, 2006, or the first day that spent fuel is initially placed in the ISFSI, whichever is sooner.

B.1. Entergy shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If they are unable to comply with any of the requirements described in Attachment 1; (2) if compliance with any of the requirements is unnecessary in its specific circumstances; or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from, or variation, of any specific requirement.

2. If Entergy considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, Entergy must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, Entergy must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required in Condition B.1.

C.1. Entergy shall, within twenty (20) days of the date of this Order, submit, to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. Entergy shall report to the Commission when it has achieved full

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

compliance with the requirements described in Attachment 1.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Entergy's responses to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21. The Director, NMSS may, in writing, relax or rescind any of the above conditions, on Entergy's demonstration of good cause.

In accordance with 10 CFR 2.202, Entergy must, and any other entity adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other entity adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator for NRC Region I at 475 Allendale Road, King of Prussia, PA 19406–1415; and to the licensee, if the answer or hearing request is by an entity other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission, to 301–415–1101, or by e-mail, to *hearingdocket@nrc.gov*, and also to the Office of the General Counsel (OGC), either by means of facsimile transmission, to 301–415–3725, or by e-mail, to *OGCMailCenter@nrc.gov*. If an entity other than Entergy requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If Entergy or another entity whose interest is adversely affected requests a hearing, the Commission will issue an Order designating the hearing's time and place. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), Entergy may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 15th day of June 2006.

**Jack R. Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6–10074 Filed 6–26–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–61; EA–06–114]**

## In the Matter of Florida Power and Light Company St. Lucie Nuclear Plant Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

**ACTION:** Issuance of Order for Implementation of Interim Safeguards and Security Compensatory Measures.

**FOR FURTHER INFORMATION, CONTACT:** Christopher M. Regan, Senior Project Manager, Licensing and Inspection Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 415–1179; fax number: (301) 415–8555; e-mail: *CMR1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Pursuant to 10 CFR 2.106, the NRC (or The Commission) is providing notice, in the matter of St. Lucie Nuclear Plant Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

### II. Further Information

NRC has issued a general license to Florida Power and Light Company (FP&L), authorizing storage of spent fuel in an ISFSI, in accordance with the Atomic Energy Act of 1954, and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, and 10 CFR part 72. This Order is being issued to FP&L, which has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5) and 10 CFR 73.55(h)(1) require FP&L to maintain safeguards contingency plan procedures in accordance with 10 CFR part 73, Appendix C. Specific safeguards requirements are contained in 10 CFR 73.55.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives, to discuss and evaluate the current threat environment, to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community and other governmental agencies, the Commission has determined that certain compensatory

measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment, in a consistent manner, throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachment 1 [1] of this Order, on FP&L, which has indicated near-term plans to store spent fuel in an ISFSI under the general license provisions of part 72. These interim requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise. The Commission recognizes that some measures may not be possible or necessary, or may need to be tailored to accommodate the specific circumstances existing at FP&L's facility, to achieve the intended objectives and to avoid any unforeseen effect on the safe storage of spent fuel.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, the Commission concludes that security measures must be embodied in an Order consistent with the established regulatory framework. FP&L's general license, issued pursuant to 10 CFR 72.210, is modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, the Commission finds that in the circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and parts 50, 72, and 73, *it is hereby ordered, effective immediately,* that your general license is modified as follows:

A. FP&L shall comply with the requirements described in Attachment 1 to this Order, except to the extent that a more stringent requirement is set forth in its security plan. It shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation before November 30, 2006, or the first day that spent fuel is initially placed in the ISFSI, whichever is sooner.

B.1. FP&L shall, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in Attachment 1; (2) if compliance with any of the requirements is unnecessary in its specific circumstances; or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from, or variation of, any specific requirement.

2. If FP&L considers that implementation of any of the requirements described in Attachment 1 to this Order would adversely impact the safe storage of spent fuel, it must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 1 requirement(s) in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, FP&L must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required in Condition B.1.

C.1. FP&L shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachment 1.

2. FP&L shall report to the Commission when it has achieved full compliance with the requirements described in Attachment 1.

D. All measures implemented or actions taken, in response to this Order, shall be maintained until the Commission determines otherwise.

FP&L's responses to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, NMSS may, in writing, relax or rescind any of the above conditions, on FP&L demonstration of good cause.

In accordance with 10 CFR 2.202, FP&L must, and any other entity adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other entity adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Director, Office of Enforcement at the same address; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; to the Regional Administrator for NRC Region II, at Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Suite 23T85, Atlanta, GA 30303; and to the licensee, if the answer or hearing request is by an entity other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission, to 301–415–1101, or by e-mail, to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel (OGC), either by means of facsimile transmission, to 301–415–3725, or by e-mail, to *OGCMailCenter@nrc.gov.* If an entity other than FP&L requests a hearing, that entity shall set forth, with particularity, the manner in which its interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by FP&L or an entity whose interest is adversely affected, the Commission will issue an Order designating the hearing's time and place. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

[1] Attachment 1 contains SAFEGUARDS INFORMATION and will not be released to the public.

Pursuant to 10 CFR 2.202(c)(2)(i), FP&L may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 15th day of June 2006.

**Jack R. Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E6–10075 Filed 6–26–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. (as shown in Attachment 1); License Nos. (as shown in Attachment 1); EA–06–137]**

## In the Matter of Operating Power Reactor Licensees Identified In Attachment 1; Order Modifying Licenses (Effective Immediately)

The licensees identified in Attachment 1 to this Order hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) authorizing operation of nuclear power plants in accordance with the Atomic Energy Act of 1954 and Title 10 of the *Code of Federal Regulations* (10 CFR) part 50.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees, and eventually Orders to selected licensees, to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On February 25, 2002, the Commission issued an Order to all operating power reactor licensees that required certain compensatory measures be implemented (February 25th Order).

On December 2, 2005, the Commission issued a Demand for Information (DFI) to the power reactor licensees. The DFI required responses regarding whether certain identified key mitigative strategies, related to Section B.5.b. of the February 25th Order, for loss of large areas of the plant due to large fires or explosions were applicable to their facilities. The DFI also required certain related information, including whether the licensees acknowledged that the identified key strategies were required by Section B.5.b. of the February 25th Order. All licensees responded to the DFI with the required information but all responses stated that the strategies were not required by Section B.5.b.

As a result of the Commission's continued assessment of Section B.5.b mitigation strategies for loss of large areas of the plant due to large fires or explosions, the Commission has determined that it is necessary at this time to require implementation of certain key radiological protection mitigation strategies. The key radiological protection mitigation strategies are set forth in Attachment 2 [1] of this Order. Each licensee must amend its site security plan, safeguards contingency plan, guard training and qualification plan, and emergency plan as appropriate to address the key radiological protection mitigation strategies identified for its facilities. The Commission's assessment of the other mitigating strategies required by Section B.5.b. of the February 25th Order is continuing.

Any needed changes to the physical security plan, safeguards contingency plan, guard training and qualification plan, and emergency plan required by 10 CFR 50.34(c), 50.34(d), 73.55(b)(4)(ii), and 50.47(b) respectively, shall be completed and implemented within 120 days of the date of this Order.

Pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety, and interest and the common defense and security require that this Order be immediately effective.

Accordingly, pursuant to sections 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50 and 73, *it is hereby ordered, effective immediately,* that all licenses identified in attachment 1 to this order are modified as follows:

A.1. Each licensee shall revise its physical security plan, safeguards contingency plan, guard training and qualification plan, and emergency plan prepared pursuant to 10 CFR 50.34(c), 50.34(d), 73.55(b)(4)(ii), and 50.47(b), as appropriate, to incorporate the key radiological protection mitigation strategies set forth in Attachment 2 to this Order. In addition, each licensee shall ensure that site procedures, and initial and recurring operations staff training programs, are updated to include the key radiological protection mitigation strategies set forth in Attachment 2 to this Order.

2. Each licensee shall implement any necessary changes to its physical security plan, safeguards contingency plan, guard training and qualification plan, emergency plan, and site procedures and training programs no later than 120 days from the date of this Order.

B.1. Each licensee shall, within 35 days of the date of this Order, notify the Commission, (1) if the licensee is unable to comply with any requirements of this Order, (2) if compliance with any requirement of this Order is unnecessary in the licensee's specific circumstances, or (3) if implementation of any requirement of this Order would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from, or variation of, any specific requirement.

2. Any licensee that considers that implementation of any of the requirements of this Order would adversely impact safe operation of the facility must notify the Commission, within 35 days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives of this Order, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B.1. of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. Each licensee shall report to the Commission, in writing, when it has fully implemented this Order. The notification shall be made no later than 120 days from the date of the Order and include substitute security plan, safeguards contingency plan, guard training and qualification plan, and

[1] Attachment 2 contains SAFEGUARDS INFORMATION and will not be publicly disclosed.

emergency plan pages that reflect any changes made to implement the Order.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise, except that the licensee may change its physical security plans, safeguards contingency plans, and guard training and qualification plans if authorized by 10 CFR 50.54(p) and may change its revised emergency preparedness plan if authorized by 10 CFR 50.54(q).

Licensee responses to Conditions A.1., B.1., B.2., and C. above, shall be submitted in accordance with 10 CFR 50.4. In addition, licensee submittals that contain safeguards information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 35 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555–0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; the Assistant General Counsel for Materials Litigation and Enforcement at the same address; the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and the licensee if the answer or hearing request is by a person other than the licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final 35 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 20th day of June 2006.

**J.E. Dyer,**

*Director, Office of Nuclear Reactor Regulation.*

**Attachment 1—List of Licensees (EA–06–137)**

Mr. William Levis
Senior Vice President and Chief Nuclear Officer
PSEG Nuclear LLC—N09
Hope Creek Generating Station, Unit 1
Docket No. 50–354
License No. NPF–57
End of Buttonwood Road
Hancocks Bridge, NJ 08038

Mr. Michael Kansler
President
Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station
Docket No. 50–271
License No. DPR–28
440 Hamilton Avenue
White Plains, NY 10601

Mr. Michael Kansler
President
Entergy Nuclear Operations, Inc.
James A. FitzPatrick Nuclear Power Plant
Docket No. 50–333,
License No. DPR–59
440 Hamilton Avenue
White Plains, NY 10601

Mr. Michael Kansler
President
Entergy Nuclear Operations, Inc.
Pilgrim Nuclear Power Station, Unit 1
Docket No. 50–293
License No. DPR–35
440 Hamilton Avenue
White Plains, NY 10601

Mr. Timothy J. O'Connor
Vice President
Nine Mile Point Nuclear Station, LLC
Nine Mile Point Nuclear Station, Units 1 and 2
Docket Nos. 50–220 & 50–410
License Nos. DPR–63 & NPF–69
348 Lake Road
Oswego, NY 13126

Mr. Britt T. McKinney
Senior Vice President and Chief Nuclear Officer
PPL Susquehanna, LLC
Susquehanna Steam Electric Station, Units 1 and 2
Docket Nos. 50–387 & 50–388
License Nos. NPF–14 & NPF–22
769 Salem Boulevard, NUCSB3
Berwick, PA 18603–0467

Mr. L. M. Stinson
Vice President—Nuclear, Hatch Project
Southern Nuclear Operating Company, Inc.
Edwin I. Hatch Nuclear Plant, Units 1 and 2
Docket Nos. 50–321 & 50–366
License Nos. DPR–57 & NPF–5
40 Inverness Center Parkway
Birmingham, AL 35242

Mr. James Scarola
Vice President
Carolina Power & Light Company
Progress Energy, Inc.
Brunswick Steam Electric Plant, Units 1 and 2
Docket Nos. 50–325 & 50–324
License Nos. DPR–71 & DPR–62
Hwy 87, 2.5 Miles North
Southport, NC 28461

Mr. Brian J. O'Grady
Site Vice President
Browns Ferry Nuclear Plant, Units 1, 2 and 3
Tennessee Valley Authority

Docket Nos. 50–259, 50–260, & 50–296
License Nos. DPR–33, DPR–52, & DPR–68
10835 Shaw Rd.
Athens, AL 35611

Mr. Michael Skaggs
Site Vice President
Watts Bar Nuclear Plant, Unit 1
Tennessee Valley Authority
Docket No. 50–390
License No. NPF–90
Highway 68 Near Spring City
Spring City, TN 37381

Mr. Randy Douet
Site Vice President
Sequoyah Nuclear Plant, Units 1 and 2
Tennessee Valley Authority
Docket Nos. 50–327 and 50–328
License Nos. DPR–77 and DPR–79
2000 Igou Ferry Road
Soddy Daisy, TN 37379

Mr. Mano K. Nazar
Senior Vice President and Chief Nuclear Officer
Indiana Michigan Power Company
Nuclear Generation Group
Donald C. Cook Nuclear Plant, Units 1 and 2
Docket Nos. 50–315 & 50–316
License Nos. DPR–58 & DPR–74
One Cook Place
Bridgman, MI 49106

Mr. Gary Van Middlesworth
Vice President
Duane Arnold Energy Center
Docket No. 50–331
License No. DPR–49
3277 DAEC Road
Palo, IA 52324–9785

Mr. Donald K. Cobb
Assistant Vice President—Nuclear Generation
Detroit Edison Company
Fermi, Unit 2
Docket No. 50–341
License No. NPF–43
6400 North Dixie Highway
Newport, MI 48166

Mr. John Conway
Site Vice President
Nuclear Management Company, LLC
Monticello Nuclear Generating Plant
Docket No. 50–263
License No. DPR–22
2807 West County Road 75
Monticello, MN 55362–9637

Mr. Randall K. Edington
Vice President—Nuclear and CNO
Nebraska Public Power District
Cooper Nuclear Station
Docket No. 50–298
License No. DPR–46
1200 Prospect Road
Brownville, NE 68321

Mr. J.V. Parrish
Chief Executive Officer
Energy Northwest
Columbia Generating Station
Docket No. 50–397
License No. NPF–21
Snake River Warehouse
North Power Plant Loop
Richland, WA 99352

Mr. Christopher M. Crane
President and Chief Nuclear Officer
AmerGen Energy Company, LLC
Oyster Creek Nuclear Generating Station
Docket No. 50–219
License No. DPR–16
4300 Winfield Road
Warrenville, IL 60555

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Generation Company, LLC
Dresden Nuclear Power Station, Units 2 and 3
Docket Nos. 50–237 & 50–249
License Nos. DPR–19 &, DPR–25
4300 Winfield Road
Warrenville, IL 60555

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Generation Company, LLC
LaSalle County Station, Units 1 and 2
Docket Nos. 50–373 & 50–374
License Nos. NPF–11 & NPF–18
4300 Winfield Road
Warrenville, IL 60555

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Generation Company, LLC
Quad Cities Nuclear Power Station, Units 1 and 2
Docket Nos. 50–254 & 50–265
License Nos. DPR–29 & DPR–30
4300 Winfield Road
Warrenville, IL 60555

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Generation Company, LLC
Limerick Generating Station, Units 1 and 2
Docket Nos. 50–352 & 50–353
License Nos. NPF–39 & NPF–85
4300 Winfield Road
Warrenville, IL 60555

Mr. Christopher M. Crane
President and Chief Nuclear Officer
Exelon Generation Company, LLC
Peach Bottom Atomic Power Station, Units 2 and 3
Docket Nos. 50–277 & 50–278
License Nos. DPR–44 & DPR–56
4300 Winfield Road
Warrenville, IL 60555

[FR Doc. E6–10076 Filed 6–26–06; 8:45 am]
BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on July 12–14, 2006, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Tuesday, November 22, 2005 (70 FR 70638).

**Wednesday, July 12, 2006, Conference Room T–2b3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10 a.m.: Final Review of the License Renewal Application for the Nine Mile Point Nuclear Station* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Constellation Energy Company, LLC regarding the license renewal application for the Nine Mile Point Nuclear Station, Units 1 and 2 and the associated NRC staff's final Safety Evaluation Report.

*10:15 a.m.–11:45 a.m.: Results of the Study to Determine the Need for Establishing Limits for Phosphate Ion Concentration* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and their contractor regarding the results of the study for use by the staff in deciding on the need for establishing limits for phosphate ion concentration in groundwater at the sites of plants applying for license renewal.

*12:45 p.m.–4 p.m.: Integrating Risk and Safety Margins* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a proposed framework for integrating risk and safety margins.

*4:15 p.m.–4:45 p.m.: Subcommittee Report* (Open)—Report by and discussions with the chairman of the ACRS Subcommittee on Thermal-Hydraulic Phenomena regarding the status of activities associated with the resolution of Generic Safety Issue–191—Assessment of Debris Accumulation on PWR Sump Performance that were discussed during the June 13–14, 2006 Subcommittee meeting.

*4:45 p.m.–6:45 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a response to the May 2, 2006 letter from the NRC Executive Director for Operations, responding to the March 24, 2006 (Revised April 10, 2006) ACRS

report on GSI–191—Assessment of Debris Accumulation on PWR Sump Performance.

**Thursday, July 13, 2006, Conference Room T–2b3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Safeguards and Security Matters* (Closed)—The Committee will hear presentations by and hold discussions with the NRC staff regarding safeguards and security matters.

[Note: This session will be closed to protect information classified as National Security information as well as safeguards information pursuant to 5 U.S.C. 552b (c) (1) and (3)].

*10:45 a.m.–11 a.m.: Subcommittee Report* (Open)—The Committee will hear a report by and hold discussions with the cognizant Acting Chairman of the ACRS Subcommittee on Digital Instrumentation and Control Systems regarding matters discussed during the Subcommittee meeting on June 27, 2006.

*11 a.m.–12 Noon: Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

*12 Noon–12:15 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

*1:15 P.M.–7 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

**Friday, July 14, 2006, Conference Room T–2b3, Two White Flint North, Rockville, Maryland**

*8:30 a.m.–12 Noon: Preparation of ACRS Reports* (Open)—The Committee will continue discussion of proposed ACRS reports.

*12 Noon—12:30 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 2005 (70 FR 56936). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d), Pub. L. 92–463, I have determined that it will be necessary to close a portion of this meeting noted above to discuss and protect information classified as National Security information as well as safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: June 22, 2006.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E6–10109 Filed 6–26–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Notice

**DATES:** Weeks of June 26, July 3, 10, 17, 24, 31, 2006.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of June 26, 2006**

There are no meetings scheduled for the Week of June 26, 2006.

**Week of July 3, 2006—Tentative**

There are no meetings scheduled for the Week of July 3, 2006.

**Week of July 10, 2006—Tentative**

There are no meetings scheduled for the Week of July 10, 2006.

**Week of July 17, 2006—Tentative**

There are no meeting scheduled for the Week of July 17, 2006.

**Week of July 24, 2006—Tentative**

*Thursday, July 27, 2006*

9:30 a.m. Briefing on Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Karen Henderson, (301) 415–0202).

This meeting will be webcast live at the Web address, *http://www.nrc.gov*.

1:30 p.m. Briefing on Equal Employment Opportunity (EEO) Programs. (Public Meeting) (Contact: Barbara Williams, (301) 415–7388).

This meeting will be webcast live at the Web address, *http://www.nrc.gov*.

**Week of July 31, 2006—Tentative**

There are no meetings scheduled for the Week of July 31, 2006.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

**ADDITIONAL INFORMATION:** The Affirmation of ''AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station) Docket No. 50–0219, Legal challenges to LBP–06–07 and LBP–06–11'' which tentatively was scheduled on Friday, June 23, 2006 at 9 a.m. has been postponed and will be rescheduled.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print) please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TTD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: June 22, 2006.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 06–5760 Filed 6–23–06; 12:20 pm]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### Notice of Availability of Interim Staff Guidance Documents For Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION CONTACT:** James Smith, Project manager, Technical Support Section, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–6459; fax number: (301) 415–5370; e-mail: *jas4@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Nuclear Regulatory Commission (NRC) continues to prepare and issue Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analysis, license applications or amendment requests or other related licensing activities for fuel cycle facilities under 10 CFR part 70. FCSS–ISG–10 has been issued and is provided for information.

### II. Summary

The purpose of this notice is to provide notice to the public of the issuance of FCSS–ISG–10, Revision 0, which provides guidance to NRC staff to address justification for minimum margin of subcriticality for safety relative to license application or amendment request under 10 CFR part 70, subpart H. FCSS–ISG–10, Revision 0, has been approved and issued after a general revision based on NRC staff and public comments on the initial draft.

### III. Further Information

The document related to this action is 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 Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the document related to this notice is provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

| Interim staff guidance | ADAMS accession No. |
|---|---|
| FCSS Interim Staff Guidance—10, Revision 0 .... | ML061650370 |

This document 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. Comments on these documents may be forwarded to James Smith, Project Manager, Technical Support Section, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Comments can also be submitted by telephone, fax, or e-mail which are as follows: Telephone: (301) 415–6459; fax number: (301) 415–5370; e-mail: *jas4@nrc.gov.*

Dated at Rockville, Maryland this 15th day of June 2006.

For the Nuclear Regulatory Commission.

**Dennis C. Morey,**

*Acting Chief, Technical Support Section, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

### FCSS Interim Staff Guidance—10, Revision 0; Justification for Minimum Margin of Subcriticality for Safety

*Prepared by Division of Fuel Cycle Safety and Safeguards Office of Nuclear Material Safety and Safeguards*

### Issue

Technical justification for the selection of the minimum margin of subcriticality for safety for fuel cycle facilities, as required by 10 CFR 70.61(d)

### Introduction

10 CFR 70.61(d) requires, in part, that licensees or applicants (henceforth to be referred to as ''licensees'') demonstrate that ''under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety.'' There are a variety of methods that may be used to demonstrate subcriticality, including use of industry standards, handbooks, hand calculations, and computer methods. Subcriticality is assured, in part, by providing margin between actual conditions and expected critical conditions. This interim staff guidance (ISG), however, applies only to margin used in those methods that rely on

calculation of $k_{eff}$, including deterministic and probabilistic computer methods. The use of other methods (*e.g.*, use of endorsed industry standards, widely accepted handbooks,certain hand calculations), containing varying amounts of margin, is outside the scope of this ISG.

For methods relying on calculation of $k_{eff}$, margin may be provided either in terms of limits on physical parameters of the system (of which $k_{eff}$ is a function), or in terms of limits on $k_{eff}$ directly, or both. For the purposes of this ISG, the term *margin of safety* will be used to refer to the margin of criticality in terms of system parameters, and the term *margin of subcriticality* (MoS) will refer to the margin to criticality in terms of $k_{eff}$. A common approach to ensuring subcriticality is to determine a maximum $k_{eff}$ limit below which the licensee's calculations must fall. This limit will be referred to in this ISG as the *Upper Subcritical Limit* (USL). Licensees using calculational methods perform validation studies, in which critical experiments similar to actual or anticipated facility applications are chosen and then analyzed to determine the bias and uncertainty in the bias. The bias is a measure of the systematic differences between calculational method results and experimental data. The uncertainty in the bias is a measure of both the accuracy and precision of the calculations and the uncertainty in the experimental data. A USL is then established that includes allowances for bias and bias uncertainty as well as an additional margin, to be referred to in this ISG as the *minimum margin of subcriticality* (MMS). The MMS is variously referred to in the nuclear industry as *minimum subcritical margin, administrative margin,* and *arbitrary margin,* and the term MMS should be regarded as synonymous with those terms. The term MMS will be used throughout this ISG, and has been chosen for consistency with the rule. The MMS is an allowance for any unknown (or difficult to identify or quantify) errors or uncertainties in the method of calculating $k_{eff}$ that may exist beyond those which have been accounted for explicitly in calculating the bias and its uncertainty.

There is little guidance in the fuel facility Standard Review Plans (SRPs) as to what constitutes sufficient technical justification for the MMS. NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility,'' Section 5.4.3.4.4, states that there must be margin that includes, among other uncertainties, ''adequate allowance for uncertainty in the methodology, data, and bias to assure subcriticality.'' An important component of this overall margin is the MMS. However, there has been almost no guidance on how to determine an appropriate MMS. Partly due to the lack of historical guidance, and partly due to differences between facilities' processes and methods of calculation, there have been significantly different MMS values approved for the various fuel cycle facilities over time. In addition, the different ways licensees have of defining margins and calculating $k_{eff}$ limits have made a consistent approach to reviewing $k_{eff}$ limits difficult. Recent licensing experience has highlighted the need for further guidance to clarify what constitutes an acceptable justification for the MMS.

The MMS can have a substantial effect on facility operations (*e.g.*, storage capacity, throughput) and there has, therefore, been considerable recent interest in decreasing margin in $k_{eff}$ below what has been licensed previously. In addition, the increasing sophistication of computer codes and the ready availability of computing resources means that there has been a gradual move towards more realistic (often resulting in less conservative) modeling of process systems. The increasing interest in reducing the MMS and the reduction in modeling conservatism make technical justification of the MMS more risk-significant than it has been in the past. In general, consistent with a risk-informed approach to regulation, a smaller MMS requires a more substantial technical justification.

This ISG is only applicable to fuel enrichment and fabrication facilities licensed under 10 CFR part 70.

**Discussion**

This guidance is applicable to evaluating the MMS in methods of evaluation that rely on calculation of $k_{eff}$. The $k_{eff}$ value of a fissionable system depends, in general, on a large number of physical variables. The factors that can affect the calculated value of $k_{eff}$ may be broadly divided into the following categories: (1) The geometric configuration; (2) the material composition; and (3) the neutron distribution. The geometric form and material composition of the system—together with the underlying nuclear data (e.g., v, X(E), cross section data)—determine the spatial and energy distribution of neutrons in the system (flux and energy spectrum). An error in the nuclear data or the geometric or material modeling of these systems can produce an error in the neutron flux and energy spectrum, and thus in the calculated value of $k_{eff}$. The bias associated with a single system is defined as the difference between the calculated and physical values of $k_{eff}$, by the following equation:

$$\beta = k_{calc} - k_{physical}$$

Thus, determining the bias requires knowing both the calculated and physical $k_{eff}$ values of the system. The bias associated with a single critical experiment can be known with a high degree of confidence, because the physical (experimental) value is known a priori ($k_{physical} \approx 1$). However, for calculations performed to demonstrate subcriticality of facility processes (to be referred to as ''applications''), this is not generally the case. The bias associated with such an application (i.e., not a known critical configuration) is not typically known with this same high degree of confidence, because the actual physical $k_{eff}$ of the system is usually not known. In practice, the bias is determined from the average calculated $k_{eff}$ for a set of experiments that cover different aspects of the licensee's applications. The bias and its uncertainty must be estimated by calculating the bias associated with a set of critical experiments having geometric forms, material compositions, and neutron spectra similar to those of the application. Because of the large number of factors that can affect the bias, and the finite number of critical experiments available, staff should recognize that this is only an estimate of the true bias of the system. The experiments analyzed cannot cover all possible combinations of conditions or sources of error that may be present in the applications to be evaluated. The effect on $k_{eff}$ of geometric, material, or spectral differences between critical experiments and applications cannot be known with precision. Therefore, an additional margin (MMS) must be applied to allow for the effects of any unknown uncertainties that may exist in the calculated value of $k_{eff}$ beyond those accounted for in the calculation of the bias and its uncertainty. As the MMS decreases, there needs to be a greater level of assurance that the various sources of bias and uncertainty have been taken into account, and that the bias and uncertainty are known with a high degree of accuracy. In general, the more similar the critical experiments are to the applications, the more confidence there is in the estimate of the bias and the less MMS is needed.

In determining an appropriate MMS, the reviewer should consider the specific conditions and process characteristics present at the facility in

question. However, the MMS should not be reduced below 0.02. The nuclear cross sections are not generally known to better than ~ 1–2%. While this does not necessarily translate into a 2% $\Delta k_{eff}$, it has been observed over many years of experience with criticality code validation that biases and spreads in the data of a few percent can be expected. As stated in NUREG–1520, MoS should be large compared to the uncertainty in the bias. Moreover, errors in the criticality codes have been discovered over time that have produced $k_{eff}$ differences of roughly this same magnitude of 1–2% (e.g., Information Notice 2005–13, ''Potential Non-Conservative Error in Modeling Geometric Regions in the KENO–V.a Criticality Code''). While the possibility of having larger undiscovered errors cannot be entirely discounted, modeling sufficiently similar critical experiments with the same code options to be used in modeling applications should minimize the potential for this to occur. However, many years of experience with the typical distribution of calculated $k_{eff}$ values and with the magnitude of code errors that have occasionally surfaced support establishing 0.02 as the minimum MMS that should be considered acceptable under the best possible conditions.

Staff should recognize the important distinction between ensuring that processes are safe and ensuring that they are adequately subcritical. The value of $k_{eff}$ is a direct indication of the degree of subcriticality of the system, but is not fully indicative of the degree of safety. A system that is very subcritical (i.e., with $k_{eff} \ll 1$) may have a small margin of safety if a small change in a process parameter can result in criticality. An example of this would be a $UO_2$ powder storage vessel, which is subcritical when dry, but may require only the addition of water for criticality. Similarly, a system with a small MoS (i.e., with $k_{eff}$ ~1) may have a very large margin of safety if it cannot credibly become critical. An example of this would be a natural uranium system in light water, which may have a $k_{eff}$ value close to 1 but will never exceed 1. Because of this, a distinction should be made between the *margin of subcriticality* and the *margin of safety.* Although a variety of terms are in use in the nuclear industry, the term *margin of subcriticality* will be taken to mean the difference between the actual (physical) value of $k_{eff}$ and the value of $k_{eff}$ at which the system is expected to be critical. The term *margin of safety* will be taken to mean the difference between the actual value of a parameter and the value of the parameter at which the system is expected to be critical. The MMS is intended to account for the degree of confidence that applications calculated to be subcritical will be subcritical. It is not intended to account for other aspects of the process (e.g., safety of the process or the ability to control parameters within certain bounds) that may need to be reviewed as part of an overall licensing review.

There are a variety of different approaches that a licensee could choose in justifying the MMS. Some of these approaches and means of reviewing them are described in the following sections, in no particular preferential order. Many of these approaches consist of qualitative arguments, and therefore there will be some degree of subjectivity in determining the adequacy of the MMS. Because the MMS is an allowance for unknown (or difficult to identify or quantify) errors, the reviewer must ultimately exercise his or her best judgement in determining whether a specific MMS is justified. Thus, the topics listed below should be regarded as factors the reviewer should take into consideration in exercising that judgement, rather than any kind of prescriptive checklist.[1]

The reviewer should also bear in mind that the licensee is not required to use any or all of these approaches, but may choose an approach that is applicable to its facility or a particular process within its facility. While it may be desirable and convenient to have a single keff limit or MMS value (and single corresponding justification) across an entire facility, it is not necessary for this to be the case. The MMS may be easier to justify for one process than for another, or for a limited application versus generically for the entire facility. The reviewer should expect to see various combinations of these approaches, or entirely different approaches, used, depending on the nature of the licensee's processes and methods of calculation. Any approach used must ultimately lead to a determination that there is adequate assurance of subcriticality.

*(1) Conservatism in the Calculational Models*

The margin in $k_{eff}$ produced by the licensee's modeling practices, together with the MMS, provide the margin between actual conditions and expected critical conditions. In terms of the subcriticality criterion taken from ANSI/ANS–8.17–2004, ''Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors' (as explained in Appendix A):

$$\text{Mos} \geq \Delta k_m + \Delta k_{sa}$$

where $\Delta k_m$ is the MMS and $\Delta k_{sa}$ is the margin in $k_{eff}$ due to conservative modeling of the system (i.e., conservative values of system parameters).

Two different applications for which the sums on the right hand side of the equation above are equal to each other are equally subcritical. Assurance of subcriticality may thus be provided by specifying a margin in $k_{eff}$ ($\Delta k_m$), or specifying conservative modeling practices ($\Delta k_{sa}$), or some combination thereof. This principle will be particularly useful to the reviewer evaluating a proposed reduction in the currently approved MMS; the review of such a reduction should prove straightforward in cases in which the overall combination of modeling conservatism and MMS has not changed. Because of this straightforward quantitative relationship, any modeling conservatism that has not been previously credited should be considered before examining other factors. Cases in which the overall MoS has decreased may still be acceptable, but would have to be justified by other means.

In evaluating justification for the MMS relying on conservatism in the model, the reviewer should consider only that conservatism in excess of any manufacturing tolerances, uncertainties in system parameters, or credible process variations. That is, the conservatism should consist of conservatism beyond the worst-case normal or abnormal conditions, as appropriate, including allowance for any tolerances. Examples of this added conservatism may include assuming optimum concentration in solution processes, neglecting neutron absorbers in structural materials, or assuming minimum reflector conditions (e.g., at least a 1-inch, tight-fitting reflector around process equipment). These technical practices used to perform criticality calculations generally result in conservatism of at least several percent in $k_{eff}$. To credit this as part of the justification for the MMS, the reviewer should have assurance that the modeling practices described will result in a predictable and dependable amount of conservatism in $k_{eff}$. In some cases, the conservatism may be process-dependent, in which case it may be

[1] In the discussion of these factors, the purpose is not to impose any new requirements or standards for acceptability on licensees. However, in many cases it will be necessary to go beyond the minimum requirements for a given factor, if that factor is being used as part of the technical basis for justifying a smaller MMS than would otherwise be acceptable.

relied on as justification for the MMS for a particular process. However, only modeling practices that result in a global conservatism across the entire facility should be relied on as justification for a site-wide MMS. Ensuring predictable and dependable conservatism includes verifying that this conservatism will be maintained over the facility lifetime, such as through the use of license commitments or conditions.

If the licensee has a program that establishes operating limits (to ensure that subcritical limits are not exceeded) below subcritical limits determined in nuclear criticality safety evaluations, the margin provided by this (optional) practice may be credited as part of the conservatism. In such cases, the reviewer should credit only the difference between operating and subcritical limits that exceeds any tolerances or process variation, and should ensure that operating limits will be maintained over the facility lifetime, through the use of license commitments or conditions.

Some questions that the reviewer may ask in evaluating the use of modeling conservatism as justification for the MMS include:

- How much margin in $k_{eff}$ is provided due to conservatism in modeling practices?
- How much of this margin exceeds allowance for tolerances and process variations?
- Is this margin specific to a particular process or does it apply to all facility processes?
- What provides assurance that this margin will be maintained over the facility lifetime?

*(2) Validation Methodology and Results*

Assurance of subcriticality for methods that rely on the calculation of $k_{eff}$ requires that those methods be appropriately validated. One of the goals of validation is to determine the method's bias and the uncertainty in the bias. After this has been done, an additional margin (MMS) is specified to account for any additional uncertainties that may exist. The appropriate MMS depends, in part, on the degree of confidence in the validation results. Having a high degree of confidence in the bias and bias uncertainty requires both that there be sufficient (for the statistical method used) applicable benchmark-quality experiments and that there be a rigorous validation methodology. Critical experiments that do not rise to the level of benchmark-quality experiments may also be acceptable, but may require additional margin. If either the data or the methodology is deficient, a high degree of confidence in the results cannot be attained, and a larger MMS may need to be employed than would otherwise be acceptable. Therefore, although validation and determining the MMS are separate exercises, they are related. The more confidence one has in the validation results, the less additional margin (MMS) is needed. The less confidence one has in the validation results, the more MMS is needed.

Any review of a licensing action involving the MMS should involve examination of the licensee's validation methodology and results. While there is no clear quantifiable relationship between the validation and MMS (as exists with modeling conservatism), several aspects of validation should be considered before making a qualitative determination of the adequacy of the MMS.

There are four factors that the reviewer should consider in evaluating the validation: (1) The similarity of critical experiments to actual applications; (2) sufficiency of the data (including the number and quality of experiments); (3) adequacy of the validation methodology; and (4) conservatism in the calculation of the bias and its uncertainty. These factors are discussed in more detail below.

Similarity of Critical Experiments

Because the bias and its uncertainty must be estimated based on critical experiments having geometric form, material composition, and neutronic behavior similar to specific applications, the degree of similarity between the critical experiments and applications is a key consideration in determining the appropriateness of the MMS. The more closely critical experiments represent the characteristics of applications being validated, the more confidence the reviewer has in the estimate of the bias and the bias uncertainty for those applications.

The reviewer must understand both the critical experiments and applications in sufficient detail to ascertain the degree of similarity between them. Validation reports generally contain a description of critical experiments (including source references). The reviewer may need to consult these references to understand the physical characteristics of the experiments. In addition, the reviewer may need to consult process descriptions, nuclear criticality safety evaluations, drawings, tables, input files, or other information to understand the physical characteristics of applications. The reviewer must consider the full spectrum of normal and abnormal conditions that may have to be modeled when evaluating the similarity of the critical experiments to applications.

In evaluating the similarity of experiments to applications, the reviewer must recognize that some parameters are more significant than others to accurately calculate $k_{eff}$. The parameters that have the greatest effect on the calculated $k_{eff}$ of the system are those that are most important to match when choosing critical experiments. Because of this, there is a close relationship between similarity of critical experiments to applications and system sensitivity. Historically, certain parameters have been used to trend the bias because these are the parameters that have been found to have the greatest effect on the bias. These parameters include the moderator-to-fuel ratio (e.g., H/U, H/X, $v^m/v^f$), isotopic abundance (*e.g.*, uranium-235 ($^{235}U$), plutonium-239 ($^{239}Pu$), or overall Pu-to-uranium ratio), and parameters that characterize the neutron energy spectrum (e.g., energy of average lethargy causing fission (EALF), average energy group (AEG)). Other parameters, such as material density or overall geometric shape, are generally considered to be of less importance. The reviewer should consider all important system characteristics that can reasonably be expected to affect the bias. For example, the critical experiments should include any materials that can have an appreciable effect on the calculated $k_{eff}$, so that the effect due to the cross sections of those materials is included in the bias. Furthermore, these materials should have at least the same reactivity worth in the experiments (which may be evidenced by having similar number densities) as in the applications. Otherwise, the effect of any bias from the underlying cross sections or the assumed material composition may be masked in the applications. The materials must be present in a statistically significant number of experiments having similar neutron spectra to the application. Conversely, materials that do not have an appreciable effect on the bias may be neglected and would not have to be represented in the critical experiments.

Merely having critical experiments that are representative of applications is the minimum acceptance criterion, and does not alone justify having any particular value of the MMS. There are some situations, however, in which there is an unusually high degree of similarity between the critical experiments and applications, and in

these cases, this fact may be credited as justification for having a smaller MMS than would otherwise be acceptable. If the critical experiments have geometric forms, material compositions, and neutron spectra that are nearly indistinguishable from those of the applications, this may be justification for a smaller MMS than would otherwise be acceptable. For example, justification for having a small MMS for finished fuel assemblies could include selecting critical experiments consisting of fuel assemblies in water, where the fuel has nearly the same pellet diameter, pellet density, cladding materials, pitch, absorber content, enrichment, and neutron energy spectrum as the licensee's fuel. In this case, the validation should be very specific to this type of system, because including other types of critical experiments could mask variations in the bias. Therefore, this type of justification is generally easiest when the area of applicability (AOA) is very narrowly defined. The reviewer should pay particular attention to abnormal conditions. In this example, changes in process conditions such as damage to the fuel or partial flooding may significantly affect the applicability of the critical experiments.

There are several tools available to the reviewer to ascertain the degree of similarity between critical experiments and applications. Some of these are listed below:

1. NUREG/CR–6698, ''Guide to Validation of Nuclear Criticality Safety Calculational Method,'' Table 2.3, contains a set of screening criteria for determining the applicability of critical experiments. As is stated in the NUREG, these criteria were arrived at by consensus among experienced nuclear criticality safety specialists and may be considered to be conservative. The reviewer should consider agreement on all screening criteria to be justification for demonstrating a very high degree of critical experiment similarity. (Agreement on the most significant screening criteria for a particular system should be considered as demonstration of an acceptable degree of critical experiment similarity.) Less conservative (i.e., broader) screening criteria may also be acceptable, if appropriately justified.

2. Analytical methods that systematically quantify the degree of similarity between a set of critical experiments and applications in pair-wise fashion may be used. One example of this is the TSUNAMI code in the SCALE 5 code package. One strength of TSUNAMI is that it calculates an overall correlation that is a quantitative measure of the degree of similarity between an experiment and an application. Another strength is that this code considers all the nuclear phenomena and underlying cross sections and weights them by their importance to the calculated $k_{eff}$ (*i.e.*, sensitivity of $k_{eff}$ to the data). The NRC staff currently considers a correlation coefficient of $c_k \gtrsim 0.95$ to be indicative of a very high degree of similarity. This is based on the staff's experience comparing the results from TSUNAMI to those from a more traditional screening criterion approach. The NRC staff also considers a correlation coefficient between 0.90 and 0.95 to be indicative of a high degree of similarity. However, owing to the amount of experience with TSUNAMI, in this range use of the code should be supplemented with other methods of evaluating critical experiment similarity. Conversely, a correlation coefficient less than 0.90 should not be used as a demonstration of a high or very high degree of critical experiment similarity. Because of limited use of the code to date, all of these observations should be considered tentative and thus the reviewer should not use TSUNAMI as a ''black box,'' or base conclusions of adequacy solely on its use. However, it may be used to test a licensee's statement that there is a high degree of similarity between experiments and applications.

3. Traditional parametric sensitivity studies may be employed to demonstrate that $k_{eff}$ is highly sensitive or insensitive to a particular parameter. For example, if a 50% reduction in the $^{10}B$ cross section is needed to produce a 1% change in the system $k_{eff}$, then it can be concluded that the system is highly insensitive to the boron content, in the amount present. This is because a credible error in the $^{10}B$ cross section of a few percent will have a statistically insignificant effect on the bias. Therefore, in the amount present, the boron content is not a parameter that is important to match in order to conclude that there is a high degree of similarity between critical experiments and applications.

4. Physical arguments may demonstrate that $k_{eff}$ is highly sensitive or insensitive to a particular parameter. For example, the fact that oxygen and fluorine are almost transparent to thermal neutrons (*i.e.*, cross sections are very low) may justify why experiments consisting of $UO_2F_2$ may be considered similar to $UO_2$ or $UF_4$ applications, provided that both experiments and applications occur in the thermal energy range.

The reviewer should ensure that all parameters which can measurably affect the bias are considered when assessing critical experiment similarity. For example, comparison should not be based solely on agreement in the $^{235}U$ fission spectrum for systems in which the system $k_{eff}$ is highly sensitive to $^{238}U$ fission, $^{10}B$ absorption, or $^{1}H$ scattering. A method such as TSUNAMI that considers the complete set of reactions and nuclides present can be used to rank the various system sensitivities, and to thus determine whether it is reasonable to rely on the fission spectrum alone in assessing the similarity of critical experiments to applications.

Some questions that the reviewer may ask in evaluating reliance on critical experiment similarity as justification for the MMS include:

- Do the critical experiments adequately span the range of geometric forms, material compositions, and neutron energy spectra expected in applications?
- Are the materials present with at least the same reactivity worth as in applications?
- Do the licensee's criteria for determining whether experiments are sufficiently similar to applications consider all nuclear reactions and nuclides that can have a statistically significant effect on the bias?

Sufficiency of the Data

Another aspect of evaluating the selected critical experiments for a specific MMS is evaluating whether there is a sufficient number of benchmark-quality experiments to determine the bias across the entire AOA. Having a sufficient number of benchmark-quality experiments means that: (1) There are enough (applicable) critical experiments to make a statistically meaningful calculation of the bias and its uncertainty; (2) the experiments somewhat evenly span the entire range of all the important parameters, without gaps requiring extrapolation or wide interpolation; and (3) the experiments are, preferably, benchmark-quality experiments. The number of critical experiments needed is dependent on the statistical method used to analyze the data. For example, some methods require a minimum number of data points to reliably determine whether the data are normally distributed. Merely having a large number of experiments is not sufficient to provide confidence in the validation result, if the experiments are not applicable to the application. The reviewer should particularly examine whether consideration of only the most applicable experiments would result in a larger negative bias (and thus a lower

USL) than that determined based on the full set of experiments. The experiments should also ideally be sufficiently well-characterized (including experimental parameters and their uncertainties) to be considered benchmark experiments. They should be drawn from established sources (such as from the International Handbook of Evaluated Criticality Safety Benchmark Experiments (IHECSBE), laboratory reports, or peer-reviewed journals). For some applications, benchmark-quality experiments may not be available; when necessary, critical experiments that do not rise to the level of benchmark-quality experiments may be used. However, the reviewer should take this into consideration and should evaluate the need for additional margin.

Some questions that the reviewer may ask in evaluating the number and quality of critical experiments as justification for the MMS include:

- Are the critical experiments chosen all high-quality benchmarks from reliable (e.g., peer-reviewed and widely-accepted) sources?
- Are the critical experiments chosen taken from multiple independent sources, to minimize the possibility of systematic errors?
- Have the experimental uncertainties associated with the critical experiments been provided and used in calculating the bias and bias uncertainty?
- Is the number and distribution of critical experiments sufficient to establish trends in the bias across the entire range of parameters?
- Is the number of critical experiments commensurate with the statistical methodology being used?

Validation Methodological Rigor

Having a sufficiently rigorous validation methodology means having a methodology that is appropriate for the number and distribution of critical experiments, that calculates the bias and its uncertainty using an established statistical methodology, that accounts for any trends in the bias, and that accounts for all apparent sources of uncertainty in the bias (e.g., the increase in uncertainty due to extrapolating the bias beyond the range covered by the experimental data.) Examples of deficiencies in the validation methodology may include: (1) Using a statistical methodology relying on the data being normally distributed about the mean $k_{eff}$ to analyze data that are not normally distributed; (2) using a linear regression fit on data that has a non-linear dependence on a trending parameter; (3) use of a single pooled bias when very different types of critical experiments are being evaluated in the same validation. These deficiencies serve to decrease confidence in the validation results and may warrant additional margin (i.e., a larger MMS). Additional guidance on some of the more commonly observed deficiencies is provided below.

The assumption that data is normally distributed is generally valid, unless there is a strong trend in the data or different types of critical experiments with different mean calculated $k_{eff}$ values are being combined. Tests for normality require a minimum number of critical experiments to attain a specified confidence level (generally 95%). If there is insufficient data to verify that the data are normally distributed, or the data are shown to be not normally distributed, a non-parametric technique should be used to analyze the data.

The critical experiments chosen should ideally provide a continuum of data across the entire validated range, so that any variation in the bias as a function of important system parameters may be observed. The presence of discrete clusters of experiments having a calculated $k_{eff}$ lower than the set of critical experiments as a whole should be examined closely to determine if there is some systematic effect common to a particular type of calculation that makes use of the overall bias non-conservative. Because the bias can vary with system parameters, if the licensee has combined different subsets of data (e.g., solutions and powders, low- and high-enriched, homogeneous and heterogeneous), the bias for the different subsets should be analyzed. In addition, the goodness-of-fit for any function used to trend the bias should be examined to ensure it is appropriate to the data being analyzed.

If critical experiments do not cover the entire range of parameters needed to cover anticipated applications, it may be necessary to extend the AOA by making use of trends in the bias. Any extrapolation (or wide interpolation) of the data should be done by means of an established mathematical methodology that takes into account the functional form of both the bias and its uncertainty. The extrapolation should not be based on judgement alone, such as by observing that the bias is increasing in the extrapolated range, because this may not account for the increase in the bias uncertainty that will occur with increasing extrapolation. The reviewer should independently confirm that the derived bias is valid in the extrapolated range and should ensure that the extrapolation is not large. NUREG/CR–6698 states that critical experiments should be added if the data must be extrapolated more than 10%. There is no corresponding guidance given for interpolation; however, if the gap represents a significant fraction of the total range of the data (e.g., more than 20% of the range of the data), then the reviewer should consider this to be a wide interpolation. If the extrapolation or interpolation is too large, new factors that could affect the bias may be introduced as the physical phenomena in the system change. The reviewer should not view validation as a purely mathematical exercise, but should bear in mind the neutron physics and underlying physical phenomena when interpreting the results.

Discarding an unusually large number of critical experiments as outliers (*i.e.*, more than 1–2%) should also be viewed with some concern. Apparent outliers should not be discarded based purely upon judgement or statistical grounds (such as causing the data to fail tests for normality), because they could be providing valuable information on the method's validity for a particular application. The reviewer should verify that there are specific defensible reasons, such as reported inconsistencies in the experimental data, for discarding any outliers. If any of the critical experiments from a particular data set are discarded, the reviewer should examine other experiments included to determine whether they may be subject to the same systematic errors. Outliers should be examined carefully especially when they have a lower calculated $k_{eff}$ than the other experiments included.

NUREG–1520 states that the MoS should be large compared to the uncertainty in the bias. The observed spread of the data about the mean $k_{eff}$ should be examined as an indicator of the overall precision of the calculational method. The reviewer should ascertain whether the statistical method of validation considers both the observed spread in the data and the experimental and calculational uncertainty in determining the USL. The reviewer should also evaluate whether the observed spread in the data is consistent with the reported uncertainty (*e.g.*, whether $X^2/N \approx 1$). If the spread in the data is larger than, or comparable to, the MMS, then the reviewer should consider whether additional margin (*i.e.*, a larger MMS) is needed.

As a final test of the code's accuracy, the bias should be relatively small (*i.e.*, bias $\lesssim$2 percent), or else the reason for the bias should be determined. No credit should be taken for positive bias, because this would result in making changes in a non-conservative direction without having a clear understanding of those changes. If the absolute value of

the bias is very large—and especially if the reason for the large bias cannot be determined—this may indicate that the calculational method is not very accurate, and a larger MMS may be appropriate.

Some questions that the reviewer may ask in evaluating the rigor of the validation methodology as justification for the MMS include:

- Are the results from use of the methodology consistent with the data (*e.g.*, normally distributed)?
- Is the normality of the data confirmed prior to performing statistical calculations? If the data does not pass the tests for normality, is a non-parametric method used?
- Does the assumed functional form of the bias represent a good fit to the critical experiments? Is a goodness-of-fit test performed?
- Does the method determine a pooled bias across disparate types of critical experiments, or does it consider variations in the bias for different types of experiments? Are there discrete clusters of experiments for which the bias appears to be non-conservative?
- Has additional margin been applied to account for extrapolation or wide interpolation? Is this done based on an established mathematical methodology?
- Have critical experiments been discarded as apparent outliers? Is there a valid reason for doing so?

Performing an adequate code validation is not by itself sufficient justification for any specific MMS. The reason for this is that the validation analysis determines the bias and its uncertainty, but not the MMS. The MMS is added after the validation has been performed to provide added assurance of subcriticality. However, having a validation methodology that either exceeds or falls short of accepted practices for validation may be a basis for either reducing or increasing the MMS.

Statistical Conservatism

In addition to having conservatism in $k_{eff}$ due to modeling practices, licensees may also provide conservatism in the statistical methods used to calculate the USL. For example, NUREG/CR–6698 states that an acceptable method for calculating the bias is to use the single-sided tolerance limit approach with a 95/95 confidence (*i.e.*, 95% confidence that 95% of all future critical calculations will lie above the USL). If the licensee decides to use the single-sided tolerance limit approach with a 95/99.9 confidence, this would result in a more conservative USL than with a 95/95 confidence. This would be true of other methods for which the licensee's confidence criteria exceed the minimum accepted criteria. Generally, the NRC has accepted 95% confidence levels for validation results, so using more stringent confidence levels may provide conservatism. In addition, there may be other reasons a larger bias and/or bias uncertainty than necessary has been used (*e.g.*, because of the inclusion of inapplicable critical experiments that have a lower calculated $k_{eff}$).

The reviewer may credit this conservatism towards having an adequate MoS if: (1) The licensee demonstrates that this translates into a specific $\Delta k_{eff}$; and (2) the licensee demonstrates that the margin will be dependably present, based on license or other commitments.

*(3) Additional Risk-Informed Considerations*

Besides modeling conservatism and the validation results, other factors may provide added assurance of subcriticality. These factors should be considered in evaluating whether there is adequate MoS and are discussed below.

System Sensitivity and Uncertainty

The sensitivity of $k_{eff}$ to changes in system parameters can be used to assess the potential effect of errors on the calculation of $k_{eff}$. If the calculated $k_{eff}$ is especially sensitive to a given parameter, an error in that parameter could have a correspondingly large contribution to the bias. Conversely, if $k_{eff}$ is very insensitive to a given parameter, then an error may have a negligible effect on the bias. This is of particular importance when assessing whether the chosen critical experiments are sufficiently similar to applications to justify a small MMS.

The reviewer should not consider the sensitivity in isolation, but should also consider the magnitude of uncertainties in the parameters. If $k_{eff}$ is very sensitive to a given parameter, but the value of that parameter is known with very high accuracy (and its variations are well-controlled), the potential contribution to the bias may still be very small. Thus, the contribution to the bias is a function of the product of the $k_{eff}$ sensitivity with the uncertainty. To illustrate this, suppose that $k_{eff}$ is a function of a large number of variables, $x_1, x_2, \ldots, x_N$. Then the uncertainty in $k_{eff}$ may be expressed as follows, if all the individual terms are independent:

$$\delta k^2 = \sum_{i=1}^{N} \left( \frac{\partial k}{\partial x_i} \right)^2 \delta x_i^2$$

where the partial derivatives $\partial k/\partial x_i$ are proportional to the sensitivity and the terms $\sigma x_i$ represent the uncertainties, or likely variations, in the parameters. (If not all variables are dependent, then there may be additional terms.) Each term in this equation then represents the contribution to the overall uncertainty in $k_{eff}$.

There are several tools available to the reviewer to ascertain the sensitivity of $k_{eff}$ to changes in the underlying parameters. Some of these are listed below:

1. Analytical tools that calculate the sensitivity for each nuclide-reaction pair present in the problem may be used. One example of this is the TSUNAMI code in the SCALE 5 code package. TSUNAMI calculates both an integral sensitivity coefficient (i.e., summed over all energy groups) and a sensitivity profile as a function of energy group. The reviewer should recognize that TSUNAMI only calculates the $k_{eff}$ sensitivity to changes in the underlying nuclear data, and not to other parameters that could affect the bias and should be considered. (See section on Critical Experiment Similarity for caveats about using TSUNAMI.)

2. Direct sensitivity calculations may be used, in which system parameters are perturbed and the resulting impact on $k_{eff}$ determined. Perturbation of atomic number densities can also be used to confirm the sensitivity calculated by other methods (e.g., TSUNAMI). Such techniques are not limited to considering the effect of the nuclear data.

There are also several sources available to the reviewer to ascertain the uncertainty associated with the underlying parameters. For process parameters, these sources of uncertainty may include manufacturing tolerances, quality assurance records, and experimental and/or measurement results. For nuclear data parameters, these sources of uncertainty may include published data, uncertainty data distributed with the cross section libraries, or the covariance data used in methods such as TSUNAMI.

Some systems are inherently more sensitive to changes in the underlying parameters than others. For example, high-enriched uranium systems typically exhibit a greater sensitivity to changes in system parameters (e.g., mass, moderation) than low-enriched systems. This has been the reason that HEU (i.e., > 20wt% $^{235}U$) facilities have been licensed with larger MMS values than LEU (≤ 10wt% $^{235}U$) facilities. This greater sensitivity would also be true of weapons-grade Pu compared to low-

assay mixed oxides (i.e., with a few percent Pu/U). However, it is also true that the uncertainties associated with measurement of the $^{235}U$ cross sections are much smaller than those associated with measurement of the $^{238}U$ cross sections. Both the greater sensitivity and smaller uncertainty would need to be considered in evaluating whether a larger MMS is needed for high-enriched systems.

Frequently, operating limits that are more conservative than safety limits determined using $k_{eff}$ calculations are established to prevent those safety limits from being exceeded. For systems in which $k_{eff}$ is very sensitive to the system parameters, more margin between the operating and safety limits may be needed. Systems in which $k_{eff}$ is very sensitive to the process parameters may need both a larger margin between operating and safety limits and a larger MMS. This is because the system is sensitive to any change, whether it be caused by normal process variations or caused by unknown errors. Because of this, the assumption is often made that the MMS is meant to account for variations in the process or the ability to control the process parameters. However, the MMS is meant only to allow for unknown (or difficult to quantify) uncertainties in the calculation of $k_{eff}$. The reviewer should recognize that determination of an appropriate MMS is not dependent on the ability to control process parameters within safety limits (although both may depend on the system sensitivity).

Some questions that the reviewer may ask in evaluating the system sensitivity as justification for the MMS include:

- How sensitive is $k_{eff}$ to changes in the underlying nuclear data (e.g., cross sections)?
- How sensitive is $k_{eff}$ to changes in the geometric form and material composition?
- Are the uncertainties associated with these underlying parameters well-known?
- How does the MMS compare to the expected magnitude of changes in $k_{eff}$ resulting from uncertainties in these underlying parameters?

Knowledge of the Neutron Physics

Another important consideration that may affect the appropriate MMS is the extent to which the physical behavior of the system is known. Fissile systems which are known to be subcritical with a high degree of confidence do not require as much MMS as systems where subcriticality is less certain. An example of a system known to be subcritical with high confidence is a light-water reactor fuel assembly. The design of these systems is such that they can only be made critical when highly thermalized. Due to extensive analysis and reactor experience, the flooded isolated assembly is known to be subcritical. In addition, the thermal neutron cross sections for materials in finished reactor fuel have been measured with a very high degree of accuracy (as opposed to cross sections in the resonance region). Other examples of systems in which there is independent corroborating evidence of subcriticality may include systems consisting of very simple geometric shapes, or other idealized situations, in which there is strong evidence that the system is subcritical based on comparison with highly similar systems in published sources (e.g., standards and handbooks). In these cases, the MMS may be significantly reduced due to the fact that the calculation of $k_{eff}$ is not relied on alone to provide assurance of subcriticality.

Reliance on independent knowledge that a given system is subcritical necessarily requires that the configuration of the system be fixed. If the configuration can change from the reference case, there will be less knowledge about the behavior of the changed system. For example, a finished fuel assembly is subject to strict quality assurance checks and would not reach final processing if it were outside specifications. In addition, it has a form that has both been extensively studied and is highly stable. For these reasons, there is a great deal of certainty that this system is well-characterized and is not subject to change. A typical solution or powder system (other than one with a simple geometric arrangement) would not have been studied with the same level of rigor as a finished fuel assembly. Even if they were studied with the same level of rigor, these systems have forms that are subject to change into forms whose neutron physics has not been as extensively studied.

Some questions that the reviewer may ask in evaluating the knowledge of the neutron physics as justification for the MMS include:

- Is the geometric form and material composition of the system fixed and very unlikely to change?
- Is the geometric form and material composition of the system subject to strict quality assurance, such that tolerances have been bounded?
- Has the system been extensively studied in the nuclear industry and shown to be subcritical (e.g., in reactor fuel studies)?
- Are there other reasons besides criticality calculations to conclude that the system will be subcritical (e.g., handbooks, standards, published data)?
- How well-known is the nuclear data (e.g., cross sections) in the energy range of interest?

Likelihood of the Abnormal Condition

Some facilities have been licensed with different sets of $k_{eff}$ limits for normal and abnormal conditions. Separate $k_{eff}$ limits for normal and abnormal conditions are permissible, but are not required. There is some low likelihood that processes calculated to be subcritical will, in fact, be critical, and this likelihood increases as the MMS is reduced (though it cannot in general be quantified). NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility,'' states that abnormal conditions should be at least unlikely from the standpoint of the double contingency principle. Then, a somewhat higher likelihood that a system calculated to be subcritical is, in fact, critical is more permissible for abnormal conditions than for normal conditions, because of the low likelihood of the abnormal condition being realized. The reviewer should verify that the licensee has defined abnormal conditions such that achieving the abnormal condition requires at least one contingency to have occurred, that the system will be closely monitored so that it is promptly detected, and that it will be promptly corrected upon detection. Also, there is generally more conservatism present in the abnormal case, because the parameters that are assumed to have failed are analyzed at their worst-case credible condition.

The increased risk associated with having a smaller MMS for abnormal conditions should be commensurate with, and offset by, the low likelihood of achieving the abnormal condition. That is, if the normal case $k_{eff}$ limit is judged to be acceptable, then the abnormal case limit will also be acceptable, provided the increased likelihood (that a system calculated to be subcritical will be critical) is offset by the reduced likelihood of realizing the abnormal condition because of the controls that have been established. Note that if two or more contingencies must occur to reach a given condition, there is no requirement to ensure that the resulting condition is subcritical. If a single $k_{eff}$ limit is used (i.e., no credit for unlikelihood of the abnormal condition), then the limit must be found acceptable to cover both normal and credible abnormal conditions. The reviewer should always make this finding considering specific conditions

and controls in the process(es) being evaluated.

*(4) Statistical Justification for the MMS*

The NRC does not consider statistical justification an appropriate basis for a specific MMS. Previously, some licensees have attempted to justify specific MMS values based on a comparison of two statistical methods. For example, the USLSTATS code issued with the SCALE code package contains two methods for calculating the USL: (1) The Confidence Band with Administrative Margin approach (calculating USL–1), and (2) the Lower Tolerance Band approach (calculating USL–2). The value of the MMS is an input parameter to the Confidence Band approach but is not included explicitly in the Lower Tolerance Band approach. In this particular justification, adequacy of the MMS is based on a comparison of USL–1 and USL–2 (i.e., the condition that USL–1, including the chosen MMS, is less than USL–2). However, the reviewer should not accept this justification.

The condition that USL–1 (with the chosen MMS) is less than USL–2 is necessary, but is not sufficient, to show that an adequate MMS has been used. These methods are both statistical methods, and a comparison can only demonstrate whether the MMS is sufficient to bound any statistical uncertainties included in the Lower Tolerance Band approach but not included in the Confidence Band approach. There may be other statistical or systematic errors in calculating $k_{eff}$ that are not included in either statistical treatment. Because of this, an MMS value should be specified regardless of the statistical method used. Therefore, the reviewer should not consider such a statistical approach an acceptable justification for any specific value of the MMS.

*(5) Summary*

Based on a review of the licensee's justification for its chosen MMS, taking into consideration the aforementioned factors, the staff should make a determination as to whether the chosen MMS provides reasonable assurance of subcriticality under normal and credible abnormal conditions. The staff's review should be risk-informed, in that the review should be commensurate with the MoS and should consider the specific facility and process characteristics, as well as the specific modeling practices used. As an example, approving an MMS value greater than 0.05 for processes typically encountered in enrichment and fuel fabrication facilities should require only a cursory review, provided that an acceptable validation has been performed and modeling practices at least as conservative as those in NUREG–1520 have been utilized. The approval of a smaller MMS will require a somewhat more detailed review, commensurate with the MMS that is requested. However, the MMS should not be reduced below 0.02 due to inherent uncertainties in the cross section data and the magnitude of code errors that have been discovered. Quantitative arguments (such as modeling conservatism) should be used to the extent practical. However, in many instances, the reviewer will need to make a judgement based at least partly on qualitative arguments. The staff should document the basis for finding the chosen MMS value to be acceptable or unacceptable in the Safety Evaluation Report (SER), and should ensure that any factors upon which this determination rests are ensured to be present over the facility lifetime (e.g., through license commitment or condition).

**Regulatory Basis**

In addition to complying with paragraphs (b) and (c) of this section, the risk of nuclear criticality accidents must be limited by assuring that under normal and credible abnormal conditions, all nuclear processes are subcritical, including use of an approved margin of subcriticality for safety. [10 CFR 70.61(d)]

**Technical Review Guidance**

Determination of an adequate MMS is strongly dependent upon specific processes, conditions, and calculational practices at the facility being licensed. Judgement and experience must be employed in evaluating the adequacy of the proposed MMS. In the past, an MMS of 0.05 has generally been found acceptable for most typical low-enriched fuel cycle facilities without a detailed technical justification. A smaller MMS may be acceptable but will require some level of technical review.[2] However, for reasons stated previously, the MMS should not be reduced below 0.02.

An MMS of 0.05 should be found acceptable for low-enriched fuel cycle processes and facilities if:

1. A validation has been performed that meets accepted industry guidelines (e.g., meets the requirements of ANSI/ANS–8.1–1998, NUREG/CR–6361, and/or NUREG/CR–6698).

2. There is an acceptable number of critical experiments with similar geometric forms, material compositions, and neutron energy spectra to applications. These experiments cover the range of parameters of applications, or else margin is provided to account for extensions to the AOA.

3. The processes to be evaluated include materials and process conditions similar to those that occur in low-enriched fuel cycle applications (i.e., no new fissile materials, unusual moderators or absorbers, or technologies new to the industry that can affect the types of systems to be modeled).

The reviewer should consider any factors, including those enumerated in the discussion above, that could result in applying additional margin (i.e., a larger MMS) or may justify reducing the MMS. The reviewer must then exercise judgment in arriving at an MMS that provides for adequate assurance of subcriticality.

Some of the factors that may serve to justify reducing the MMS include:

1. There is a predictable and dependable amount of conservatism in modeling practices, in terms of $k_{eff}$, that is assured to be maintained (in both normal and abnormal conditions) over the facility lifetime.

2. Critical experiments have nearly identical geometric forms, material compositions, and neutron energy spectra to applications, and the validation is specific to this type of application.

3. The validation methodology substantially exceeds accepted industry guidelines (e.g., it uses a very conservative statistical approach, considers an unusually large number of trending parameters, or analyzes the bias for a large number of subgroups of critical experiments).

4. The system $k_{eff}$ is demonstrably much less sensitive to uncertainties in cross sections or variations in other system parameters than typical low-enriched fuel cycle processes.

5. There is reliable information besides results of calculations that provides assurance that the evaluated applications will be subcritical (e.g., experimental data, historical evidence, industry standards or widely accepted handbooks).

6. The MMS is only applied to abnormal conditions, which are at least unlikely to be achieved, based on credited controls.

[2] For high-enriched and plutonium or other fuel cycle facilities, no general guidance on the appropriate MMS is given. The reviewer should consider any relevant differences between these facilities and low-enriched uranium facilities (e.g., generally increased sensitivity of $k_{eff}$ generally reduced cross section uncertainty) on a case-by-case basis.

Some of the factors that may necessitate increasing (or not approving) the MMS include:

1. The technical practices employed by the licensee are less conservative than standard industry modeling practices (e.g., do not adequately bound reflection or the full range of credible moderation, do not take geometric tolerances into account).

2. There are few similar critical experiments of benchmark quality that cover the range of parameters of applications.

3. The validation methodology substantially falls below accepted industry guidelines (e.g., it uses less than a 95% confidence in the statistical approach, fails to consider trends in the bias, fails to account for extensions to the AOA).

4. The validation results otherwise tend to cast doubt on the accuracy of the bias and its uncertainty (i.e., the critical experiments are not normally distributed, there is a large number of outliers discarded ($\gtrsim$ 2%), there are distinct subgroups of experiments with lower $k_{eff}$ than the experiments as a whole, trending fits do not pass goodness-of-fit tests, etc.).

5. The system $k_{eff}$ is demonstrably much more sensitive to uncertainties in cross sections or other system parameters than typical low-enriched fuel cycle processes.

6. There is reliable information that casts doubt on the results of the calculational method or the subcriticality of evaluated applications (e.g., experimental data, reported concerns with the nuclear data).

The purpose of asking the questions in the individual discussion sections is to ascertain the degree to which these factors either provide justification for reducing the MMS or necessitate increasing the MMS. These lists are not all-inclusive, and any other technical information that demonstrates the degree of confidence in the calculational method should be considered.

## Recommendation

The guidance in this ISG should supplement the current guidance in the nuclear criticality safety chapters of the fuel facility SRPs (NUREG–1520 and –1718). However, NUREG–1718, Section 6.4.3.3.4, states that the licensee should submit justification for the MMS, but then states that an MMS of 0.05 is ''generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible.'' These two statements are inconsistent. Therefore, NUREG–1718, Section 6.4.3.3.4, should be revised to remove the following sentence:

''A minimum subcritical margin of 0.05 is generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible.''

## References


ANSI/ANS–8.1–1998, ''Nuclear Criticality Safety in Operations with Fissionable Materials Outside Reactors,'' American Nuclear Society.

ANSI/ANS–8.17–2004, ''Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR [Light Water Reactor] Fuel Outside Reactors,'' American Nuclear Society.

''International Handbook of Evaluated Criticality Safety Experiments,'' NEA/NSC/DOC (95) 03, Nuclear Energy Agency, Organization for Economic Co-operation and Development, 2003.

IN 2005–13, ''Potential Non-Conservative Error in Modeling Geometric Regions in the KENO–V.a Criticality Code,'' May 17, 2005.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG–1520, ''Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility.'' NRC: Washington, DC March 2002.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG–1718, ''Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility.'' NRC: Washington, DC August 2000.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG/CR–6698, ''Guide for Validation of Nuclear Criticality Safety Calculational Methodology.'' NRC: Washington, DC January 2001.

U.S. Nuclear Regulatory Commission (U.S.) (NRC). NUREG/CR–6361, ''Criticality Benchmark Guide for Light-Water-Reactor Fuel in Transportation and Storage Packages.'' NRC: Washington, DC March 1997.


Approved: _____

Robert C. Pierson, Director Division of Fuel Cycle Safety and Safeguards, NMSS

Date: _____

## Appendix A—ANSI/ANS–8.17 Calculation of Maximum $k_{eff}$

ANSI/ANS–8.17–2004, ''Criticality Safety Criteria for the Handling, Storage, and Transportation of LWR Fuel Outside Reactors,'' contains a detailed discussion of the various factors that should be considered in setting $k_{eff}$ limits. This is consistent with, but more detailed than, the discussion in ANSI/ANS–8.1–1998.

The subcriticality criterion from Section 5.1 of ANSI/ANS–8.17–2004 is:

$$k_s \leq k_c - \Delta k_s - \Delta k_c - \Delta k_m$$

where $k_s$ is the calculated $k_{eff}$ corresponding to the application, $\Delta k_s$ is its uncertainty, $k_c$ is the mean $k_{eff}$ resulting from the calculation of critical experiments, $\Delta k_c$ is its uncertainty, and $\Delta k_m$ is the MMS. The types of uncertainties included in each of these ''delta'' terms is provided, and includes the following:

$\Delta k_s$ = (1) Statistical uncertainties in computing $k_s$; (2) convergence uncertainties in computing $k_s$, (3) material tolerances; (4) fabrication tolerances; (5) uncertainties due to limitations in the geometric representation used in the method; and (6) uncertainties due to limitations in the material representations used in the method.

$\Delta k_c$ = (7) Uncertainties in the critical experiments; (8) statistical uncertainties in computing $k_c$; (9) convergence uncertainties in computing $k_c$; (10) uncertainties due to extrapolating $k_c$ outside the range of experimental data; (11) uncertainties due to limitations in the geometric representations used in the method; and (12) uncertainties due to limitations in the material representations used in the method.

$\Delta k_m$ = An allowance for any additional uncertainties (MMS).

To the extent that not all 12 sources of uncertainty listed above have been explicitly taken into account, they may be allowed for by increasing the value of $\Delta k_m$. The more of these sources of uncertainty that have been taken into account, the smaller the necessary additional margin $\Delta k_m$. As a general principle, however, the MMS should be large compared to known uncertainties in the nuclear data and limitations of the methodology. However, a value of the MMS below 0.02 should not be used.

Frequently, the terms in the above equation relating to the application are grouped on the left-hand side of the equation, so that the equation is rewritten as follows:

$$k_s + \Delta k_s \leq \Delta k_c - \Delta k_c - \Delta k_m$$

where the terms on the right-hand side of the equation are often lumped together and termed the Upper Subcritical Limit (USL), so that the USL = $k_c - \Delta k_c - \Delta k_m$.

*Relation to the Minimum Subcritical Margin (MMS)*

The MoS has been defined as the difference between the actual value of $k_{eff}$ and the value of $k_{eff}$ at which the system is expected to be critical. The expected (best estimate) critical value of keff is the mean $k_{eff}$ value of all critical experiments analyzed (*i.e.*, $k_c$), including consideration of the uncertainty in the bias (*i.e.*, $\Delta k_c$). The calculated value of $k_{eff}$ for an application generally exceeds the actual (physical) $k_{eff}$ value due to conservative assumptions in modeling the system. In terms of the above USL equation, the MoS may be expressed mathematically as:

$$MoS = k_c - \Delta k_c - (k_s - \Delta k_{sa}) - \Delta k_s$$

where the term in parentheses is equal to the actual (physical) $k_{eff}$ of the application, $k_{sa}$. A term, $\Delta k_{sa}$, has been added to represent the difference between the actual and calculated value of $k_{eff}$ for the application (*i.e.*, $\Delta k_{sa}$ = change in $k_{eff}$ resulting from modeling conservatism). In terms of the USL:

$$MoS = USL + \Delta k_m - k_s + \Delta k_{sa} - \Delta k_s$$

The minimum allowed value of the MoS is reached when the calculated $k_{eff}$ for the application, $k_s + \Delta k_s$, is equal to the USL. When this occurs, the minimum value of the MoS is:

$$MoS \geq \Delta k_m + \Delta k_{sa}$$

Thus, adequate margin (MoS) may be assured either by conservatism in modeling

practices or in the explicit specification of $\Delta k_m$ (MMS). This is discussed in the ISG section on modeling conservatism.

**Glossary**

*Application:* calculation of a fissionable system in the facility performed to demonstrate subcriticality under normal or credible abnormal conditions.

*Area of applicability (AOA):* the ranges of material compositions and geometric arrangements within which the bias of a calculational method is established.

*Benchmark experiment:* a critical experiment that has been peer-reviewed and published and is sufficiently well-defined to be used for validation of calculational methods.

*Bias:* a measure of the systematic differences between calculational method results and experimental data.

*Bias uncertainty:* a measure of both the accuracy and precision of the calculations and the uncertainty in the experimental data.

*Calculational method:* includes the hardware platform, operating system, computer algorithms and methods, nuclear reaction data, and methods used to construct computer models.

*Critical experiment:* a fissionable system that has been experimentally determined to be critical (with $k_{eff} \approx 1$).

*Margin of safety:* the difference between the actual value of a parameter and the value of the parameter at which the system is expected to be critical with critical defined as $k_{eff} = 1 - \text{bias} - \text{bias uncertainty}$.

*Margin of subcriticality (MoS):* the difference between the actual value of $k_{eff}$ and the value of $k_{eff}$ at which the system is expected to be critical with critical defined as $k_{eff} = 1 - \text{bias} - \text{bias uncertainty}$.

*Minimum margin of subcriticality (MMS):* a minimum allowed margin of subcriticality, which is an allowance for any unknown uncertainties in calculating $k_{eff}$.

*Subcritical limit:* the maximum allowed value of a controlled parameter under normal case conditions.

*Upper subcritical limit (USL):* the maximum allowed value of $k_{eff}$ (including uncertainty in $k_{eff}$), under both normal and credible abnormal conditions, including allowance for the bias, the bias uncertainty, and a minimum margin of subcriticality.

[FR Doc. 06–5738 Filed 6–26–06; 8:45 am]

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## OFFICE OF MANAGEMENT AND BUDGET

### Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Federal Advisory Committee Meetings.

**SUMMARY:** The Office of Management and Budget announces one meeting of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

**DATES:** There is one meeting announced in this **Federal Register** Notice. A public meeting of the Panel will be held on July 12, 2006 beginning at 9 a.m. Eastern Time and ending no later than 5 p.m. There are additional public meetings of the Acquisition Advisory Panel for June and July 2006 previously published in the **Federal Register**. For a schedule of all public meetings, visit *http://acquisition.gov/comp/aap/index.html* and select the link called ''Schedule.''

**ADDRESSES:** The July 12th meeting will be held at the new FDIC Building, 3501 N. Fairfax Drive, Arlington, VA in the new auditorium Room C3050D. This facility is ¼ block off of the orange line metro stop for Virginia Square. The public is asked to pre-register one week in advance of the meeting due to security and/or seating limitations (see below for information on pre-registration).

**FOR FURTHER INFORMATION CONTACT:** Members of the public wishing further information concerning these meetings or the Panel itself, or to pre-register for the meeting, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov,* phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F Street, NW., Room 4006, Washington, DC 20405. Members of the public wishing to reserve speaking time must contact Mr. Emile Monette, AAP Staff Analyst, *in writing* at: *emile.monette@gsa.gov* or by fax at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:**

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meeting. Opportunity for public comments will be provided at this meeting. Any change will be announced in the **Federal Register**.

*Meeting*—While the Panel may hear from additional invited speakers, the focus of this meeting will be discussions of and voting on working group findings and recommendations from selected working groups, established at the February 28, 2005 and May 17, 2005 public meetings of the AAP (see *http://acquisition.gov/comp/aap/index.html* for a list of working groups). The Panel welcomes oral public comments at this meeting and has reserved one-half hour for this purpose. Members of the public wishing to address the Panel during the meeting must contact Mr. Monette, *in writing,* as soon as possible to reserve time (see contact information above).

(b) *Posting of Draft Reports:* Members of the public are encouraged to regularly visit the Panel's Web site for draft reports. Currently, the working groups are staggering the posting of various sections of their draft reports at *http://acquisition.gov/comp/aap/index.html* under the link for ''Working Group Reports.'' The most recent posting is from the Commercial Practices Working Group. The public is encouraged to submit written comments on any and all draft reports.

(c) *Adopted Recommendations:* The Panel has adopted recommendations presented by the Small Business, Interagency Contracting, and Performance-Based Acquisition Working Groups. While additional recommendations from some of these working groups are likely, the public is encouraged to review and comment on the recommendations adopted by the Panel to date by going to *http://acquisition.gov/comp/aap/index.html* and selecting the link for ''Adopted Recommendations.''

(d) *Availability of Meeting Materials:* Please see the Panel's Web site for any available materials, including draft agendas and minutes. Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Revised Commercial Practices Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel.

(e) *Procedures for Providing Public Comments:* It is the policy of the Panel to accept written public comments of any length, and to accommodate oral

public comments whenever possible. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

*Oral Comments:* Speaking times will be confirmed by Panel staff on a ''first-come/first-served'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Mr. Emile Monette, in writing (via mail, e-mail, or fax identified above for Mr. Monette) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and/or presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Mr. Monette one week in advance of the meeting.

*Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format).

**Please note:** Because the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(f) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

**Laura Auletta,**

*Designated Federal Officer (Executive Director), Acquisition Advisory Panel.*

[FR Doc. 06–5762 Filed 6–26–06; 8:45 am]

BILLING CODE 3110–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 26, 2006:

A Closed Meeting will be held on Thursday, June 29, 2006 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in this opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B), (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 29, 2006 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Litigation matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 22, 2006.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–5748 Filed 6–23–06; 12:01 pm]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE

**[Release No. 34–54019; File No. SR–CBOE–2006–55]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Position Limits for VIX Options

June 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE is filing this rule change to eliminate the position limits for the regular-size options on the CBOE Volatility Index® (''VIX''); the CBOE Nasdaq 100® Volatility Index (''VXN''); and the CBOE Dow Jones Industrial Average® Volatility Index (''VXD'').[6] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(b)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] CBOE also has an increased-value version of VIX, VXN, and VXD, which is calculated by multiplying the corresponding index level of the regular-size VIX, VXN, and VXD, respectively, by ten. *See* Securities Exchange Act Release No. 49698 (May 13, 2004), 69 FR 29152 (May 20, 2004) (''Notice of Filing Order Granting Accelerated Approval of a Proposed Rule change by [CBOE] Relating to Options on Certain CBOE Volatility Indexes''). Telephone conversation between Angelo Evangelou, Assistant General Counsel, CBOE, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on June 19, 2006.

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 those 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 parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange received approval from the Commission to list and trade cash-settled, European-style options on the regular-size VIX, VXN, and VXD [7] (together, ''Regular-Size Volatility Index Options''). VIX, VXN, and VXD are calculated using real-time quotes of at-the-money and out-of-the-money nearby and second nearby index put and call options of S&P 500® Index (SPX), the Nasdaq 100® Index (NDX), and the Dow Jones Industrial Average® Index (DJX), respectively. Generally, volatility indexes provides investors with up-to-the-minute market estimates of expected volatility of the corresponding securities index that search particular volatility index tracks.

The Exchange originally sought and received approval for position and exercise limits of Regular-Size Volatility Index Options in the amount of 25,000 contracts on either side of the market, with no more than 15,000 of such contracts in series in the nearest expiration month. The Exchange later sought and received approval to increase the position limits for the Regular-Size VIX, VXN, and VXD to 250,000 position and exercise limits on either side of the market for each of those contracts, with no more than 150,000 of such contracts in series in the nearest expiration month.[8] Since that time, trading volume in the Regular-Size Volatility Index Options has continued to grow dramatically. These products settle using quotes and traded prices from their corresponding index options. Given that there are no position limits for heavily traded broad-based index option contracts on the DJX, NDX, and SPX, the Exchange believes it is appropriate to eliminate the position limits for the Regular-Size VIX, VXN, and VXD. Because the size of the market underlying these broad-based index options is so large, CBOE believes that this should dispel any concerns regarding market manipulation.[9] By extension, CBOE believes that the same reasoning applies to VIX options since the value of VIX options are derived from the volatility of these broad based indexes.[10]

CBOE believes this rule change will enhance the ability of brokerage firms to facilitate their customers' volatility trading strategies.

2. Statutory Basis

By eliminating the position limits for Regular-Size Volatility Index Options, the Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and further the objectives of Section 6(b)(5) in particular,[12] 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 protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act.[13] and Rule 19b–4(f)(6) thereunder [14] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–(f)(6) [16] thereunder.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay.[17] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative delay would allow CBOE to eliminate position limits for Regular-Size Volatility Index Options, which would make the position limit treatment of these options consistent with that of broad-based index option contracts on the DJX, NDX, and SPX. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[18]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons ar 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

[7] *See* Securities Exchange Act Release No. 49563 (April 14, 2004), 69 FR 21589 (April 21, 2004) (''Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Relating to Options on Certain CBOE Volatility Indexes'').

[8] *See* Securities Exchange Act Release No. 53470 (March 10, 2006), 71 FR 13871 (March 17, 2006) (notice of immediate effectiveness for SR–CBOE–2006–26).

[9] Telephone conversation between Angelo Evangelou, Assistant General Counsel, CBOE, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission, on June 19, 2006.

[10] *Id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Number SR–CBOE–2006–55 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–55. This file number should be included on the subject lien if e-mail is used.To help the Comission 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–55 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–5680 Filed 6–26–05; 8:45 am]

**BILLING CODE 8010–01–M**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54021; File No. SR–CHX–2005–06]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Relating to the Exchange's Disciplinary Process

June 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2005, the Chicago Stock Exchange, inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On June 2, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to adopt, amend, and delete a number of rules relating to the Exchange's enforcement and disciplinary processes. This proposal, as amended, would: (1) Modify the procedures by which formal disciplinary actions and certain other matters that require a hearing are instituted by removing the Chief Executive Officer (''CEO'') from the authorization process and substituting the Exchange's Chief Regulatory Officer (''CRO''); (2) adopt a rule establishing the criteria by which Hearing Officers are selected and providing a procedure by which a respondent may move to replace a Hearing Officer based upon a showing of bias or conflict of interest; (3) delete the requirement that the CEO approve, modify, or reject the findings of a Hearing Officer in a formal disciplinary action and certain other matters that require a hearing; (4) modify the existing rules relating to appeals of Hearing Officer decisions to permit the Exchange to appeal an adverse decision; (5) amend the Exchange's rules relating to the non-payment of fines to provide for additional sanctions; and (6) make various language and organizational changes. The text of this proposed rule change is available on the Exchange's Web site *http://www.chx.com/rules/proposed_rules.htm* 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 CHX 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 CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In light of the Commission's recent guidance that a self-regulatory organization (''SRO'') should ensure that its ''regulatory function is strong, vigorous, and sufficiently independent and insulated from improper influence from management or any regulatory entity,'' [4] the CHX has reviewed its existing rules relating to its disciplinary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revises the proposal to: (i) Clarify the role of Exchange counsel in both disciplinary and delisting proceedings by providing that Exchange counsel—who are not part of the CHX's Market Regulation Department—can serve as counsel for the Hearing Officer, so long as these attorneys have not directly participated in any examination, investigation or decision associated with the initiation or conduct of the particular proceeding; (ii) delete proposed changes to the Exchange's Minor Rule Violation Plan contained in the original filing, which have been filed separately with the Commission in File No. SR–CHX–2005–39; (iii) eliminate the proposed addition of new types of violations to the existing summary procedure for handling minor infractions; (iv) clarity that any person against whom a fine is imposed for minor infractions pursuant to CHX Art. XII, Rule 2(a) will be provided with notice of the violation and fines imposed; (v) provide dual authority to the Chief Executive Officer and Chief Regulatory Officer to impose restrictions on Participant Firm operations for failure to meet the requirements of CHX Art. XI, rule 3, ''Net Capital and Aggregate Indebtedness;'' (vi) modify the Exchange's delisting rule, CHX Art. XXVIII, Rule 4, to make the hearing and appeal process for delisting decisions similar to the hearings that might be held in other matters and to provide that the initial delisting decision-makers are not the same persons who would hear an appeal from that decision; and (vii) incorporate additional details that had not been included in the original version of the proposal, but which have been added to respond to comments from Commission staff. Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (order approving File No. SR–NYSE–2003–34) (the '' NYSE Governance Order'').

process.[5] The Exchange is proposing a number of modifications, addition and deletions to the rules governing Exchange disciplinary proceedings. In general, these changes serve to eliminate any appearance of a conflict of interest by removing the CEO from the authorization and determination of disciplinary charges. The Exchange also proposes to enhance the ability of its regulatory staff to effectively prosecute disciplinary actions by endowing the Exchange with the right to appeal adverse decisions and providing for addition sanctions for the failure of an Exchange Participant to promptly pay a disciplinary fine. The Exchange is also proposing various language and organizational changes to the disciplinary rules.

a. Authorization of Formal Disciplinary Actions

The Exchange's current rules require that the CEO authorize the institution of all major disciplinary actions.[6] The Exchange believes that this requirement is outdated and somewhat inconsistent with recent Commission direction that SROs must possess ''sufficient independence in the regulatory process to prevail against undue interference or influence from the persons or entities being regulated.'' [7] The CHX is of the belief, confirmed by the Independent Consultant appointed by the terms of the Order,[8] that there is no evidence of any actual conflict of interest having influenced the decision of the Exchange's CEO regarding any disciplinary matters. Nevertheless, the Exchange proposes to remove the CEO from such decision-making processes to address any negative public perception of a possible conflict of interest. In place of the current structure, the Exchange proposes that disciplinary and related proceedings against Exchange Participants be authorized by the Exchange's CRO. In the case of proceedings based upon a Participant's failure to maintain operational capability under CHX Art. XI, Rule 8, the Exchange has determined to permit the institution of such proceedings at the direction of either the CEO or the CRO.[9] The Exchange believes that dual authority is appropriate in such proceedings since, unlike traditional disciplinary matters, they can involve a mixture of business and regulatory concerns.

Vesting the authority to initiate disciplinary actions in the Exchange's CRO serves to bolster the apparent and actual independence of the Exchange's regulatory processes. The CRO's primary mission is to ensure that the Exchange has an effective regulatory program reasonably designed to ensure compliance by is Participants with the Exchange's rules and the federal securities laws. The Exchange acknowledges that the CRO reports to the CEO and therefore could conceivably be influenced by the latter's views on a proposed disciplinary matter. However, the CRO is required to appear before, and report on the Exchange's regulatory programs not less than quarterly to, the Exchange's Regulatory Oversight Committee, a committee of the CHX's Board of Directors (''Board'') predominately composed of independent directors, which is charged with oversight of the Exchange's regulatory function.[10] The Exchange believes that this review by the Regulatory Oversight Committee serves as a reasonable mechanism to prevent any conflict of interest from interfering with the Exchange's regulatory role. Moreover, the Exchange notes that the Commission has acknowledged that there is no''one size fits all'' model for discharging an SRO's oversight function.[11] The Exchange believes that this proposed structure is appropriate given the scope and nature of its regulatory unit and mission.

In addition, the Exchange proposes to delete paragraph (b) of CHX Art. XII, Rule 2 to eliminate the ''summary hearing'' process noted therein and to delete paragraph (c) regarding the ''settlement procedure.'' To the extent that action under CHX Art. XII, Rule 2(a), '' Minor Infraction,'' is not warranted under the circumstances involved, the CRO may refer the matter for a formal disciplinary action under CHX Art. XII, Rule 1, ''Investigation and Written Report of Investigation Findings.'' Thus, the current hearing procedure noted in CHX Art. XII, Rule 2(b) is redundant and unnecessary. The CHX also proposes to delete the suspension and termination rules applicable to specialists, odd-lot dealers, and market makers in CHX Articles XXX, XXXI, and XXXIV, respectively, as obsolete and redundant of the Emergency Suspension provisions under CHX Art. VII, Rule 2. Finally, the Exchange also proposes to amend the process under current CHX Art. XII, Rule 2(d), ''Collateral Proceedings,'' to provide for the appointment of a Hearing Officer to oversee proceedings to suspend or bar a Participant or associated person based upon the imposition of a comparable sanction by another SRO.[12] The current version of the rule provides for the CEO to conduct that hearing personally.

b. *Criteria for the Section of Hearing Officers*

The Exchange seeks to amend its disciplinary rules to provide for criteria to be followed in the selection and appointment of Hearing Officers in disciplinary proceedings. Currently, the rules of the Exchange provide only that the CEO shall select a Hearing Officer.[13] While the Exchange continues to believe that it is appropriate for the CEO to select the Hearing Officer, the Exchange would like to create requirements of professional competence and experience and the absence of bias or any conflict of interest that the CEO would be required to consider in selecting a Hearing Officer.[14] In fairness to the

[5] The CHX's review also is being conducted pursuant to the requirements of the Commission's September 30, 2003 Order Instituting Proceedings against the Exchange. Securities Exchange Act Release No. 48566 (September 30, 2003), Administrative Proceeding File No. 3–11282 (the ''Order''). Certain aspects of this filing are also based upon the recommendations of the Independent Consultant appointed by the terms of the Order.

[6] These proceedings include: CHX Art. VII, Rule 2, ''Emergency Suspensions;'' CHX Art. XI, Rule 3(d), ''Restrictions on Operations;'' CHX Art. XI, Rule 8, ''Operational Capability;'' CHX Art. XII, Rule 1(b), ''Disciplinary Actions;'' CHX Art. XII, Rule 2, ''Summary Procedure;'' CHX Art. XXVIII, Rule 4, Interpretation .01, ''Removal of Securities;'' CHX Art. XXX, Rule 8, ''Termination of Specialist Registration;'' CHX Art. XXXI, Rule 14, ''Termination of Specialist Registration;'' CHX Art. XXXIV, Rule 15, ''Suspension of Registered Market Makers.'' Authorization by the CEO is not required to institute an action pursuant to the Exchanges's Minor Rule Violation Plan. Such actions are authorized by a Minor Rule Violation panel, which is appointed by the CEO. *See* CHX Art. XII, Rule 9, '' Minor Rule Violations.'' The Exchange proposes to delete the procedures of CHX Articles XXX, XXXI and XXXIV regarding *ex parte* suspension of Participants since the process is both outdated and duplicative of the Emergency Suspension process detailed in CHX Art. VII, Rule 2, which is being updated in this filing.

[7] NYSE Governance Order, *supra* note 4.

[8] *See* Order, *supra* note 5.

[9] The Exchange proposes to extend this same dual authority to the decision to impose restrictions on Participant Firm operations under CHX Art. XI Rule 3(d), relating to net capital and aggregate indebtedness requirements.

[10] The composition requirements and responsibilities of the Exchange's Regulatory Oversight Committee were set forth in the Order. *See* Order, *supra* note 5.

[11] *See* NYSE Governance Order, *supa* note 4, at n. 96 and accompanying text.

[12] Current CHX Art. XII, Rule 2(d) would become proposed CHX Art. XII, Rule 2(b) because of the proposed deletion of other rule provisions.

[13] *See* CHX Art. XII, Rule 5(a), ''Conduct of Hearing.''

[14] *See* proposed CHX Art. XII, Rule 5(e), ''Appointment of Hearing Officer.'' These provisions would require that the CEO give reasonable consideration to the prospective Hearing Officer's professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, the absence of bias and any actual or perceived conflict of interest and any other relevant factors.

respondent, the Exchange also proposes to create a process by which the respondent could object to a particular Hearing Officer on the grounds of bias or conflict of interest.[15]

c. *Initial Decision by Hearing Officers*

CHX rules currently require that the proposed decision of a Hearing Officer be reviewed by the CEO of the Exchange.[16] The CEO may take a number of different actions with respect to the proposed judgment. The CEO may approve or modify the proposed decision, remand the matter for further consideration, or even conduct additional proceedings himself. The Exchange's review of comparable provisions of the rules of other SROs has not revealed a similar requirement relating to disciplinary proceedings. In order to eliminate any appearance of a conflict of interest, the Exchange proposes to eliminate the requirement that the CEO review the proposed decision of the Hearing Officer and instead provide that the Hearing Officer issue a final, albeit appealable, decision.

d. *Appeal of Disciplinary Proceedings*

Under the current CHX rules, disciplinary orders may only be appealed by the respondent to the Judiciary Committee of the Exchange.[17] According to the CHX, the rules of most other exchanges and SROs permit appeals to be brought by either party. The Exchange believes that there may be instances when the Exchange's Market Regulation staff that prosecuted a particular matter may wish to appeal an adverse decision. For example, where the staff believes that a Hearing Officer applied an incorrect standard of law in making his or her decision, an appeal may be appropriate and desirable. Providing the staff of the Exchange with the authority to initiate an appellate review would put the staff in the same position as the respondent, and therefore appears to increase the fundamental fairness of the disciplinary process.

In addition, the Exchange proposes to streamline the appellate review process for disciplinary actions. Currently, appeals are heard first by a Judiciary Committee, then by the Executive Committee and finally, on a discretionary basis, by the Board.[18] In place of this three-tiered structure, the Exchange proposes to eliminate appellate review by the Executive Committee. Appeals would be heard by a Judiciary Committee and, on a discretionary basis, by the full Board.[19] The removal of an unnecessary layer of review should reduce the time required to reach a final judgment, thus contributing to the fair and effective enforcement of the Exchange's rules.

e. *Failure to Promptly Pay Fines*

The Exchange has noticed a recent trend that some Minor Rule Violation Plan (*MRVP*) fines are not being paid in a timely manner. Under existing Exchange rules, Participants who fail to pay fines owing to the Exchange within 60 days of the date such amount became payable may be suspended, after due notice, until such payment is made.[20] While a suspension rule may be an effective deterrent in most circumstances, the Exchange would like the flexibility to assess additional fines or other sanctions, either in lieu of or in addition to a suspension, as added inducement to avoiding late payment. Moreover, the Exchange would like to explicitly include associated persons of Participants in the text of the rule.[21]

f. *Procedural Changes*

Although the Exchange's current rule set forth the general process to be followed in the course of a disciplinary proceeding, the rules contain few details about the time frames within which various tasks must be accomplished; do not provide for pre-hearing discovery; and do not set forth certain other details about the disciplinary process.

The Exchange's proposal would attempt to provide more clarity to these proceedings. As an initial matter, the proposed rules would set forth clear time frames in which various events must occur, *e.g.,* responding to charges, filing of motions, and issuing of orders.[22] The proposed rules also would confirm the information that should be included in certain notices;[23] create limited rights to prehearing discovery for all parties to a proceeding;[24] and set briefing schedules in various situations.[25]

Somewhat more substantively, the proposed rules would: (i) Confirm that the Board or the Executive Committee could direct the CRO to initiate a disciplinary proceeding;[26] (ii) confirm that a Hearing Officer must make specific findings as to each proffered charge and impose an appropriate sanction for violations that are found to have occurred;[27] (iii) confirm that the Exchange will serve a party fined under the summary procedure in CHX Art. XII, Rule 2 with a notice that provides specific information about the violation and the associated fine;[28] (iv) clarify that fines assessed under the summary procedure of CHX Art. XII, Rule 2 are not publicly reported, except as may be

[15] *See* proposed CHX Art. XII, Rule 5(h), ''Impartiality of Hearing Officer.'' Any motion seeking the disqualification of the Hearing Officer would need to be filed within 15 days of the Hearing Officer's appointment.

[16] *See* CHX Art. XII, Rule 5(b), ''*Decision.*'' This provision currently is identified as Rule 5(b), but would be changed to Rule 5(f) because of the proposed addition of other rule provisions.

[17] *See* CHX Art. XII, Rule 6(a), *Judiciary Committee.*

[18] *See* CHX Art. XII, Rule 6.

[19] *See* proposed CHX Art. XII, Rule 6(a) and (b).

[20] *See* CHX Art. XIV, Rule 10, ''*Failure to Pay Debts.*'' Suspension of a Participant for Non-payment operates as a termination of the Participant's registration with the Exchange.

[21] The Exchange believes that it already has the authority to suspend such persons for nonpayment of fines pursuant to CGX ART. XII, Rule 8, ''*Disciplinary Jurisdiction,*'' but proposes to amend the language of CHX Art. XIV, Rule 10, to provide additional clarity to its Participants and their associated persons.

[22] For example, in CHX Art. XII, the proposed changes would require: (i) That a respondent file a written answer to charges within 30 days from the date of service of the charges (CHX Rule 5(b)); (ii) that the Hearing Officer schedule a hearing within 30 days after the filing of an answer (CHX Rule 5(d)); and (iii) that the Hearing Officer ordinarily issue an order within 90 days after the conclusion of a hearing (CHX Rule 5(f)). In CHX Art. XXVIII, the proposed rule changes similarly would require that the Hearing Officer schedule a hearing within 30 days after receipt of an issuer's demand for a hearing, and that the Hearing Officer issue an order within 90 days after the conclusion of a hearing (CHX Rule 4(d)).

[23] The proposed rules would confirm that, in any action taken by the Exchange pursuant to the summary procedure set forth in CHX Art. XII, rule 2(a), the person against whom a fine is imposed shall be served (as also provided in CHX Art. XII, Rule 1(c)) with a written statement (the ''Notice of Fines''), signed by the CRO or his designee, setting forth: (i) The rule(s) or policy(ies) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; (iv) the date on which such action is taken; and (v) the date on which such determinination becomes final and such fine becomes due and payable to the Exchange, or on which such action must be contested. The Exchange currently provides this notice to persons against whom a fine is imposed. This new provision would confirm that that practice should continue.

[24] Under the proposed rules, the parties must exchange a list of witnesses that they plan to call to testify at least 30 days before the hearing. *See* proposed CHX Art. XII, Rule 5(c)(1), ''Prehearing Procedure.'' Any party may request production of some or all of the documents that an opposing party intends to introduce as evidence. This request must be made at least 45 days prior to the hearing, and the documents must be produced at least 30 days before the hearing. *See* proposed CHX Art, XII, Rule 5(c)(2). Under the proposed rules, a party that does not identify witnesses or produce requested documents would be barred from presenting those witnesses or documents at the hearing, unless the party seeking to introduce the evidence could show good cause for the failure to earlier identify the witnesses or documents and could establish that the failure to allow the presentation of the evidence would result in undue hardship to that party. *See* proposed Art, XII, Rules 5(c)(1) and 5(c)(2).

[25] *See* proposed CHX Art. XII, Rule 5(h) (regarding motions to disqualify the hearing examiner) and CHX Art. XII, Rule 6(a) (regarding appeals to the Judiciary Committee).

[26] *See* proposed CHX Art. XII, Rule 1(b)(2).

[27] *See* proposed CHX Art. XII, Rule 5(f).

[28] *See supra* note 23.

required by Rule 19d–1 under the Act;[29] (v) extend the emergency suspension rules to associated persons of Participants;[30] and (vi) confirm that the three-person board panel that hears an appeal from an emergency suspension decision would consist of at least two public directors on the Board.[31] The Exchange also proposes to add provisions that set forth the required content of settlement agreements in disciplinary proceedings.[32] The Exchange believes that these proposed changes provide important clarifications that are consistent with the Exchange's obligation to provide a fair and vigorous procedure for the enforcement of its rules.

g. Removal of Securities

Other proposed changes can be found in CHX Art. XXVIII, which contains the Exchange's rules relating to the listing of securities. In this article, the Exchange proposes to add text that sets forth new requirements of professional competence and experience, and the absence of bias or any conflict of interest, that the CEO would be required to consider in selecting a Hearing Officer for a proposed delisting hearing.[33] The proposal would also incorporate a process by which an issuer could object to a particular Hearing Officer on the grounds of bias or conflict of interest.[34] In addition, the proposed changes in this article would confirm that a Hearing Officer's decision is final unless a review is specifically demanded and would set forth the process and standards that should be followed by the Executive Committee on any appeal of the Hearing Officer's decision.[35] Finally, the proposed changes would make clear that the final decision to delist a security, on appeal, would be made by the Executive Committee (not by the Exchange's Board) and would confirm that the initial delisting decision-makers are not the same persons who would hear an appeal from that decision.[36]

h. Other Changes

The Exchange has made a number of other miscellaneous changes to its disciplinary rules in an effort to modernize the terms used in referring to the parties to proceedings. Some of the terminology changes include substituting ''respondent'' for ''accused'' and substituting ''hearing'' for ''trial.''[37]

The Exchange anticipates that these proposed rule changes, if and when approved by the Commission, would be implemented for any newly-commenced proceeding as soon as possible after such Commission approval occurs. Upon approval of the proposed rule changes, the Exchange will issue a notice to its Participants that describes the changes and that confirms that the changes will apply to any proceeding that is initiated by the Exchange on or after a date that immediately follows the date of the Commission's approval.[38]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[39] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[40] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**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–CHX–2005–06 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2005–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[29] *See* proposed CHX Art. XII, Rule 2(a).

[30] *See* proposed CHX Art. VII, Rule 2.

[31] *See* proposed CHX Art. VII, Rule 2(b).

[32] *See* proposed CHX Art. XII, Rule 1(d). This proposed provision would confirm that a respondent could settle a proceeding at any time by entering into a settlement agreement with the Exchange without admitting or denying the charges, except as to jurisdiction (which must be admitted). Under the proposed rules, a settlement agreement must contain a waiver by the respondent of all rights to appeal and a proposed penalty to be imposed, which must be reasonable under the circumstances and consistent with the seriousness of the alleged violations. The CRO would have the sole right to approve a proposed settlement agreement.

[33] *See* proposed CHX Art. XXVIII, Rule 4(d).

[34] *Id.*

[35] *See* proposed CHX Art. XXVIII, Rule 4(d)–(e).

[36] The current rule provides that securities may be delisted by the Exchange's Board and that an appeal from that decision is made to a hearing examiner and, ultimately, to the Exchange's Executive Committee. *See* CHX Art. XXVIII, Rule 4 and Interpretation and Policy .01. The Exchange believes that it is appropriate to remove any suggestion that the same persons who make a delisting decision might hear the appeal from that decision. Under the proposed change, the Exchange's staff would make an initial delisting determination, which could be heard by a hearing examiner and then appealed to the Exchange's Executive Committee.

[37] *See, e.g.,* proposed CHX Art. XII, Rule 1(b) (introducing the term ''respondent'') and CHX Art. XII, Rule 5 (introducing the term ''hearing'' instead of ''trial'').

[38] These changes would apply to the appeal of any MRVP fine that is imposed on or after the approval date, as well as to any formal disciplinary proceeding, suspension decision or delisting action that the Exchange initiates on or after the approval date.

[39] 15 U.S.C. 78f(b).

[40] 15 U.S.C. 78f(b)(5).

Commission, and all written communications relating to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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–CHX–2005–06 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[41]

**J. Lynn Taylor,**

*Assistant Secretary*

[FR Doc. 06–5682 Filed 6–26–06; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54016; File No. SR–ISE–2006–32]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

June 19, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the Act),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2006, the International Securities Exchange, Inc. (ISE or Exchange) filed with the Securities and Exchange Commission (Commission) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On June 15, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to increase the threshold average daily volume (ADV) levels for the reduction and waiver of execution fees and the waiver of comparison fees with respect to trading options on the Nasdaq 100 Index Tracking Stock® (QQQQ) and transactions executed in the Exchange's Facilitation Mechanism.

The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, 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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to increase the threshold ADV levels for the reduction and waiver of execution fees and the waiver of comparison fees in the Exchange's Schedule of Fees for (i) trading options in the QQQQ and (ii) transactions executed through the Exchange's Facilitation Mechanism. In November 2003, on a pilot basis, the Exchange adopted a reduction and a waiver of execution fees and a waiver of comparison fees for QQQQ options.[6] In September 2004, again on a pilot basis, the Exchange adopted a similar reduction and a waiver of execution fees and a waiver of comparison fees on transactions executed through the Exchange's Facilitation Mechanism.[7]

Discount on QQQQ Execution and Comparison Fees

Under the current QQQQ pilot program, when a member's monthly ADV in QQQQ options reaches 8,000 contracts, the member's execution fee for the next 2,000 contracts is reduced by $0.10 per contract.[8] Further, when a member's monthly ADV in QQQQ options reaches 10,000 contracts, the Exchange waives the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter. The Exchange states that its volume in QQQQ options traded has increased as a result of this pilot program. As a result, ISE now proposes to increase the threshold ADV levels at which the fee reduction and waiver for QQQQ options traded apply, such that the $0.10 per contract fee reduction shall apply for the next 2,000 contracts when a member's monthly ADV in QQQQ options reaches 10,000 contracts. Further, when a member's monthly ADV reaches 12,000 contracts, the Exchange will waive the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter.

Discount on Facilitation Mechanism Fees

With respect to the Exchange's Facilitation Mechanism, the structure of

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[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 deleted brackets included in the initial Exhibit 5. The brackets reflected a proposed rule change in SR–ISE–2006–30, which was originally submitted under Section 19(b)(3)(A) of the Act, rejected by the Commission, and subsequently re-filed by the Exchange under Section 19(b)(2) of the Act. The Exchange also made clarifying changes to the purpose section of the filing. The correction to Exhibit 5 and the clarifications to the purpose section of the original filing do not affect the fees covered by this filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* Securities Exchange Act Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004). *See also* Securities Exchange Act Release Nos. 49853 (June 14, 2004), 69 FR 35087 (June 23, 2004) (extending the pilot program until November 30, 2004); 50900 (December 21, 2004), 69 FR 78075 (December 29, 2004) (extending the pilot program until November 30, 2005); and 52934 (December 9, 2005), 70 FR 74859 (December 16, 2005) (extending the pilot program until November 30, 2006).

[7] *See* Securities Exchange Act Release Nos. 50658 (November 12, 2004), 69 FR 67768 (November 19, 2004); and 52934, *supra* note 6 (extending the pilot program until November 30, 2006). The Facilitation Mechanism is a process by which Electronic Access Members facilitate block-size orders. Options traded in the Facilitation Mechanism are treated as Firm Proprietary orders and, as such, are subject to an execution and comparison fee of $0.15 and $0.03 per contract per side, respectively.

[8] This execution fee and any reduction or waiver thereof is applicable to Firm Proprietary orders and ISE Market Maker orders. For ISE Market Maker orders, the execution fee is currently between $0.21 and $0.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $0.03 per contract per side.

the reduction and waiver of the execution fee for the Facilitation Mechanism (''facilitation execution fee'') and the waiver of the comparison fee are similar to the structure of the reduction and waiver of the QQQQ execution fee and the waiver of the comparison fee noted above. That is, when a member's monthly ADV in the Facilitation Mechanism reached 8,000 contracts, the member's facilitation execution fee for the next 2,000 contracts transacted in the Facilitation Mechanism is reduced by $0.10 per contract.[9] Further, when a member's monthly ADV in the Facilitation Mechanism reaches 10,000 contracts, the Exchange waives the entire facilitation execution fee and the comparison fee for each contract transacted in the Facilitation Mechanism thereafter. The Exchange believes that the current pilot program has also encouraged members to use the Facilitation Mechanism, illustrated by its increased volume. As such, the Exchange now also proposes to increase the threshold ADV levels at which the fee reduction and waiver for options traded in the Facilitation Mechanism apply, such that the $0.10 per contract fee reduction shall apply for the next 5,000 contracts when a member's monthly ADV in the Facilitation Mechanism reaches 15,000 contracts. Further, when a member's monthly ADV reaches 20,000 contracts, the Exchange will waive the entire execution fee and the comparison fee for each option contract traded in the Facilitation Mechanism thereafter.

The Exchange believes that the proposed increases of the threshold levels will allow it to maintain its competitiveness in trading QQQQ options and encourage continued use by members of the Facilitation Mechanism.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,[10] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, these fees would extend current reductions and waivers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such amended 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.[13]

**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 from (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2006–32 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http:www.sec.gov/rules/sro/shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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 filings also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–32 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–5677 Filed 6–26–06; 8:45 am]

**BILLING CODE 8010–01–M**

[9] This execution fee and any reduction or waiver thereof is applicable only to Firm Proprietary orders. *See supra* note 7.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 19b–4(f)(2).

[13] The effective date of the original proposed rule is June 1, 2006. The effective date of Amendment No. 1 is June 15, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 15, 2006, the date on which the ISE submitted Amendment No. 1 *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54018; File No. SR–NSX–2006–06]**

## Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change To Allow the Primary Market Print Protection Rule To Be Applied on an Optional Basis

June 20, 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 12, 2006, the National Stock Exchange (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NSX Rule 11.9(u), which pertains to the preferencing of public agency limit orders that a dealer represents as agent, to eliminate the specific requirement that a Designated Dealer execute eligible limit order if certain conditions occur in the primary market (referred to as the ''primary market print protection'' or the ''limit order protection'' provision). Dealers and members would still be permitted, but not required, to guarantee the execution of a limit order as principal upon the occurrence of a transaction in another market. The text of the proposed rule change is set forth below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

**Rule 11.9 National Securities Trading System**

(a)–(u) No change.

Interpretations And Policies

.01 Limit Order Protection

Public agency limit orders in securities [other than Nasdaq/NNM Securities shall] *may* be filled if one of the following conditions occur:

(a) the bid or offering at the limit price has been exhausted in the primary market (NOTE: orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market);

(b) there has been a price penetration of the limit in the primary market; or

(c) the issue is trading at the limit price on the primary market, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the customer and the Designated Dealer agree to a specific volume related or other criteria for requiring a fill.

(d) with respect to paragraph (c) above, if the issue has traded in a primary market's after-hours closing price trading session, the Designated Dealer shall fill limit orders designated as eligible for limit order protection based on volume that prints in a primary market's after-hours closing price trading session (a ''GTX'' order) at such limit price.

[In unusual trading situations, a Designated Dealer may seek relief from the above requirements from two Trading practices Committee members or a designated member of the Exchange staff who would have the authority to set execution prices.]

## II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NSX Rule 11.9(u), which pertains to the preferencing of public agency limit orders that a dealer represents as agent, to eliminate the primary market print protection provision contained in Interpretation and Policy .01.[3] However, dealers and other members would still be permitted, but not required, to execute orders pursuant to the limit order guarantee provisions in NSX Rule 11.9(a)(12), (k), (l), and (p).

NSX Rule 11.9(u), Interpretation and Policy .01 sets out specific primary market-related execution guarantees for non-Nasdaq-listed securities. Under the primary market print protection policy, a public agency limit order in an exchange-listed security routed to an NSX dealer for execution on NSX would be filled if the bid or offering at the limit price has been exhausted in the primary market; there has been a price penetration of the limit in the primary market; or the issue is trading at the limit price on the primary market, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the customer and the Designated Dealers agree to a specific volume related or other criteria for requiring a fill.[4] NSX states that, at the time this policy was adopted, the listing markets were generally the primary source of liquidity, the minimum price variation was ⅛ point, and more size was available at the national best bid or offer (''NBBO''). The larger spreads and quote sizes could create situations where a security might trade in the primary market all day at a customer limit price without an NSX dealer's customer limit order being filled absent the requirement that Designated Dealers provide primary market print protection. The Exchange states that the primary market print protection thus provided a means to ensure that a customer limit order received as timely an execution as it would have received on the primary and was also a competitive tool to attract order flow to the NSX dealer units.

The Exchange proposes to eliminate the requirement for Designated Dealers to provide primary market print protection in light of changes in the industry that have occurred since the requirement was first adopted in 1996. Since that time, the industry has converted to decimal trading and the availability of liquidity at the NBBO price point has declined, in many cases significantly. NSX states that, as a result, a dealer that may choose to offset his position in the primary market may often encounter great difficulty in accessing liquidity at the primary market price that it is obligated to provide. This is particularly true in the case of manually-executed orders, given the associated time latency and the frequency with which quotes in markets change.

In addition to decimalization, the Commission has adopted the order handling rules, including the limit order display requirements of Rule 604 of Regulation NMS under the Act.[5] The display of a limit order, in conjunction with the requirements that other markets not trade-through that price, makes it more likely that the limit order will be executed. NSX states that there is also increased competition between the various markets, and the primary market may not necessarily be the best source for liquidity. Electronic communication networks have also formed as alternative liquidity providers to the markets, and automated order routing system capabilities to the various markets have been enhanced.

[3] Interpretation and Policy .01 to NSX Rule 11.9(u) was initially adopted as part of the Exchange's (then known as The Cincinnati Stock Exchange or ''CSE'') preferencing program in 1996. *See* Securities Exchange Act Release No. 37046 (March 29, 1996), 61 FR 15322 (April 5, 1996) (File No. SR–CSE–95–03).

[4] With respect to paragraph (c), the rule provides that, if the issue has traded in a primary market's after-hours closing price trading session, the Designated Dealer shall fill limit orders designated as eligible for limit order protection based on volume that prints in a primary market's after-hours closing trading session (a ''GTX'' order) at such limit price. The interpretation also provides that dealers may seek relief from the limit order protection requirements in unusual trading situations.

[5] 17 CFR 242.604.

The Exchange also notes that, in contrast to the environment when NSX enacted its rule provisions mandating primary market print protection for exchange-listed issues, NSX order-sending firms now have access to comprehensive order execution quality statistics.

These changes make it such that the mandatory aspects of the primary market print protection policy are no longer necessary to ensure timely executions or as a ''front-end'' execution price guarantee to attract order flow. The Exchange notes that many dealers believe that it is no longer appropriate to mandate they guarantee the execution of resting limit orders for exchange-listed issues based on activity in the primary market. NSX states that they believe that, in today's trading environment, the exchange-listed primary market print protection exposes them to unwarranted liability, which they often have no ability to mitigate.

Accordingly, the Exchange believes that the primary market print protection provisions of its Rules should be eliminated. In making this proposal, the Exchange notes that under separate provisions of the NSX Rules, dealers and other members are currently permitted, but not required, to guarantee the execution of a limit order as principal upon the occurrence of a transaction in another market, not just the primary markets, at the price of such order.[6] Dealers and other members will continue to have this ability after the elimination of the primary market print protection rule. Accordingly, NSX dealers can continue to execute resting limit orders voluntarily when executions at the limit price occur in other markets as a means of satisfying their best execution obligations and maintaining superior execution quality statistics, but they not have more flexibility to determine how best to service those orders.

Importantly, the Exchange notes that these revisions do not affect the trading ahead prohibitions of NSX Rule 12.6, the best execution obligations of NSX Rule 12.10, or any other dealer obligations. The Exchange states that its Regulatory Services Division will continue its surveillance of order executions to ensure that NDX dealers meet their obligations to each order.

2. Statutory Basis

The Exchange believes that 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 is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NSX consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2006–06 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2006–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying the principal office of NSX. All comments received will be posed without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NSX–2006–06 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–5681 Filed 6–26–06; 8:45 am]

**BILLING CODE 8010–01–M**

[6] Under the Exchange's priority principles, dealers and members are permitted to effect the execution of a public agency limit order on NSX pursuant to a limit order guarantee. The execution of an order pursuant to a limit order guarantee takes priority over orders and bids or offers in the Exchange's trading system (known as the National Securities Trading System or ''NSTS'') and is deemed to be a transaction effected on NSX in the same manner as if the transaction were executed through NSTs and must be reported to the Exchange as promptly as possible and in any event within one minute of execution. *See* NSX Rules 11.9(a)(12), (k), (l) and (p).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54020; File No. SR–NYSE–2006–35]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Listing and Trading the Shares of Six CurrencyShares Trusts

June 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2006 the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which items have been substantially prepared by the Exchange. On June 19, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and is granting accelerated approval to the proposed rule change, as amended.

### 1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under Rules 1300A and 1301A *et seq.:* CurrencyShares™ Australian Dollar Trust, which issues Australian Dollar Shares; CurrencyShares™ British Pound Sterling Trust, which issues British Pound Sterling Shares; CurrencyShares™ Canadian Dollar Trust, which issues Canadian Dollar Shares; CurrencyShares™ Mexican Peso Trust, which issues Mexican Peso Shares; CurrencyShares™ Swedish Krona Trust, which issues Swedish Krona Shares; and CurrencyShares™ Swiss Franc Trust, which issues Swiss Franc Shares. Each of these trusts (''Trusts'') issues Shares (as identified above) that represent units of fractional undivided beneficial interest in and ownership of their respective Trust.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, substantially set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As noted above, the Exchange proposes to list and trade the Shares, which represent units of fractional undivided beneficial interest in and ownership of their respective Trust. According to the Exchange, the investment objective of the Trusts is for the Shares issued by the Trusts to reflect the price of their respective currency.[4] The sole assets of the Trusts will be the applicable foreign currency deposited into the Deposit Account[5] upon the creation of Baskets of 50,000 Shares each (as described below) and the applicable foreign currency earned as interest on the Deposit Account. The Trusts will not hold or trade in any currency swaps, options, futures or other currency derivative products, or engage in any foreign exchange market transactions.

The Exchange states that Shares are intended to provide institutional and retail investors with a simple, cost-effective means of hedging their exposure to a particular foreign currency and otherwise implement investment strategies that involve foreign currency (*e.g.*, diversify more generally against the risk that the U.S. Dollar (''USD'') will depreciate). According to the Exchange, the Sponsor believes that, for many investors, the Shares will represent a cost-effective investment relative to traditional means of investing in the foreign exchange market. Because the Shares will be traded on the NYSE, investors will be able to access the applicable foreign currency market through a traditional brokerage account, which the Exchange believes will provide investors with an efficient means of implementing investment tactics and strategies that involve the applicable foreign currency.

*Overview of the Foreign Exchange Industry.*[6] The Exchange represents that the foreign exchange market is the largest and most liquid financial market in the world. The Exchange states that, as of April 2004, the foreign exchange market experienced average daily turnover of approximately $1.88 trillion, which was a 57% increase (at current exchange rates) from 2001 daily averages. The foreign exchange market is predominantly an over-the-counter market, with no fixed location and it operates 24 hours a day, seven days a week. London, New York, and Tokyo are the principal geographic centers of the world-wide foreign exchange market, with approximately 58% of all foreign exchange business executed in the U.K., U.S. and Japan. Other, smaller markets include Singapore, Zurich, and Frankfurt.[7]

The Exchange states that there are three major kinds of transactions in the traditional foreign exchange markets: spot transactions, outright forwards and foreign exchange swaps.[8] There also are transactions in currency options, which trade both over-the-counter and, in the U.S., on the Philadelphia Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment No. 1.

[4] The Sponsor, on behalf of the Trusts, filed a Form S–1 for each Trust on March 10, 2006 (collectively, ''Registration Statements''). *See* Registration No. 333–132362 for the CurrencyShares Australian Dollar Trust; Registration No. 333–132361 for the CurrencyShares British Pound Sterling Trust; Registration No. 333–132363 for the CurrencyShares Canadian Dollar Trust; Registration No. 333–132367 for the CurrencyShares Mexican Peso Trust; Registration No. 333–132366 for the CurrencyShares Swedish Krona Trust; and Registration No. 333–132364 for the Swiss Franc Trust.

[5] The Deposit Account is the applicable foreign currency account of the Trust established with the Depository (the London branch of JP Morgan Chase Bank, N.A.) by the Deposit Account Agreement. The Deposit Account holds the currency deposited with the Trust.

[6] The Exchange represents that, except as otherwise specifically noted, the information provided in the Form 19b–4 filing relating to the Shares, foreign currency markets, movements in foreign currency pricing, and related information is based entirely on information included in the Registration Statements.

[7] For April 2004, the daily average foreign exchange turnover of the U.S. dollar against the Pound Sterling, Swiss Franc, Canadian dollar, and Australian dollar was approximately $245 billion, $78 billion, $71 billion, and $89 billion, respectively. *See* Bank for International Settlements, Triennial Central Bank Survey, March 2005, Statistical Annex Tables, Table E–2. In April 2004, the daily average foreign exchange turnover in USD of the Mexican Peso and Swedish Krona against all other currencies was approximately $20 billion and $40 billion, respectively. *See id* at Statistical Annex Tables, Table E–1.

[8] ''Spot'' trades are foreign exchange transactions that settle typically within two business days with the counterparty to the trade. Spot transactions account for approximately 35% of reported daily volume in the traditional foreign exchange markets. ''Forward'' trades, which are transactions that settle on a date beyond spot, account for 12% of the reported daily volume, and ''swap'' transactions, in which two parties exchange two currencies on one or more specified dates over an agreed period and exchange them again when the period ends, account for the remaining 53% of volume.

Exchange (''Phlx''). Currency futures[9] are traded on a number of regulated markets, including the International Monetary Market division of the Chicago Mercantile Exchange (''CME''), the Singapore Exchange Derivatives Trading Limited (''SGX,'' formerly the Singapore International Monetary Exchange or SIMEX) and the London International Financial Futures Exchange (''LIFFE''). Over 85% of currency derivative products (swaps, options and futures) are traded over-the-counter.[10]

Futures on the Australian Dollar, British Pound, Canadian Dollar, Mexico Peso, Swedish Krona, and Swiss Franc as well as options on such futures (except for the Swedish Krona) are traded on the CME (both exchange pit trading and GLOBEX trading, except for Swedish Krona futures, which trade on GLOBEX only). Standardized options on the Australian Dollar, British Pound, Canadian Dollar, and Swiss Franc trade on Phlx. Phlx also offers more customized options on certain currency pairs.[11] According to the Exchange, these U.S. markets are the primary trading markets in the world for exchange-traded futures, options and options on futures on these currencies.[12] Based on the Exchange's review of information supplied by major market data vendors, exchange-traded options are not traded on the Mexican Peso or the Swedish Krona.

According to the Exchange, participants in the foreign exchange market have various reasons for participating. Multinational corporations and importers need foreign currency to acquire materials or goods from abroad. Banks and multinational corporations sometimes require specific wholesale funding for their commercial loan or other foreign investment portfolios. Some participants hedge open currency exposure through off-balance-sheet products.

The Exchange further represents that the primary market participants in foreign exchange are banks (including government-controlled central banks), investment banks, money managers, multinational corporations, and institutional investors. The most significant participants are the major international commercial banks that act both as brokers and as dealers. In their dealer role, these banks maintain long or short positions in a currency and seek to profit from changes in exchange rates. In their broker role, the banks handle buy and sell orders from commercial customers, such as multinational corporations. The banks earn commissions when acting as agent. They profit from the spread between the rates at which they buy and sell currency for customers when they act as principal.

In its filing, the Exchange represents that, typically, banks engage in transactions ranging from $5 million to $50 million in amount. Although banks will engage in smaller transactions, the fees that they charge have made the foreign currency markets relatively inaccessible to individual investors. Some banks allow individual investors to engage in spot trades without paying traditional commissions on the trades. Such trading is often not profitable for individual investors, however, because the banks charge the investor the spread between the bid and the ask price maintained by the bank on all purchases and sales. The overall effect of this fee structure depends on the spread maintained by the bank and the frequency with which the investor trades. Generally, this fee structure is particularly disadvantageous to active traders.

*Foreign Currency Regulation.* Most trading in the global over-the-counter (OTC) foreign currency markets is conducted by regulated financial institutions such as banks and broker-dealers. In addition, in the U.S., the Foreign Exchange Committee of the New York Federal Reserve Bank has issued Guidelines for Foreign Exchange Trading, and central-bank sponsored committees in Japan and Singapore have published similar best practice guidelines. In the United Kingdom, the Bank of England has published the Non-Investment Products Code, which covers foreign currency trading. The Financial Markets Association, whose members include major international banking organizations, has also established best practices guidelines called the Model Code.

Participants in the U.S. OTC market for foreign currencies are generally regulated by their oversight regulators. For example, participating banks are regulated by the banking authorities. In addition, in the U.S., the Commission regulates trading of options on foreign currencies on the Phlx and the Commodity Futures Trading Commission (''CFTC'') regulates trading of futures, options, and options on futures on foreign currencies on regulated futures exchanges.[13]

The Exchange states that the Phlx and CME have authority to perform surveillance on their members' trading activities, review positions held by members and large-scale customers, and monitor the price movements of options and/or futures markets by comparing them with cash and other derivative markets' prices.

*Foreign Exchange Markets.*[14] The Exchange represents that the average daily turnover of the USD in the foreign exchange market is approximately $1.57 trillion, which makes it the most-traded currency in the world, accounting for approximately 89% of global foreign exchange transactions.

The Australian Dollar is the national currency of Australia and the currency of the accounts of the Reserve Bank of Australia, the Australian central bank. The official currency code for the Australian Dollar is ''AUD.'' As with U.S. currency, 100 Australian cents are equal to one Australian Dollar. According to the Exchange, the average daily turnover of the Australian Dollar in the foreign exchange market is approximately $97.1 billion, which makes it the sixth-most-traded currency in the world, accounting for approximately 5.5% of global foreign exchange transactions. The Exchange further represents that the USD/Australian Dollar pair has an average daily turnover of approximately $89.8 billion, which makes it the fourth-most-traded currency pair, accounting for

[9] Currency futures are transactions in which an institution buys or sells a standardized amount of foreign currency on an organized exchange for delivery on one of several specified dates.

[10] *See* Bank for International Settlements, Triennial Central Bank Survey of Foreign Exchange and Derivatives Market Activity in April 2004, September 2004 (Tables 2 and 6).

[11] For the period May 2005 through April 2006, futures contract volume on the CME was as follows: Australian Dollar, 56,611 (Pit) and 203,073 (Globex); British Pound, 69,580 (Pit) and 486,136 (Globex); Canadian Dollar, 78,618 (Pit) and 335,586 (Globex); Mexican Peso, 86,614 (Pit) and 78,884 (Globex); Swiss Franc, 62,685 (Pit) and 378,208 (Globex); Swedish Krona, 53 (Globex). For the period January through March 2006, Australian Dollar, British Pound, Canadian Dollar, and Swiss Franc options volume on the Phlx was 2,162 contracts, 399 contracts, 8,032 contracts, and 479 contracts, respectively.

[12] The London International Financial Futures Exchange trades Euro futures and options and not derivatives on the currencies that are the subject of this filing.

[13] The CFTC is an independent government agency with the mandate to regulate commodity futures and options markets in the U.S. under the Commodity Exchange Act. In addition to its oversight of regulated futures exchanges, the CFTC has jurisdiction over certain foreign currency futures, options and options on futures transactions occurring other than on a regulated exchange and involving retail customers. Both the Commission and CFTC have established rules designed to prevent market manipulation, abusive trade practices, and fraud, as have the exchanges on which the foreign currency products trade.

[14] According to the Exchange, the primary source of the statistical information in this section is the Bank of International Settlements Survey, *supra* at note 7. The Exchange further represents that other information came from the Web sites of the central banks for the applicable countries and other sources the Sponsor believes to be reliable.

approximately 5% of the global foreign exchange transactions. Within the past five years, the value of the Australian Dollar reached a record low of $0.4773 and a record high of $0.8005. As of March 10, 2006, the Australian Dollar was worth $0.7429.

The British Pound Sterling is the official currency of the United Kingdom and has been the currency of the accounts of the Bank of England since 1694. The British Pound Sterling is also referred to as the British Pound and its official currency code is ''GBP'' (Great Britain Pound). The Exchange represents that the average daily turnover of the British Pound Sterling in the foreign exchange market is approximately $299 billion, which makes it the fourth-most-traded currency in the world, accounting for approximately 17% of global foreign exchange transactions. According to the Exchange, the USD/British Pound Sterling pair has an average daily turnover of approximately $245 billion, which makes it the third-most-traded currency pair, accounting for approximately 14% of the global foreign exchange transactions. The United Kingdom has not entered into the Second European Exchange Rate Mechanism (ERM II), a necessary condition before a country can adopt the Euro as its currency. Within the past five years, the value of the British Pound Sterling reached a record low of $1.3677 and a record high of $1.955. As of March 1, 2006, the British Pound Sterling was worth $1.7473.

The Canadian Dollar is the national currency of Canada and the currency of the accounts of the Bank of Canada, the Canadian central bank. The official currency code for the Canadian Dollar is ''CAD.'' As with U.S. currency, 100 Canadian cents are equal to one Canadian Dollar. The Exchange represents that the average daily turnover of the Canadian Dollar in the foreign exchange market is approximately $74.6 billion, which makes it the seventh-most-traded currency in the world, accounting for approximately 4% of global foreign exchange transactions. The Exchange further represents that the USD/Canadian Dollar pair has an average daily turnover of approximately $71.1 billion, which makes it the sixth-most-traded currency pair, accounting for approximately 4% of the global foreign exchange transactions. Within the past five years, the value of the Canadian Dollar reached a record low of $0.6175 and a record high of $0.8821. As of March 1, 2006, the Canadian Dollar was worth $0.8799.

The Mexican Peso is the national currency of Mexico and the currency of the accounts of the Bank of Mexico. Subsequent to the redenomination of the Mexican Peso in 1993, the official currency code for the Mexican Peso is ''MXN.'' One hundred ''centavos'' comprise one Mexican Peso. Average daily turnover of the Mexican Peso in the foreign exchange market is approximately $20.3 billion, which makes it the twelfth-most-traded currency in the world, accounting for approximately 1.1% of global foreign exchange transactions. Within the past five years, the value of the Mexican Peso reached a record low of USD 0.08507 and a record high of USD 0.11205. As of March 1, 2006, the Mexican Peso was worth USD 0.09558.

The Swedish Krona is the national currency of Sweden and the currency of the accounts of the Swedish central bank, the Riksbank. The official currency code for the Swedish Krona is ''SEK.'' One hundred ''öre'' comprise one Swedish Krona. According to the Exchange, the average daily turnover of the Swedish Krona in the foreign exchange market is approximately $40.6 billion, which makes it the eighth-most-traded currency in the world, accounting for approximately 2.3% of global foreign exchange transactions. Within the past five years, the value of the Swedish Krona reached a record low of $0.09046 and a record high of $0.15200. As of March 1, 2006, the Swedish Krona was worth $0.12586.

The Swiss Franc is the national currency of Switzerland and Liechtenstein and the currency of the accounts of the Swiss National Bank, the central bank of Switzerland. The official currency code for the Swiss Franc is ''CHF.'' Each Swiss Franc is equal to 100 Swiss centimes. The Exchange represents that the average daily turnover of the Swiss Franc in the foreign exchange market is approximately $108 billion, which makes it the fifth-most-traded currency in the world, accounting for approximately 6.1% of global foreign exchange transactions. The Exchange further represents that the USD/Swiss Franc pair has an average daily turnover of approximately $78.2 billion, which makes it the fifth-most-traded currency pair, accounting for approximately 4% the global foreign exchange transactions. Within the past five years, the value of the Swiss Franc reached a record low of $0.5487 and a record high of $0.8879. As of March 1, 2006, the Swiss Franc was worth $0.7596.

As members of the European Union, the United Kingdom and Sweden have the option to adopt the Euro as their official currency in lieu of their national currencies. Switzerland could join the European Union and adopt the Euro as its currency as well. If a country adopts the Euro as its currency, the value of national currency could depreciate, depending on, among other things, the relative value of the national currency and the Euro, the conversion ratio of the national currency per Euro, and the timing of the adoption of the Euro. If the national currencies lose value, the value of the respective shares would also depreciate. Furthermore, if the United Kingdom, Sweden or Switzerland adopts the Euro as its currency, then the respective Trust will terminate and liquidate.

*The Sponsor.* The Sponsor of each Trust is Rydex Specialized Products LLC, a Delaware limited liability company that is wholly-owned by PADCO Advisors II, Inc., a Maryland corporation, a privately-held company owned by Rydex Holdings, Inc., a Maryland Corporation, which is controlled by two irrevocable trusts. The Sponsor and its affiliates collectively do business as ''Rydex Investments.''

The Sponsor is responsible for establishing the Trusts and for the registration of the Shares. The Sponsor generally oversees the performance of the Trustee and the Trusts' principal service providers, but does not exercise day-to-day oversight over the Trustee or such service providers. The Sponsor regularly communicates with the Trustee to monitor the overall performance of the Trusts. The Sponsor, with assistance and support from Rydex affiliates who also do business as ''Rydex Investments,'' the Trustee and outside professionals, are responsible for preparing and filing periodic reports on behalf of the Trusts with the Commission.[15] The Sponsor will designate the auditors of the Trusts and may from time to time employ legal counsel for the Trusts.

The Distributor is assisting the Sponsor in developing a marketing plan for the Trusts, preparing marketing

[15] The Sponsor has obtained a no-action letter from the Commission's Division of Corporation Finance with respect to the Euro Currency Trust pursuant to which the Sponsor's principal executive officer and principal financial officer will provide any certifications that are required from a ''registrant's'' principal executive officer and principal financial officer. *See* Letter from Charles Kwon, Special Counsel, Division of Corporation Finance, Commission, dated March 22, 2006. The Exchange states that the Sponsor plans to request the same type of no-action relief for the Trusts. *See* telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, Geoffrey Pemble, Special Counsel, Commission, and Christopher Chow, Special Counsel, Commission, during the morning of June 13, 2006 (''June 13 AM Telephone Conversation'').

materials on the Shares, executing the marketing plan for the Trusts and providing strategic and tactical research on the global foreign exchange markets. The Sponsor will not enter into an agreement with the Distributor covering these services, because the Distributor is an affiliate and will not be paid any compensation by the Sponsor for performing these services.

The Sponsor with the Distributor's assistance maintains a public Web site on behalf of the Trusts, *http://www.currencyshares.com*. which contains information about the Trusts and the Shares, and oversees certain Shareholder services, such as a call center and prospectus delivery.

The Sponsor may direct the Trustee in the conduct of its affairs, but only as provided in the Depositary Trust Agreement. For example, the Sponsor may direct the Trustee to sell the Trusts' foreign currency to pay certain extraordinary expenses, to suspend a redemption order or postpone a redemption settlement date, or to terminate the Trusts if certain criteria are met. The Sponsor anticipates that, if the market capitalization of a Trust is less than $300 million at any time after the first anniversary of such Trust's inception, then the Sponsor will, in accordance with the Depositary Trust Agreement, direct the Trustee to terminate and liquidate such Trust.

Fees are paid to the Sponsor as compensation for services performed under the Depositary Trust Agreement and for services performed in connection with maintaining the Trusts' Web site and marketing the Shares. The Sponsor's fee is the only ordinary recurring expense that will be borne by the Trusts and, ultimately, by the Shareholders.[16]

*The Trustee.* The Bank of New York, the Trustee, is generally responsible for the day-to-day administration of the Trusts, including keeping the Trusts' operational records. The Trustee's principal responsibilities include selling the Trusts' foreign currency if needed to pay the Trusts' expenses, calculating the net asset value (''NAV'') of the Trusts and the NAV per Share, receiving and processing orders from Authorized Participants to create and redeem Baskets (as discussed below), and coordinating the processing of such orders with the Depository and DTC. The Trustee will earn a monthly fee that will be paid by the Sponsor.

The Trustee intends to regularly communicate with the Sponsor to monitor the over-all performance of the Trusts. The Trustee, along with the Sponsor, consults with the Trusts' legal, accounting and other professional service providers as needed. The Trustee assists and supports the Sponsor with the preparation of all periodic reports required to be filed with the Commission on behalf of the Trusts.

Affiliates of the Trustee may from time to time act as Authorized Participants or purchase or sell foreign currency or Shares for their own account, as agent for their customers, and for accounts over which they exercise investment discretion.

*The Depository.* The Depository accepts Trust foreign currency deposited with it as a banker by Authorized Participants in connection with the creation of Baskets. The Depository facilitates the transfer of the applicable foreign currency into and out of the Trusts through the applicable foreign currency deposit account maintained with it as a banker by the Trusts. The Depository will not be paid a fee for its services to the Trusts. The Depository may earn a ''spread'' or ''margin'' over the rate of interest it pays to the Trusts on the foreign currency deposit balances. The Depository is not a trustee for the Trusts or the Shareholders. The Depository and its affiliates may from time to time act as Authorized Participants or purchase or sell the foreign currency or Shares for their own account, as agent for their customers, and for accounts over which they exercise investment discretion.

*The Distributor.* Rydex Distributors, Inc., the Distributor, assists the Sponsor in developing a marketing plan for the Trusts on an ongoing basis, preparing marketing materials regarding the Shares, including the content on the Trusts' Web site, *http://www.currencyshares.com*. executing the marketing plan for the Trusts, and providing strategic and tactical research on the global foreign exchange market. The Distributor and its affiliates may from time to time act as Authorized Participants or purchase or sell foreign currency or Shares for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

*Description of the Trusts' Management and Structure.* Rydex Specialized Products LLC is the sponsor of the Trusts (''Sponsor''), The Bank of New York is the trustee of the Trusts (''Trustee''), JPMorgan Chase Bank, N.A., London Branch (''Bank''), is the depository for the Trusts (''Depository''), and Rydex Distributors, Inc. is the distributor for the Trusts (''Distributor''). The Sponsor, Trustee, Depository and Distributor are not affiliated with the Exchange or one another, with the exception that the Sponsor and Distributor are affiliated. The Exchange currently lists and trades shares of the Euro Currency Trust, which has the same Sponsor, Trustee, Depository and Distributor as the Trusts.[17]

According to the Exchange, the Trusts will be formed under the laws of the State of New York as of the date the Sponsor and the Trustee sign the Depositary Trust Agreement and the Initial Purchaser makes the initial deposit for the issuance of three Baskets.[18] The Shares represent units of fractional undivided beneficial interest in, and ownership of, the respective Trusts. The investment objective of each Trust is for the Shares to reflect the price of the applicable foreign currency.

Each Trust's assets will consist only of foreign currency on demand deposit in a foreign currency-denominated, interest-bearing account at JPMorgan Chase, London Branch.[19] The Trusts will not hold any derivative products. Each Share represents a proportional interest, based on the total number of Shares outstanding, in the applicable foreign currency owned by the specific Trust, less the estimated accrued but unpaid expenses (both asset-based and non-asset based) of such Trust. The Sponsor expects that the price of a Share will fluctuate in response to fluctuations in the price of the applicable foreign currency and that the price of a Share will reflect accumulated interest as well as the estimated accrued but unpaid expenses of the specific Trust. A Trust will terminate upon the occurrence of any of the termination events listed in the Depositary Trust Agreement and will otherwise terminate on a specified date in 2045.

The Trusts are not managed like a business corporation or an active investment vehicle. The foreign

[16] *See infra* section entitled ''Trust Expenses and Management Fees.''

[17] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65).

[18] A Basket is a block of 50,000 Shares.

[19] The Exchange notes that, in addition to the Euro Currency Trust (*see supra* at note 17), the Commission has permitted the listing of prior securities products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.,* Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (approving listing and trading on NYSE of StreetTRACKS® Gold Shares); 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995), 60 FR 61277 (November 29, 1995) (SR–Phlx–95–42) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995), 60 FR 46653 (September 7, 1995) (SR–NYSE–94–41) (approving listing standards for, among other things, currency and currency index warrants).

currency held by each Trust will only be sold: (1) If needed to pay Trust expenses; (2) in the event the Trust terminates and liquidates its assets; or (3) as otherwise required by law or regulation. The sale of foreign currency by the Trusts is a taxable event to Shareholders. According to the Exchange, the Trusts are not registered as investment companies under the Investment Company Act and are not required to register under such Act.

The Sponsor, on behalf of the Trusts, has requested relief from certain trading requirements of the Act.[20] In addition, the Exchange represents that the Trusts will not be subject to the Exchange's corporate governance requirements, including the Exchange's audit committee requirements.[21]

*Trusts' Expenses and Management Fees.* Each Trust will use interest earned on its respective Deposit Account to pay the Sponsor's fee and any other Trust expenses that may arise from time to time.[22] If that interest is not sufficient to fully pay the Sponsor's fee and Trust expenses, then the Trustee will sell deposited foreign currency as needed. In either case, the applicable foreign currency will be converted to USD at the prevailing market rate at the time of conversion. In estimating the amount of the Sponsor's fee and any other Trust expenses that are accrued but unpaid, the Trusts will use the Noon Buying Rate in effect at the time the estimate is made. The USD amount estimated for accrued but unpaid expenses at any time may be more or less than the USD amount actually paid when such expenses become due and payable.

The Trusts' only ordinary recurring expense is expected to be the Sponsor's fee.[23] The Sponsor in turn is obligated under the Depositary Trust Agreement to pay the following administrative and marketing expenses for each of the Trusts: The Trustee's monthly fee; the Distributor's fee; NYSE listing fees; Commission registration fees; printing and mailing costs; audit fees and expenses; and up to $100,000 per annum in legal fees and expenses. The Sponsor also is obligated to pay the costs of the Trusts' organization and the costs of the initial sale of the Shares, including the applicable Commission registration fees.

Under the Deposit Account Agreement, the Depository is entitled to invoice the Trustee or debit the Deposit Account for out-of-pocket expenses. The Trust has also agreed to reimburse the Depository for any taxes, levies, imposts, deductions, charges, stamp, transaction and other duties and withholdings in connection with the Deposit Account, except for such items imposed on the overall net income of the Depository. Except for the reimbursable expenses just described, the Depository will not be paid a fee for its services to the Trust. The Depository may earn a ''spread'' or ''margin'' on the foreign currency deposit balances it holds.

The following additional expenses may be charged to the Trusts: (1) Expenses and costs of any extraordinary services performed by the Trustee or the Sponsor on behalf of the Trusts or action taken by the Trustee or the Sponsor to protect the Trusts or interests of Shareholders; (2) indemnification of the Sponsor; (3) taxes and other governmental charges; and (4) expenses of the Trusts other than those the Sponsor is obligated to pay pursuant to the Depositary Trust Agreement.

In order to pay a Trust's expenses, the Trustee will make payments using the applicable foreign currency held in the Depositary Account. For expenses not payable in the applicable foreign currency, if any, the Trustee shall convert the applicable foreign currency to other currencies as necessary to pay the Trust's expenses. The Trustee shall withdraw the smallest amount of foreign currency required to purchase amounts of another currency sufficient to pay Trust expenses and the costs of currency conversion. The Trustee will place foreign currency sale orders with dealers (which may include the 20 Depository) through which the Trustee expects to receive a commercially reasonable price and good execution of orders. Neither the Trustee nor the Sponsor is liable for depreciation or loss incurred by reason of any conversion.

*Liquidity.* The Exchange states that the amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the major foreign currency markets and the NYSE. The period of greatest liquidity in the British Pound, Swiss Franc and Swedish Krona market, for example, is typically that time of the day when trading in the European time zones overlaps with trading in the U.S., which is when OTC market trading in London, New York, and other centers coincides with futures and options trading on those currencies. While the Shares will trade on the NYSE until 4:15 p.m. (New York time), liquidity in the OTC market for the British Pound, Swiss Franc, and Swedish Krona will be slightly reduced after the close of the London foreign currency markets.

Because of the potential for arbitrage inherent in the structure of the Trusts, the Sponsor believes that the Shares will not trade at a material discount or premium to the value of underlying currency held by the Trust. The Exchange states that the arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts and can be expected to operate efficiently in the case of the Shares and the applicable foreign currency. If the price of the Shares deviates enough from the price of the foreign currency to create a material discount or premium, an arbitrage opportunity is created. If the Shares are inexpensive compared to the foreign currency that underlies them, an Authorized Participant, either on its own behalf or acting as agent for investors, arbitrageurs or traders, may buy the Shares at a discount, immediately redeem them in exchange for the foreign currency and sell the foreign currency in the cash market at a profit. If the Shares are expensive compared to the foreign currency that underlies them, an Authorized Participant may sell the Shares short, buy enough foreign currency to create the number of Shares sold short, acquire the Shares through the creation process and deliver the Shares to close out the short position.[24] According to the

[20] *See infra* note 52.

[21] *See* Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (SR–NYSE–2002–33, SR–NASD–2002–77, *et al.*) (specifically noting that the corporate governance standards will not apply to, among others, passive business organizations in the form of trusts). *See also* Securities Exchange Act Release No. 47654 (April 9, 2003), 68 FR 18787 (April 16, 2003) (noting in Section II(F)(3)(c) that ''SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities'').

[22] Interest on the Deposit Account will accrue daily at an initial annual nominal rate that may vary for each Trust. The Depository may change the rate for a Trust based upon changes to the applicable London InterBank Offer Rate (''LIB OR'') overnight rate set by the British Bankers' Association, other market conditions or the liquidity needs of the Bank.

[23] The Sponsor's fee accrues daily at an annual nominal rate of 0.40% of the NAV of the Trusts, compounds daily on the basis of a 365- or 366-day year, and is paid monthly in arrears.

[24] The Exchange notes that the Trusts, which will only hold foreign currency as an asset in the normal course of their operations, differ from index-based

Continued

Exchange, in both instances the arbitrageur serves efficiently to correct price discrepancies between the Shares and the underlying foreign currency.

*Description of the Shares.* According to the Exchange, the Shares are not a traditional investment. They are dissimilar from the ''shares'' of a corporation operating a business enterprise, with management and a board of directors. Trust Shareholders do not have rights normally associated with owning shares of a business corporation, including, for example, the right to bring ''oppression'' or ''derivative'' actions. Shareholders have only those rights explicitly set forth in the Depositary Trust Agreement.[25] All Shares are of the same class with equal rights and privileges. Each Share is transferable, is fully paid and non-assessable, and entitles the holder to vote on the limited matters upon which Shareholders may vote under the Depositary Trust Agreement. The Shares do not entitle their holders to any conversion or pre-emptive rights or, except as provided in the Registration Statement, any redemption or distribution rights.

*Distributions.* The Depositary Trust Agreement requires the Trustee to promptly distribute ''Surplus Property'' that is in USD and sell or convert all other Surplus Property into USD and distribute the proceeds. ''Surplus Property'' includes, among other things, interest on the foreign currency in the Deposit Account that the Trustee determines is not required to pay estimated Trust expenses within the following month. In addition, if a Trust is terminated and liquidated, then the Trustee will distribute to the Shareholders upon surrender of their Shares any amounts remaining after the satisfaction of all outstanding liabilities of the Trust and the establishment of such reserves for applicable taxes, other governmental charges and contingent or future liabilities as the Trustee shall determine. All distributions will be made monthly in USD. The Trustee will effectuate the conversion and will determine the exchange rate, which will be proximate to the Noon Buying Rate on the record date for the distribution. Shareholders of record on the record date fixed by the Trustee for any distribution will be entitled to receive their pro-rata portion of the distribution.[26]

*Creation and Redemption of Shares.* Each Trust will create Shares on a continuous basis only in aggregations of 50,000 Shares (each such aggregation referred to as a ''Basket'') in exchange for deposits of the applicable foreign currency, and will distribute the applicable foreign currency in connection with the redemption of one or more Baskets. As discussed further below, the creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of foreign currency represented by the Baskets being created or redeemed. This amount is based on the combined NAV per Share of the number of Shares included in the Baskets being created or redeemed, determined on the day the order to create or redeem Baskets is properly received. The number of Shares outstanding is expected to increase and decrease from time to time as a result of the creation and redemption of Baskets. Authorized Participants pay for Baskets with the applicable foreign currency. Shareholders pay for Shares with U.S. dollars.

Authorized Participants are the only persons that may place orders to create and redeem Baskets.[27] An Authorized Participant is a DTC Participant that is a registered broker-dealer or other securities market participant such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions and has entered into a Participant Agreement with the Trustee. Before initiating a creation or redemption order, an Authorized Participant must have entered into a Participant Agreement with the Sponsor and the Trustee. The Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of foreign currency required for creations and redemptions. The Participant Agreements may be amended by the Trustee, the Sponsor and the relevant Authorized Participant.

Authorized Participants will pay a transaction fee of $500 to the Trustee for each order that they place to create or redeem one or more Baskets.[28] Authorized Participants who make deposits with the Trust in exchange for Baskets receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust. No Authorized Participant has any obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

The Exchange states that certain Authorized Participants are expected to have the facility to participate directly in the global foreign exchange market. In some cases, an Authorized Participant may acquire foreign currency from, or sell foreign currency to, an affiliated foreign exchange trading desk, which may profit in these instances. The Sponsor believes that the size and operation of the foreign exchange markets make it unlikely that an Authorized Participant's direct activities in the foreign exchange and securities markets will impact the price of foreign currency or the price of Shares.[29] The Exchange states that each Authorized Participant will be registered as a broker-dealer under the Act and will be regulated by the National Association of Securities Dealers, Inc., or else will be exempt from being (or otherwise will not be required to be) so registered or regulated, and will be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its

exchange-traded funds, which may involve a trust holding hundreds or even thousands of underlying component securities, necessarily involving in the arbitrage process movements in a large number of security positions. *See, e.g.,* Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the UTP trading of Vanguard Total Market VIPERs based on the Wilshire 5000 Total Market Index).

[25] Shareholders have no voting rights under the Depositary Trust Agreement, except in limited circumstances. If the holders of at least 25% of the Shares outstanding for a Trust determine that the Trustee is in material breach of its obligations under the Depositary Trust Agreement, they may provide written notice to the Trustee (or require the Sponsor to do so) specifying the default and requiring the Trustee to cure such default. If the Trustee fails to cure such breach within 30 days after receipt of the notice, the Sponsor, acting on behalf of the Registered Owners, may remove the Trustee for such Trust. The holders of at least 66⅔% of the Shares outstanding may vote to remove the Trustee. The Trustee must terminate the Trust at the request of the holders of at least 75% of the outstanding Shares.

[26] On the last calendar day of each month, the Depository will deposit into the Deposit Account the accrued but unpaid interest for that month and pay the accrued Sponsor's fee for the month plus any other Trust expenses. If the last calendar day of the month is not a business day, the deposit of interest and payment of the Sponsor's fee and expenses will be made on the next following business day. In the event that the interest deposited exceeds the sum of the Sponsor's fees for the month plus other Trust expenses, if any, then the Trustee shall convert the excess into dollars based on the Noon Buying Rate and distribute the dollars promptly to Shareholders of record on the last calendar day of the month, on a pro rata basis (in accordance with the number of Shares that they own). The distribution per Share shall be rounded down to the nearest penny, and any excess remaining after the rounding shall be retained by the Trust in the applicable foreign currency.

[27] Authorized Participants may sell to other investors all or part of the Shares included in the Baskets that they purchase from the Trusts.

[28] The transaction fee may be reduced or, with the consent of the Sponsor, increased. The Trustee shall notify DTC of any agreement to change the transaction fee and will not implement any increase in the fee for the redemption of Baskets until 30 days after the date of the notice.

[29] *See* June 13 AM Telephone Conversation, *supra* at note 15 (authorizing clarification of this sentence.)

business so requires. Certain Authorized Participants may be regulated under federal and state banking laws and regulations. The Exchange states that each Authorized Participant will have its own set of rules and procedures, internal controls and information barriers as it determines to be appropriate in light of its own regulatory regime.

Authorized Participants may act for their own accounts or as agents for broker-dealers, depositaries and other securities or foreign currency market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

In order to create a Basket, the Authorized Participant deposits the applicable Basket Amount (defined below) with the Depository and orders Shares from the Trustee.[30] The Trustee directs DTC to credit Shares to the Authorized Participant. The Authorized Participant will then be able to sell Shares to Purchasers on the NYSE or any other market in which the Shares may trade.

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. The creation or redemption of Shares can occur only in a Basket of 50,000 Shares or multiples thereof. For purposes of processing both purchase and redemption orders, a ''business day'' means any day other than a day when the NYSE is closed for regular trading. Purchase orders must be placed by 4 p.m. (New York time) or the close of regular trading on the NYSE, whichever is earlier. The day on which the Trustee receives a valid purchase order is the purchase order date. By placing a purchase order, an Authorized Participant agrees to deposit the applicable foreign currency with the Trust. Before the delivery of Baskets for a purchase order, the Authorized Participant also must have wired to the Trustee the non-refundable transaction fee due for the purchase order.

The total deposit required to create each Basket, called the Basket Amount, is an amount of foreign currency bearing the same proportion to the number of Baskets to be created as the total assets of a Trust (net of estimated accrued but unpaid expenses) bears to the total number of Baskets outstanding on the date that the order to purchase is properly received. The amount of the required deposit is determined by dividing the number of units of foreign currency (*e.g.* Australian Dollars) held by a Trust (net of estimated accrued but unpaid expenses) by the number of Baskets outstanding. All questions as to the composition of a Basket Amount are finally determined by the Trustee. The Trustee's determination of the Basket Amount shall be final and binding on all persons interested in the Trusts.

An Authorized Participant who places a purchase order is responsible for delivering the Basket Amount to the Deposit Account by 7:30 a.m. or 8:30 a.m. eastern standard time (''EST''), depending upon whether daylight savings is in effect,[31] on the third business day after the purchase order date. Authorized Participants will use the SWIFT system to make timely deposits through their bank correspondents in London. Upon receipt of the foreign currency deposit from an Authorized Participant, the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership, and safekeeping of the applicable foreign currency until such foreign currency has been received by the Depository shall be borne solely by the Authorized Participant.

In order to redeem Shares, an Authorized Participant must send the Trustee a Redemption Order specifying the number of Baskets that the Authorized Participant wishes to redeem. The Trustee then instructs the Depository to send the Authorized Participant the foreign currency and directs DTC to cancel the Authorized Participant's Shares that were redeemed.

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 p.m. (New York time) or the close of regular trading on the NYSE, whichever is earlier. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Depository not later than 7:30 a.m. or 8:30 a.m. EST, depending upon whether daylight savings is in effect,[32] on the third business day after the redemption order date. Before the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

The redemption distribution from a Trust is a wire transfer, to an account of the redeeming Authorized Participant identified by the Authorized Participant, in the amount of foreign currency held by the Trust evidenced by the Shares being redeemed, giving effect to all estimated accrued but unpaid expenses. Redemption distributions are subject to the deduction of any applicable tax or other governmental charges that may be due.[33] All questions as to the amount of a redemption distribution are finally determined by the Trustee. The Trustee's determination of the amount shall be final and binding on all persons interested in the Trust.

The redemption distribution due from a Trust is delivered to the Authorized Participant on the third business day after the redemption order date if, by 7:30 a.m. or 8:30 a.m. EST (depending upon whether daylight savings is in effect) [34] on the third business day after the redemption order date, the Trustee's DTC account has been credited with the Baskets to be redeemed. If the Trustee's DTC account has not been credited with all of the Baskets to be redeemed by that time, then the redemption distribution is delivered to the extent of whole Baskets received. Any remainder of the redemption distribution is delivered on

[30] The Trustee shall determine the Basket Amount ''as promptly as practicable'' after the Federal Reserve Bank of New York announces the Noon Buying Rate on each day that the NYSE is open for regular trading. Ordinarily, this will occur by 2 p.m. (New York time) . The Basket Amount will be published on the Trust's Web site every day the NYSE is open for regular trading. The Registration Statements, the Participant Agreement and the Trust Agreement do not state a precise time each day for publication of the Basket Amount. It will be published simultaneously with the NAV. The Sponsor for the Trusts has represented to the Exchange that the NAV and the Basket amount for each Trust will be available to all market participants at the same time.

[31] *See* June 13 AM Telephone Conversation, *supra* at note 15 (information provided about EST).

[32] *See id.*

[33] Authorized Participants will not be responsible for any transfer tax, sales or use tax, recording tax, value added tax or similar tax or governmental charge applicable to the creation or redemption of Baskets, regardless of whether or not such tax or charge is imposed directly on the Authorized Participant, and agree to indemnify the Sponsor, the Trustee, and the Trust if they are required by law to pay any such tax, together with any applicable penalties, additions to tax or interest thereon.

[34] *See* June 13 AM Telephone Conversation, *supra* at note 15.

the next business day to the extent of remaining whole Baskets received if the Trustee receives the fee applicable to the extension of the redemption distribution date that the Trustee may, from time to time, determine and the remaining Baskets to be redeemed are credited to the Trustee's DTC account by 7:30 a.m. or 8:30 a.m. EST (depending upon whether daylight savings is in effect) [35] on such next business day. Any further outstanding amount of the redemption order will be cancelled. The Trustee also is authorized to deliver the redemption distribution notwithstanding that the Baskets to be redeemed are not credited to the Trustee's DTC account by 7:30 a.m. or 8:30 a.m. EST (depending upon whether daylight savings is in effect) [36] on the third business day after the redemption order date, if the Authorized Participant has collateralized its obligation to deliver the Baskets through DTC's book-entry system on such terms as the Sponsor and the Trustee may agree upon from time to time.

The Depository wires the redemption amount from the Deposit Account to an account of the redeeming Authorized Participant identified by the Authorized Participant. The Authorized Participant and the Trust are each at risk in respect of foreign currency credited to their respective accounts in the event of the Depository's insolvency. The Trustee will reject a redemption order if the order is not in proper form as described in the Participant Agreement or if the fulfillment of the order, in the opinion of its counsel, might be unlawful.

*Valuation of Applicable Foreign Currency, Definition of Net Asset Value and Adiusted Net Asset Value.* As promptly as practicable, ordinarily no later than 2 p.m. (New York time) after the Federal Reserve Bank of New York announces the Noon Buying Rate for the applicable foreign currency on each day that the NYSE is open for regular trading, the Trustee will value such foreign currency held by a Trust and determine the NAV of the Trust. The Trustee determines the NAV of the Trusts.[37] In doing so, the Trustee values the foreign currency held by the Trusts on the basis of the Noon Buying Rate.[38] If, on a particular Evaluation Day, the Noon Buying Rate has not been determined and announced by 2:00 p.m. (New York time), then the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate shall be used to determine the NAV of the Trusts unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate to use as the basis for such valuation. In the event that the Trustee and the Sponsor determine that the most recent Federal Reserve Bank of New York determination of the Noon Buying Rate is not an appropriate basis for valuation of the Trust's foreign currency, they shall determine an alternative basis for such evaluation to be employed by the Trustee.[39] The Trustee also determines the NAV per Share, which equals the NAV of the Trusts divided by the number of outstanding Shares. Neither the Trustee nor the Sponsor will be liable to any person for its determination that the most recently announced Noon Buying Rate is not appropriate as a basis for evaluation of the foreign currency held by the Trust, so long as that detennination is made in good faith.[40]

To calculate the NAV, the Trustee will subtract the Sponsor's fee and any other accrued but unpaid expenses of the Trust that are or will be incurred or accrued through the close of the evaluation day from the total number of the foreign currency owned by a Trust, including interest accrued during the prior day. The Trustee will multiply the resultant number of units of foreign currency (*e.g.*, Australian Dollars) by the Noon Buying Rate to detennine the NAV. The Trustee will also detennine the NAV per Share by dividing the NAV of a Trust by the number of the Shares outstanding as of the close of trading on the NYSE. Shares deliverable under a purchase order will be considered outstanding for purposes of detennining NAV per Share; shares deliverable under a redemption order will not be considered outstanding for this purpose. The Trustee's estimation of accrued but unpaid expenses will be conclusive upon all persons interested in a Trust.

*Book Entry Fonn; Clearance and Settlement.* The Sponsor and the Trustee will apply to DTC for acceptance of the Shares in its book-entry settlement system. If the Shares are eligible for book-entry settlement, individual certificates will not be issued for the Shares. Instead, global certificates will be signed by the Trustee and the Sponsor on behalf of the Trusts, registered in the name of Cede & Co., as nominee for DTC, and deposited with the Trustee on behalf of DTC. The global certificates will evidence all of the Shares outstanding at any time.[41] In order to transfer Shares through DTC, Shareholders must be DTC Participants. The Shares will be transferable only through the book-entry system of DTC. A Shareholder that is not a DTC Participant will be able to transfer its Shares through DTC by instructing the DTC Participant holding its Shares. Transfers will be made in accordance with standard securities industry practice.

Upon the settlement date of any creation, transfer, or redemption of Shares, DTC will credit or debit, on its book-entry registration and transfer system, the amount of the Shares so created, transferred, or redeemed to the accounts of the appropriate DTC Participants. The Trustee and the Authorized Participants will designate the accounts to be credited and charged in the case of creation or redemption of Shares.

Beneficial ownership of the Shares is limited to DTC Participants, Indirect Participants and persons holding interests through DTC Participants and Indirect Participants. Ownership of beneficial interests in the Shares will be shown on, and the transfer of ownership will be effected only through, records maintained by DTC (with respect to DTC Participants), the records of DTC Participants (with respect to Indirect Participants), and the records of Indirect Participants (with respect to Shareholders that are not DTC Participants or Indirect Participants). A Shareholder is expected to receive from

[35] *See id.*

[36] *See id.*

[37] The NAV of the Trusts will be published by the Sponsor on each day that the NYSE is open for regular trading and will be posted on the Trusts' Web Site.

[38] The Noon Buying Rate is the USD/applicable foreign currency exchange rate as determined by the Federal Reserve Bank of New York as of 12:00 p.m. (New York time) on each day that the NYSE is open for regular trading.

[39] The Trustee and the Sponsor may determine to apply an alternative basis for evaluation in extraordinary circumstances, such as if the Federal Reserve Bank of New York does not announce a Noon Buying Rate, or discontinues such announcements, of if there is an extraordinary change in the spot price of the applicable foreign currency after the Noon Buying Rate is established. In the event the Sponsor and Trustee determine to use a source other than the Noon Buying Rate on more than a temporary basis, the Exchange will contact the Commission staff and, as necessary, file a proposed rule change pursuant to Rule 19b-4 seeking Commission approval to continue to trade the CurrencyShares. Unless approved by the Commission for continued trading, the Exchange will commence delisting proceedings.

[40] The NAV will be posted on the Trusts' Web Site as soon as the valuation of the foreign currency held by the Trust is complete (ordinarily by 2 p.m., New York time). Ordinarily, it will be posted no more than thirty minutes after the Noon Buying Rate is published by the Federal Reserve Bank of New York. The Exchange represents that all market participants will have access to this data at the same time and, therefore, no market participant will have a time advantage in using such data.

[41] The representations, undertakings and agreements made on the part of the Trusts in the global certificates will be made and intended for the purpose of binding only the Trusts and not the Trustee or the Sponsor individually.

or through the DTC Participant maintaining the account through which the Shareholder purchased its Shares a written confirmation relating to the purchase.

DTC may discontinue providing its service with respect to Baskets or the Shares (or both) by giving notice to the Trustee and the Sponsor. Under such circumstances, the Trustee and the Sponsor would either find a replacement for DTC to perform its functions at a comparable cost or, if a replacement is unavailable, terminate the Trust.

*Risk Factors to Investing in the Shares.* An investment in the Shares carries certain risks. The following risk factors are taken from and discussed in more detail in the Registration Statements:

- The value of the Shares relates directly to the value of the foreign currency held by the Trust. Fluctuations in the price of the currency could materially and adversely affect the value of the Shares.
- The USD/applicable foreign currency exchange rate, like foreign exchange rates in general, can be volatile and difficult to predict. This volatility could materially and adversely affect the performance of the Shares.
- The Deposit Account is not entitled to payment at any office of JP Morgan Chase Bank, N.A. located in the U.S.
- Shareholders will not have the protections associated with ownership of a demand deposit account insured in the U.S. by the Federal Deposit Insurance Corporation nor the protection provided under English law.
- Foreign currency held in the Deposit Account will not be segregated from the Depository's assets. If the Depository becomes insolvent, then its assets might not be adequate to satisfy a claim by the Trust or any Authorized Participant. In addition, in the event of the insolvency of the Depository or the U.S. Bank of which it is a branch, there may be a delay and costs incurred in identifying the foreign currency held in the Deposit Account.
- The Shares are a new securities product. Their value could decrease if unanticipated operational or trading problems were to arise.
- Shareholders will not have the protections associated with ownership of shares in an investment company registered under the Investment Company Act of 1940.
- Shareholders will not have the rights enjoyed by investors in certain other financial instruments.
- The Shares may trade at a price that is at, above, or below the NAV per Share.
- The interest rate earned by the Trusts, although competitive, may not be the best rate available. If the Sponsor determines that the interest rate is inadequate, then its sole recourse will be to remove the Depositary and terminate the Deposit Account.
- The possible sale of foreign currency by the Trust to pay expenses, if required, will reduce the amount of foreign currency represented by each Share on an ongoing basis regardless of whether the price of a Share rises or falls in response to changes in the price of the foreign currency.
- The sale of the Trusts' deposited currency, if necessary, to pay expenses at a time when the price of the currency is relatively low could adversely affect the value of the Shares.
- The Depository owes no fiduciary duties to the Trusts or the Shareholders, is not required to act in their best interest and could resign or be removed by the Sponsor with respect to any Trust, triggering early termination of such Trust.
- The Trusts may be required to terminate and liquidate at a time disadvantageous to Shareholders.
- Redemption orders are subject to rejection by the Trustee under certain circumstances.
- Substantial sales of foreign currency by the official sector could adversely affect an investment in the Shares.
- Shareholders that are not Authorized Participants may only purchase or sell their Shares in secondary trading markets.
- The liability of the Sponsor and the Trustee under the Depositary Trust Agreement is limited; and, except as set forth in the Depositary Trust Agreement, they are not obligated to prosecute any action, suit or other proceeding in respect to any Trust property.
- The Depositary Trust Agreement may be amended to the detriment of Shareholders without their consent.
- The License Agreement with the Bank of New York may be terminated by the Bank of New York in the event of a material breach by the Sponsor. Termination of the License Agreement might lead to early termination and liquidation of the Trusts.
- Each member of the European Union has the option of adopting the Euro as its official currency in lieu of a national currency. If this occurs, then the national currency and the Shares may depreciate significantly. Further, there is the risk that the council of the European Union could adopt an irrevocable conversion rate, in which case the applicable Trusts will terminate.

*Availability of Information Regarding Foreign Currency Prices.* Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a foreign currency over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, the Exchange represents that there is a considerable amount of foreign currency price and market information available on public Web sites and through professional and subscription services. As is the case with equity securities generally and exchange-traded funds specifically, in most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

Investors may obtain on a 24-hour basis foreign currency pricing information based on the foreign currency spot price of each applicable foreign currency from various financial information service providers. Complete real-time data for foreign currency futures and options prices traded on the CME and Phlx are also available by subscription from information service providers. The CME and Phlx also provide delayed futures and options information on current and past trading sessions and market news free of charge on their respective Web sites.

According to the Exchange, there are a variety of other public Web sites available at no charge that provide information on the currencies underlying the CurrencyShares that are the subject of this filing, which service providers include Bloomberg, (*http://www.bloomberg.com/markets/currencies/fxc.html*). CBS Market Watch (*http://www.marketwatch.com/tools/stockresearchlglobalmarkets*), Yahoo! Finance (*http://www.finance.yahoo.com/currency*), moneycentral.com, cnnfn.com and reuters.com. which provide spot price or currency conversion information about each of the currencies that underlie the CurrencyShares that are the subject of this filing. Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[42] In

[42] There may be incremental differences in the foreign currency spot price among the various information service sources. While the Exchange believes the differences in the foreign currency spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of the applicable foreign currency or foreign currency

Continued

addition, major market data vendors regularly report current currency exchange pricing for a fee for the currencies underlying the CurrencyShares that are subject of this filing. Like bond securities traded in the OTC market with respect to which pricing information is available directly from bond dealers, current foreign currency spot prices are also generally available with bid/ask spreads from foreign currency dealers.[43] In addition, the Trusts' Web site, *www.currencvshares.com.* will provide ongoing pricing information for foreign currency spot prices and the Shares. Market prices for the Shares will be available from a variety of sources, including brokerage firms, financial information Web Sites and other information service providers.

In addition, the Trust's Web Site will provide the following information: (1) The spot price for each applicable foreign currency,[44] including the bid and offer and the midpoint between the bid and offer for the foreign currency spot price, updated at least every 15 seconds,[45] which is an essentially real-time basis; (2) an intraday indicative value (''IIV'') per share for the Shares calculated by multiplying the indicative spot price of the applicable foreign currency by the quantity of foreign currency backing each Share, updated at least every 15 seconds;[46] (3) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (4) premium/discount information, calculated on a 20 minute delayed basis; (5) the NAV of the Trust as calculated each business day by the Trustee; (6) accrued interest per Share; (7) the daily Federal Reserve Bank of New York Noon Buying Rate; (8) the Basket Amount for each applicable foreign currency; and (9) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[47] The Exchange will provide on its own public Web site (*http://www.nyse.com*) a link to the Trust's Web site.

*Other Characteristics of the Shares.* Set forth below is a table that shows the initial number of currency units per Share, the number of Shares per Basket, and the number of currency units per Basket:

| Trust name | Currency units per share | Shares per basket | Currency units per basket |
|---|---|---|---|
| CurrencyShares™ Australian Dollar Trust | 100 | 50,000 | 5,000,000 |
| CurrencyShares™ British Pound Sterling Trust | 100 | 50,000 | 5,000,000 |
| CurrencyShares™ Canadian Dollar Trust | 100 | 50,000 | 5,000,000 |
| CurrencyShares™ Mexican Peso Trust | 1,000 | 50,000 | 50,000,000 |
| CurrencyShares™ Swedish Krona Trust | 1,000 | 50,000 | 50,000,000 |
| CurrencyShares™ Swiss Franc Trust | 100 | 50,000 | 5,000,000 |

For each Trust, a minimum of three Baskets, representing 150,000 Shares, will be outstanding at the commencement of trading on the Exchange.

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each business day. The minimum trading increment for Shares on the Exchange will be $0.01.

*Listing Fees.* The Exchange original listing fee applicable to the listing of the Trust will be $5,000. The annual continued listing fee for the Trust will be $2,000.

*Continued Listing Criteria.* Under the applicable continued listing criteria, the Exchange will commence delisting proceedings with respect to Shares for a particular Trust as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of foreign currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Trustee, or the Exchange or the Exchange stops providing a hyperlink on the Exchange's Web site to any such unaffiliated foreign currency value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

derivatives, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy. *See* telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE, and Christopher Chow, Special Counsel, Commission, on June 19, 2006 (authorizing the continued inclusion of footnote 21 from the original filing, despite the text of Amendment No.1).

[43] *See, e.g.,* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35) (noting that quote and trade information regarding debt securities is widely available to market participants from a variety of sources, including broker-dealers, information service providers, newspapers and Web sites).

[44] The Trust Web site's foreign currency spot price will be provided by FactSet Research Systems (*http://www.factset.com*). The NYSE will provide a link to the Trust's Web site. FactSet Research Systems is not affiliated with the Trusts, Trustee, Sponsor, Depository, Distributor or the Exchange. In the event that the Trust's Web site should cease to provide this foreign currency spot price information from an unaffiliated source and the intraday indicative value of the Shares, the NYSE will commence delisting proceedings for the Shares.

[45] The midpoint will be calculated by the Sponsor. The midpoint is used for purposes of calculating the premium or discount of the Shares. For example, assuming a British Pound spot bid of $1.7473 and an offer of $1.7474, the mid point would be calculated as follows: (British Pound spot bid plus ((spot offer minus spot bid) divided by 2)) or ($1.7473+($1.7474 − $1.7473)/2)) + $1.74735.

[46] The IIV of the Shares is analogous to the intraday optimized portfolio value (sometimes referred to as the IOPV), indicative portfolio value and the intraday indicative value (sometimes referred to as the IIV) associated with the trading of exchange-traded funds. *See, e.g.,* Securities Exchange Act Release No. 46686 (October 18, 2002), 67 FR 65388 (October 24, 2002) (SR–NYSE–2002–51) for a discussion of indicative portfolio value in the context of an exchange-traded fund. The Exchange will halt trading in an issue of CurrencyShares for which the IIV per Share is no longer calculated or disseminated. In such case, the Exchange will immediately contact the Commission staff to discuss measures that may be appropriate under the circumstances.

[47] The last sale price of the Shares in the secondary market will be available on a real-time basis for a fee from regular data vendors.

*Exchange Trading Rules and Policies.* The Shares are considered ''securities'' pursuant to NYSE Rule 3 and are subject to all applicable trading rules. Trading in the Shares will be subject to all provisions of Rule 1300A.[48] The Exchange does not currently exempt Currency Trust Shares from the Exchange's ''Market-on-Close/Limit-on-Close/Pre-Opening Price Indications'' Policy, although the Exchange may do so by means of a rule change in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.

The Exchange also has adopted Rule 1301A (''Currency Trust Shares: Securities Accounts and Orders of Specialists'') to ensure that specialists handling Currency Trust Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, options, futures contracts and options thereon or any other derivative on such currency.[49] As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

*Surveillance.* The Exchange's surveillance procedures will be comparable to those used for Investment Company Units, and streetTRACKS@ Gold Shares and the Euro Currency Trust, and will incorporate and rely upon existing NYSE surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Shares and to detect violations of Exchange rules, thereby deterring manipulation.

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. The Exchange is able to obtain information regarding trading in the Shares, foreign currency options and foreign currency futures through NYSE members, in connection with such members' proprietary or customer trades which they effect 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 noted above, futures on the Australian Dollar, British Pound, Canadian Dollar, Mexico Peso, Swedish Krona, and Swiss Franc, as well as options on such futures (except for the Swedish Krona) are traded on the CME (both exchange pit trading and GLOBEX trading, except for Swedish Krona futures, which trade on GLOBEX only). Standardized options on the Australian Dollar, British Pound, Canadian Dollar, and Swiss Franc trade on the Phlx. The Exchange represents that these U.S. markets are the primary trading markets in the world for exchange-traded futures, options, and options or futures on these currencies. The Exchange represents that it can obtain trading information in connection with these currency futures, options, and options on futures from CME and Phlx through the ISG. Specifically, the NYSE can obtain information: (1) From the CME about the trading of the relevant foreign currency futures, and options on those futures, that trade on the CME; and (2) from the Phlx about the trading of options on the relevant foreign currencies that trade on the Phlx.[50]

*Trading Halts.* With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) The extent to which trading is not occurring in the applicable foreign currency or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to Exchange's ''circuit breaker'' rule.[51] The Exchange will halt trading in the Shares of a Trust if the Trusts' Web Site (to which NYSE will link) ceases to provide: (1) the value of the applicable foreign currency updated at least every 15 seconds from a source not affiliated with the Sponsor, Trust, or the Exchange; or (2) the IIV per Share updated every 15 seconds. In such event, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances.

*Due Diligence.* Before a member, member organization, allied member, or employee thereof recommends a transaction in the Shares, such person must exercise due diligence to learn the essential facts relative to the customer pursuant to Exchange Rule 405, and must determine that the recommendation complies with all other applicable Exchange and Federal rules and regulations. A person making such recommendation should have a reasonable basis for believing, at the time of making the recommendation, that the customer has sufficient knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

*Information Memo.* The Exchange will distribute an Information Memo to its members in connection with the trading in the Shares. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Memo, among other things, will discuss what the Shares are, that Shares are not individually redeemable but are redeemable only in Baskets of 50,000 shares or multiples thereof, how a Basket is created and redeemed, applicable Exchange rules, the indicative price of the applicable foreign currency and IIV, dissemination information, trading information, and

[48] In particular, Rule 1300A provides in part that Rule 105(m) is deemed to prohibit an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof from acting as a market maker or functioning in any capacity involving marketmaking responsibilities in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, except as otherwise provided therein. *See* Securities Exchange Act Release Nos. 52843, *supra* at note 17 and 52715 (November 1, 2005), 70 FR 68490 (November 10, 2005).

[49] Rule 1301A also states that, in connection with trading the applicable non-U.S. currency, options, futures or options on futures or any other derivatives on such currency (including Currency Trust Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the applicable non-U.S. currency, options, futures or options on futures, or any other derivatives on such currency. For purposes of Rule BOlA, ''person associated with a member'' shall have the same meaning ascribed to it in Section 3(a)(21) of the Act.

[50] Phlx is a member of the ISG. CME is an affiliate member of lSG.

[51] NYSE Rule 80B.

the applicability of suitability rules.[52] The Information Memo also will state that the number of units of foreign currency required to create a Basket or to be delivered upon redemption of a Basket may gradually decrease over time in the event that the Trust is required to sell units of foreign currency to pay the Trust's expenses. The Memo also will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Memo also will reference the fact that there is no regulated source of last sale information regarding foreign currency, and that the Commission has no jurisdiction over the trading of foreign currency. Finally, the Memo also will note to members language in the Registration Statement regarding prospectus delivery requirements for the Shares.

2. Statutory Basis

The Exchange states that the basis under the Exchange Act for this proposed rule change, as amended, is the requirement under Section 6(b)(5) of the Exchange Act [53] 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, as amended, will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange states that written comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2006–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–35. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–35 and should be submitted by July 18, 2006.

**IV. Commission Findings and Order Granting Accelerated Approval of a Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act [54] and the rules and regulations thereunder applicable to a national securities exchange.[55] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Exchange Act,[56] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

*A. Surveillance*

The Commission finds that the proposed rule change provides the NYSE with the tools necessary to monitor trading in the Shares and is designed to prevent fraudulent and manipulative acts and practices. Information sharing agreements with markets trading securities underlying a derivative, or primary markets trading derivatives on the same underlying instruments, are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.[57] Although an information sharing agreement is not possible with the OTC foreign exchange market, the Commission believes that the Exchange's comprehensive surveillance sharing agreements with the Phlx and CME, by virtue of their memberships in the ISO, together with NYSE Rules 1301A and 1300A(b), will allow the NYSE to monitor for fraudulent and manipulative trading practices.[58]

NYSE Rule 1301A requires that the specialist handling the Shares provide the Exchange with information relating to its trading in options, futures or

[52] The Information Memo also will discuss exemptive relief, if any, granted by the Commission from certain rules under the 1934 Act. The applicable rules are: Rule 10a–1; Rule 200(g) of Regulation SHO; Section 11(d)(1) and Rule 11d1–2; and Rules 101 and 102 of Regulation M under the 1934 Act.

[53] 15 U.S.C. 78(f)(b)(5).

[54] 15 U.S.C. 78f.

[55] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See U.S.C. 78c(f).

[56] 15 U.S.C. 78f(b)(5).

[57] *See, e.g.,* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving proposal by the NYSE to list and trade trust shares that correspond to a fixed amount of gold).

[58] The Commission notes that it has previously approved the listing and trading of foreign currency options or warrants. *See, e.g.,* Securities Exchange Act Release Nos. 19133 (October 14, 1982), 47 FR 46946 (October 21,1982) (order approving a Phlx proposal to accommodate the listing and trading of standardized option contracts on five foreign currencies, including the British Pound and Swiss Franc); 22471 (September 26,1985), 50 FR 40636 (October 4,1985) (order approving a proposed rule change by the Chicago Board Options Exchange, Inc. (''CBOE'') to trade standardized option contracts on six foreign currencies, including the British Pound, Canadian Dollar, and Swiss Franc); 23945 (December 30, 1986), 52 FR 633 (January 7, 1987) (order approving a proposal by the CBOE to trade standardized options on the Australian Dollar); and 35806 (June 5,1995), 60 FR 30911 (June 12, 1995) (order approving a Phlx proposal to trade currency warrants based on the value of the U.S. dollar in relation to the Mexican Peso).

options on futures on the applicable foreign currencies, or any other derivatives based on the applicable foreign currencies. These reporting and recordkeeping requirements will assist the Exchange in identifying situations potentially susceptible to manipulation. NYSE Rule 1301A(c) also prohibits the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the applicable foreign currency, or options, futures or options on futures on the applicable foreign currency, or any other derivatives based on the applicable foreign currency (including the Shares). In addition, NYSE Rule 1300A(b) prohibits the specialist in the Shares from being affiliated with a market maker in the applicable foreign currency, or options, futures or options on futures on the applicable foreign currency, or any other derivative based on the applicable foreign currency, unless information barriers are in place that satisfy the requirements in NYSE Rule 98.

The Exchange also represents that it can obtain, through its ISG membership, information from CME regarding the trading of the relevant foreign currency futures, and options on those futures, that trade on CME, and from Phlx regarding the trading of options on the relevant foreign currencies that trade on Phlx. In addition, the Exchange represents that it is able to obtain information regarding trading in the Shares, and options and futures on the applicable foreign currency, through its members, in connection with such members' proprietary or customer trades that they effect on any relevant market.

*B. Dissemination of Information*

The Commission believes that sufficient venues for obtaining reliable information exist so that investors in the Shares can monitor the underlying spot markets relative to the NAV of their Shares. As discussed above, the Exchange represents that there is a considerable amount of foreign currency price and market information available 24 hours a day through public Web sites and through professional and subscription services, including Bloomberg and Reuters.[59] The Exchange further represents that major market data vendors regularly report current currency exchange pricing for a fee for the currencies underlying the Shares. In addition, the Exchange will provide a link to the Trust's Web site on the NYSE's public Web site. The Trust's Web site will provide, among other things, the relevant spot prices,[60] including the bids and offers and the midpoints between the bids and offers for the spot prices, updated no less than every 15 seconds, and the daily Federal Reserve Bank of New York Noon Buying Rate.

The Commission also notes that the Trust's Web site will contain: (1) An IIV per Share for the Shares, updated at least every 15 seconds; (2) a delayed indicative value (subject to a 20 minute delay), which is used for calculating premium/discount information; (3) premium/discount information, calculated on a 20 minute delayed basis; (4) the NAV of the Trust, as calculated each business day by the Trustee;[61] (5) accrued interest per Share; (6) the Basket Amount for each applicable foreign currency; and (7) the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay, as it is provided free of charge.[62] Further, the Exchange represents that real-time information for prices for futures and options on the applicable foreign currencies traded on CME and Phlx are available from information service providers, and that CME and Phlx provide delayed futures and options information free of charge on their respective Web sites.

The Commission believes that the wide availability of such information, as described above, will facilitate transparency with respect to the Shares and diminish the risk of manipulation or unfair informational advantage.

*C. Listing and Trading*

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Exchange Act. Shares will trade as equity securities subject to NYSE rules including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting rules and procedures governing the trading of lCUs on the NYSE. The Commission believes that listing and deli sting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the Information Memo the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares, including their prospectus delivery obligations.

*D. Acceleration*

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission has previously granted approval to a NYSE proposal to adopt NYSE Rules 1300A and 1301A that govern the trading of Currency Trust Shares, and a proposal to list and trade Euro Shares pursuant to such rules.[63] The Shares proposed to be listed and traded in this proposed rule change, based on six different foreign currencies, are substantially similar in structure and operation to the Euro Shares, will be listed and traded pursuant to the same rules, and do not raise any new issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[64] to approve the proposal, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[65] that the proposed rule change (SR–NYSE–2006–35), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[66]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–5703 Filed 6–26–06; 8:45am]

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[59] The Exchange notes that, in most instances, real-time information is available for a fee, and information available free of charge is subject to delay (typically, 15 to 20 minutes).

[60] As noted above, the spot prices for the applicable foreign currencies published on the Trusts' Web site will be provided by FactSet Research Systems, which is not affiliated with the Trusts, the Trustee, the Sponsor, the Depository, the Distributor or the Exchange.

[61] According to the Exchange, the Sponsor has represented to the Exchange that the NAV for each Trust will be available to all market participants at the same time. The Exchange further represents that therefore, no market participant will have a time advantage in using such data.

[62] As noted above, the last sale price of the Shares in the secondary market will be disseminated over the Consolidated Tape.

[63] *See* Securities Exchange Act Release No. 52843, *supra* at note 17 (order granting accelerated approval, after a 15-day comment period, to a NYSE proposal to list and trade Euro Shares, which represent units of fractional undivided beneficial interest in and ownership of the Euro Currency Trust).

[64] 15 U.S.C. 78s(b)(2).

[65] 15 U.S.C. 78s(b)(2).

[66] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54009; File No. SR–Phlx–2005–42]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Establishment of a Neutral ''Referee''

June 16, 2006.

### I. Introduction

On June 10, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to establish a neutral ''Referee.'' The Phlx filed Amendment Nos. 1, 2, and 3 to the proposed rule change on June 20, 2005, February 16, 2006 and March 10, 2006, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 31, 2006.[3] The Commission received one comment letter on the proposal.[4] On May 19, 2006, the Phlx submitted a response to the comment letter.[5] This order approves the proposed rule change, as amended.

### II. Description of the Proposed Rule Change

The Exchange proposes to create the new regulatory position of ''Referee'' to improve the process of resolving trading disputes and Floor Official rulings. This neutral Referee would be either an Exchange employee or an independent contractor. The Referee would have the authority to: (1) Review and rule on appeals from Floor Official rulings concerning the nullification or adjustment of trades; and (2) act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of certain Exchange rules, Equity Floor Procedure Advices,[6] and Option Floor Procedure Advices.[7]

*Current Floor Official Program*

Pursuant to Exchange By-Law Article VIII, Floor Officials, as designees [8] of the Chairmen of the Options Committee,[9] Floor Procedure Committee,[10] and Foreign Currency Options Committee,[11] respectively, are authorized to administer the provisions of Exchange By-Laws and Rules of the Exchange pertaining to the respective trading floors and the immediately adjacent premises of the Exchange. Floor Officials may impose penalties, as applicable, for breaches of the Exchange's rules or regulations relating to order, decorum, health, safety and welfare on the respective trading floors. Additionally, they may rule to nullify, or adjust the terms of, executed trades under specific and limited conditions contained in Exchange rules, and may grant relief from certain Exchange requirements imposed on on-floor members and member organizations, if authorized to do so by rule.

Currently, Floor Official rulings and appeals for review from such rulings are governed by Exchange Rule 124, Disputes. Rule 124(d) provides that Options Floor Official rulings may be appealed to a Review Panel consisting of three members of the Options Subcommittee on Rules and Rulings (''Subcommittee''),[12] or the Chairperson of the Standing Committee (or his designee) if three Subcommittee members cannot be promptly convened, and Equity Floor Official rulings may be appealed to a Review Panel consisting of three members of the Floor Procedure Committee, or the Chairperson of the Floor Procedure Committee (or his designee) if three members cannot be promptly convened.[13] Decisions of the Review Panel are considered final decisions of the Standing Committee and may be appealed to an Advisory Committee on Appeals of the Board of Governors (''Board'').

Floor Officials also are authorized to rule on requests for relief from the requirments of rules pertaining to quote spread parameters,[14] disengagement of Exchange automatic execution systems under extraordinary circumstances,[15] determinations with respect to the Exchange's Quote Rule,[16] and trading halts, opening and reopenings.[17]

*The Referee*

The Referee would be either an Exchange employee or an independent contractor who is not an employee of the Exchange but who has entered into an employment contract with the Exchange for a fixed period of time. The Referee would be appointed by the Exchange's Board pursuant to the recommendation of the Audit Committee. Candidates for the Referee position would be recruited in the same fashion as candidates for other Exchange positions through the Exchange's Human Resources Department. After conducting an interview process with the various candidates, the Audit Committee would recommend its selection to the Board, who then would vote on the Audit Committee's recommendation. The Exchange notes that, upon the Commission's approval of this proposal, the Referee would be appointed to the new position.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53548 (March 24, 2006), 71 FR 16389.

[4] *See* letter to Jonathan G. Katz, Secretary, Commission from Matthew B. Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC (''Citadel''), dated April 21, 2006 (''Citadel Letter'').

[5] *See* letter to Nancy M. Morris, Secretary, Commission from Richard S. Rudolph, Vice President and Counsel, Phlx, dated May 17, 2006 (''Phlx Response Letter'').

[6] The Exchange clarified that the Referee also may have the authority to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of Equity Floor Procedure Advices. Telephone conversations between Richard Rudolph, Vice President and Counsel, Phlx, and Jennifer Dodd, Special Counsel, Division of Market Regulation (''Division''), Commission, on March 10, 2006 (''March 10 Telephone Conversation'').

[7] Floor Officials would retain their authority to make such initial rulings. The Referee simply would have the same authority as a Floor Official concerning such initial rulings.

[8] The designees of the respective floor Committee Chairmen are generally members of the respective committees and subcommittees thereof.

[9] The Options Committee has general supervision of the dealings of members on the options trading floor. *See* Exchange By-Law Article X, Section 10–20.

[10] The Floor Procedure Committee has general supervision of the dealings of members on the equity trading floor. *See* Exchange By-Law Article X, Section 10–16.

[11] The Foreign Currency Options Committee has general supervision of the dealings of members on the foreign currency options trading floor. *See* Exchange By-Law Article X, Section 10–17.

[12] Each Standing and Special Committe may appoint such subcommittees as it may deem necessary for the efficient discharge of its duties. *See* Exchange By-Law Article X, Section 10–3(b). The Options Committee has appointed the Subcommittee to review and recommend the adoption for new rules or the amendment of current rules to the full Options Committee, and to discuss rulings made on the floor of the Exchange by Floor Officials. The Exchange clarified that the Subcommittee also would discuss initial rulings on requests for relief made by the Referee acting in the capacity of a Floor Official. Telephone conversation between Richard Rudolph, Vice President and Counsel, Phlx, and Nancy Sanow, Assistant Director, and Kate Robbins, Attorney, Division, Commission, on June 12, 2006 (''June 12 Telephone Conversation'').

[13] The Exchange clarified the current process for Equity Floor Oficial rulings. March 10 Telephone Conservation.

[14] Relief from the established bid/ask differentials may be granted upon the receipt of an approval of two Floor Officials. *See* OFPA F–6.

[15] *See* Exchange Rule 1080(e) and OFPA A–13.

[16] *See* Exchange Rule; 1080(c)(i).

[17] *See* Exchange rules 1017, 1047, and 1047A and OFPA G–2.

To ensure the neutrality of the Referee, the Referee would report to the Exchange's Audit Committee,[18] which would have supervision over the Referee. The Exchange's General Counsel or his/her designee would be responsible for purely administrative matters such as, without limitation, personnel issues and vacation. Additionally, based on the advice of the Exchange's General Counsel and Human Resources management, the Audit Committee may recommend the level of compensation of the Referee to the Board, and may establish other conditions of employment of the Referee. The Audit Committee or its designee[19] would conduct annual performance evaluations, and would consider any written complaints from members and member organizations concerning the Referee. The Audit Committee would not, however, have the authority to overrule or modify any ruling made by the Referee. The Audit Committee would have the authority to terminate the employee of the Referee for good cause shown, and to otherwise disipline the Referee as appropriate for good cause shown.

The Referee would have jurisdiction over all Exchange trading floors and systems, except with regard to issues of order and decorum pursuant to Exchange rule 60. The Options Committee would continue to have jurisdiction over order and decorum issues on the options floor;[20] the Floor Procedure Committee would continue to have jurisdiction over order and decorum issues on the equity floor,[21] and the Foreign Currency Options Committee would continue to have jurisdiction over order and decorum issues on the foreign currency options floor.[22]

The Audit Committee would recommend for appointment by the Board other Exchange employee(s) or independent contractor(s) to function as the Referee in the event that the Referee is unavailable (''Backup Referees''). The Exchange's rules and procedures, including qualifications, applicable to the Referee also would apply to Backup Referees, and any reference to the Referee in the proposed rules would be deemed to include Backup Referees. The Exchange states that having Backup Referees is necessary if the Referee is not available due to, for example, a ruling on another matter that is in progress, vacation, or illness.

Under the proposal, the Market Surveillance staff would assign available Floor Officials to rule on disputes. The Exchange believes that this provision should ensure the neutrality of Floor Officials by assigning the next available Floor Official to rule on a particular matter.

*Qualifications of the Referee*

Under the proposal, the Referee would be required to have sufficient expertise in the area of trading to act in the capacity of a Floor Official concerning initial requests for relief and to conduct reviews of Floor Official rulings concerning the nullification and adjustment of trades. The Referee must possess sufficient knowledge of Exchange rules and the relevant sections of the Act and the rules thereunder to administer the Referee's responsibilities and authority.

To ensure the Referee's neutrality, the proposal would provide that the Referee may not be a member of the Exchange, may not be directly or indirectly affiliated with any Exchange member or member organization, and may not be an immediate family member of any Exchange member. The Referee may not be a debtor or creditor of any Exchange member or member organization.

*Duties of the Referee*

The primary responsibility of the Referee would be to rule on appeals from Floor Official decisions concerning the nullification and adjustment of trades, and to have the same authority as Floor Officials concerning rulings on member requests for relief from the requirements of specified rules, as set forth in proposed Commentary .02(a) to Exchange Rule 124.[23] The Referee would replace the current three-member Review Panel, which is currently composed of Floor Officials, and would be authorized to review Floor Official rulings concerning the adjustment of the terms of a trade or the nullification of a trade, and either uphold, overturn, or modify such Floor Official rulings. If the Referee is unavailable or unable to make a ruling for any reason (including, without limitation, absence from the Exchange trading floor, vacation, illness, or in the process of making another Referee ruling), the proposal would require Market Surveillance staff to immediately notify the Exchange's General Counsel or his or her designee, who then would designate a Backup Referee to make a such a ruling.

The Exchange's General Counsel or his or her designee may assign additional duties and responsibilities to the Referee not related to Referee rulings. In order to ensure the Referee's neutrality respecting any matter on which he or she is to rule, and to avoid the possibility that the Referee could be biased as a result of his or her knowledge of any pending investigation or disciplinary action concerning a person that is a party to a dispute or that requests relief from the requirements of an Exchange rule, the proposal would prohibit the Referee from: (i) Participating in any Exchange enforcement action, investigation, market surveillance activity, hearing (other than a witness) or other activity related to disciplinary matters; (ii) issuing citations for violations of Exchange rules; (iii) ruling on any matter concerning order and decorum pursuant to Exchange Rule 60 and the regulations thereunder; and (iv) preparing, researching, drafting, reviewing, or filing of a proposed rule change with the Commission pursuant to the Act and the rules thereunder concerning the Exchange's disciplinary rules.

The proposed rules would require the Referee to make fair and impartial decisions in accordance with the Exchange's rules and By-Laws.

*Procedures for Review of Floor Official Rulings*

Under the proposed amendments to Exchange Rule 124(d), OFPA–27, and EFPA F–27, Market Surveillance staff must be advised within 15 minutes of a Floor Official ruling concerning the nullification or adjustment of a trade that a party to such ruling has determined to seek the Referee's review of such ruling. The purpose of the notification requirement is to provide reasonably prompt notice to Market Surveillance and to participants in a trade that such ruling is subject to appeal and that the process set forth in the proposed rule amendments has begun, and ultimately a decision to sustain, overturn, or modify the initial Floor Official decision concerning the trade will be made.[24]

As appropriate, the Chairman of the Options Committee, the Foreign

[18] *See* propsoed Exchange By-Law Article X, Section 10–9.

[19] The Exchange clarified that the Audit Committee's designee may include the Exchange's General Counsel. June 12 Telephone Conservation.

[20] *See* Exchange By-Law Article X, Section 10–20.

[21] *See* Exchange By-Law Article X, Section 10–16

[22] *See* Exchange By-Law Article X, Section 10–17.

[23] *See* Section II, Rulings on Requests for Relief, *infra*.

[24] The Exchange advises that this notification requirement is consistent with Exchange Rule 1092, Obvious Errors, which establishes a similar notice period. Under the proposal, Floor Official rulings made pursuant to Exchange Rule 1092 would be reviewed by the Referee, provided that the party seeking the review requests such as a review within the time frame required. *See* proposed Exchange Rule 1092(f).

Currency Options Committee or of the Floor Procedure Committee, or their respective designees,[25] would be required to refer a Referee that fails to make any ruling in accordance with Exchange rules to the Audit Committee for possible disciplinary action, including removal. A Floor Official that fails to make any ruling in accordance with Exchange rules may be subject to possible disciplinary action by the Exchange.

To minimize the likelihood of frivolous appeals from Floor Official rulings, a member or member organization seeking the Referee's review of a Floor Official ruling concerning the nullification or adjustment of a trade would be assessed a fee of $250 for each Floor Official ruling they seek to have reviewed if the Referee upholds the Floor Official decision. No fee would be assessed to the member or member organization seeking a review if the Floor Official decision is overturned or modified. This fee is currently imposed on options floor appeals that are found by the Review Panel to be frivolous.[26] The Exchange believes that the proposed $250 fee provides an objective standard for imposition of the fee (*i.e.,* the fee would be imposed in situations where the Referee sustains a Floor Official ruling on the nullification or adjustment of a trade). According to the Exchange, the Referee would not have the discretion to impose the fee that the Review Panel[27] currently has, and Exchange members and member organizations would have actual notice of the circumstances giving rise to the imposition of the fee.

*Rulings on Requests for Relief*

Proposed Commentary .02(a) to Exchange Rule 124 would authorize the Referee to act in the capacity of a Floor Official respecting initial rulings concerning requests for relief from the requirements of Exchange Rules relating to: (1) Bid/ask differentials pursuant to Exchange Rule 1014(c) and OFPA F–6; (ii) disengagement of Exchange automatic execution systems pursuant to Exchange Rule 1080(e) and OFPA A–13; (iii) the determination pursuant to Exchange Rule 1080(c)(i) that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule,[28] as defined in Exchange Rule 1082(a)(iii), and that quotes in options on the Exchange or another market or markets previously subject to such relief are no longer subject to such relief; and (iv) trading halts, openings and re-openings pursuant to Exchange Rules 1017, 1047 and 1047A and OFPAs A–12, A–14 and G–2.[29]

Exchange Rule 1014(c) and OFPA F–6 set forth the maximum allowable bid/ask differentials, or quote widths, that may be disseminated by specialists and Registered Options Traders on the Exchange, depending on the price of the series to be quoted. The Exchange believes that these requirements can have the unintended consequence of requiring those making markets to quote at prices that are unnecessarily narrow, thereby exposing them to great risk if markets move quickly.[30] The Exchange has indicated that, under OFPA F–6, two Floor Officials may grant relief from these differentials during times of peak market activity where options markets and/or the market for securities underlying the option move quickly. Under the proposal, the Referee would have the same authority as a Floor Official to make such a ruling under OFPA F–6.[31]

Exchange Rule 1080(e) and OFPA A–13 provide that, in the event extraordinary circumstances with respect to a particular class of options exist, two Floor Officials may determine to disengage automatic execution systems with respect to that option, in accordance with Exchange procedures. Exchange Rule 1080(e) and OFPA A–13 describe the procedures to be followed to effect such disengagement. Under the proposal, the Referee would have the same authority as a Floor Official to make such a determination under Exchange Rule 1080(e) and OFPA A–13.[32]

Exchange Rule 1080(c)(i) provides that the Chairman of the Exchange's Options Committee or his designee (or if neither is available, two Floor Officials) may determine that quotes in options on the Exchange or another market or markets are subject to relief from the firm quote requirement set forth in the SEC Quote Rule, (thereby excluding such quotes from the Exchange's calculation of the National Best Bid/Offer (''NBBO'')) and that quotes in options on the Exchange or another market or markets previously subject to such relief are no longer subject to such relief. The Referee would have the same authority as a Floor Official in making such determinations under Exchange Rule 1080(c)(i).

Exchange Rules 1017, 1047 and 1047A and OFPAs A–12, A–14[33] and G–2 govern trading halts, openings and re-openings on the Exchange.[34] Under the proposal, the Referee would have the same authority as a Floor Official respecting initial rulings concerning requests for relief from the requirements of Exchange Rules 1017, 1047, 1047A and OFPAs A–12, A–14 and G–2 when Floor Official approval is required.[35]

*Referee's Decision Final*

Currently, the decisions of the Review Panel are considered final decisions of the Standing Committee and may be appealed to an Advisory Committee on Appeals of the Board. Initial rulings to grant or deny relief from the requirements of certain Exchange rules are not currently considered final decisions of a Standing Committee and thus are not currently appealable to the Exchange's Board.[36]

The proposed rule change would provide that decisions of the Referee concerning the review of Floor Official rulings relating to the nullification or adjustment of transactions, and initial requests for relief from the requirements for the rules specified in Commentary .02(a) to Exchange Rule 124, shall be

[25] The Exchange clarified that the Chairman of the Foreign Currency Options Committee, or his designee, also would be required to refer a Referee to the Audit Committee for disciplinary action, if appropriate. March 10 Telephone Conversation.

[26] This fee is not currently imposed on equity floor appeals. March 10 Telephone Conversation.

[27] The Exchange clarified that the Review Panel currently has the discretion to impose the $250 fee. June 12 Telephone conversation.

[28] Rule 602 of Regulation NMS, 17 CFR 242.602.

[29] If the Referee acts in the capacity of a Floor Official and makes an initial ruling on a request for relief from the requirements of Exchange rules, as set forth in proposed Commentary .02(a) to Exchange Rule 124, its decision would be final, as described below.

[30] *See, e.g.,*Securities Exchange Act Release No. 50729 (November 23, 2004), 69 FR 69982 (December 1, 2004) (SR–Phlx–2004–74), (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to $5 Bid/Ask Differentials).

[31] The Exchange clarified that the Referee would not be able to act in the capacity of a Floor Official in calling upon a ROT to make a market pursuant to Exchange Rule 1014(c). Telephone conversation between Richard Rudolph, Vice President and Counsel, Phlx, and Kate Robbins, Attorney, Division, Commission, on June 15, 2006 (''June 15 Telephone Conversation'').

[32] This authority also would extend to the re-engagement of the Exchange's automatic execution systems. June 15 Telephone Conversation.

[33] The Exchange clarified that the Referee also would have the same authority as a Floor Official to make rulings in the capacity of a Floor Official with respect to the requirements in OFPA A–14. March 10 Telephone Conversation.

[34] For consistency, the Exchange is proposing a conforming amendment to OFPA G–2, as described below.

[35] The Exchange clarified that the Referee would have the authority to make any ruling that a Floor Official may currently make pursuant to these rules. June 12 Telephone Conversation.

[36] These rules are set forth in proposed Commentary .02(a) to Exchange rule 124.

final and may not be appealed to the Exchange's Board. the Exchange does not believe that these are the types of decisions that are appropriate for such appeals, particularly because of the need for speedy resolution and certainty in resolving trading disputes, whereas other Standing Committee decisions are often prospectively applied.

The Exchange notes that this provision would not operate to preclude any aggrieved member or member organization from proceeding with any other legal remedy to which such member or member organization might be entitled (*e.g.,* arbitration or appeal to the Commission if allowable by law).

*Obvious Errors*

The Exchange also proposes to amend Exchange Rule 1092, Obvious Errors. Currently, Exchange Rule 1092(f), Request for Review, provides that a Review Panel of Floor Officials will review decisions made under Exchange Rule 1092 in accordance with Exchange Rule 124(d). For consistency, the Exchange proposes to amend Rule 1092(f) to provide that the Referee will review such decisions.

*Conforming Amendment to OFPA G–2*

As a housekeeping matter, the Exchange proposes to amend OFPA G–2(c), to reflect that trading on the Exchange in any option may be halted with the approval of two Floor Officials, with the concurrence of a Market Surveillance officer. Current Exchange Rule 1047A(c) includes this provision, and the Exchange proposes to amend OFPA G–2 for consistency.

## III. Comment Letter and Phlx's Response

The Commission received one comment letter with respect to the proposed rule change.[37] In its letter, Citadel applauded the Phlx's proposal to introduce a neutral Referee into the review process and noted that the proposal is a ''welcome one'' with the ''laudable'' goal of providing more fair and professional reviews that could result in substantively better decisions and more fundamentally equitable treatment for users of the Exchange who are not members. Citadel asserted that the success of the proposal would depend on the Referee's ability, neutrality and training. Although Citadel expressed its preference for having neutral decisionmakers make initial rulings on trading disputes, it surmised that having an independent Referee act in an appellate role might also lead to more thorough, objective and fair decisions by Floor Officials.

Citadel, however, expressed some concerns with the proposal. Citadel stated that the proposal to impose a fine of $250 for unsuccessful but non-frivolous appeals is ''fundamentally unfair.'' In support of its argument, Citadel noted that initial decisions regarding trade disputes are made by Floor Officials, who are not independent and can lack proper training. Also, Citadel asserted that persons who are not Exchange members may not be able to assess on their own whether an Exchange-specific error has occurred.

In addition, Citadel believes that it is unwise to not permit the right to appeal the Referee's decision to the Exchange's Board. Citadel acknowledged that the importance of the Board's role in the review of any specific ruling might be diminished by an independent Referee providing appellate review. Citadel, however, believes that because there is no guarantee that the Referee would always meet the high standards the Exchange hopes to achieve, the ability to appeal to the Board would remain an ''important safeguard'' and would give the Referee an incentive to make fair rulings. Citadel noted that, if the Exchange were to permit the Referee's rulings to be appealed to the Board, it would indicate that the Exchange takes trading disputes seriously and would allow the Board to timely address potential problems.

In its response letter, the Phlx noted its view that the $250 fee for unsuccessful appeals is an ''objective standard'' to replace the Review Panel's current ''subjective discretion'' over the imposition of fees.[38] The Phlx further asserted that the $250 fee for unsuccessful appeals is fair and consistent with Section 6(b)(4) of the Act.[39]

In addressing Citadel's concerns regarding the right to appeal the Referee's ruling, the Phlx remarked that the types of rulings the Referee would make are not appropriate for appeals to the Exchange's Board because of the need for ''speedy resolution and certainty.'' The Exchange noted that an aggrieved member or member organization would not be precluded from proceeding with any other legal remedy to which such member or member organization might be entitled. The Exchange further noted that there is a safeguard and an incentive for the Referee to make fair rulings, citing the requirement that the Chairmen of the various floor committees, or their respective designees, must refer a Referee that fails to make any ruling in accordance with Exchange rules to the Audit Committee for possible disciplinary action, including removal. Finally, the Exchange stated its view that its proposed process for resolving trading disputes is fair and consistent with the Act.

## IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[40] In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(1) of the Act,[41] which requires an exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. In addition, the Commission finds that the proposed rule change, as amended, is consistent with section 69(b)(4) of the Act,[42] which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members. Furthermore, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,[43] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to establish an independent Referee to rule on appeals from Floor Official rulings regarding the nullification or adjustment of trades is designed to bring promptness, certainty and objectivity to the Exchange's process of resolving disputes. In addition, the Commission believes that replacing the Review Panel with an independent Referee should help improve the decisionmaking process

[37] *See* Citadel Letter, *supra* note 4.

[38] *See* Phlx Response Letter, *supra* note 5.

[39] 15 U.S.C. 78f(b)(4).

[40] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78f(b)(1).

[42] 15 U.S.C. 78f(b)(4).

[43] 15 U.S.C. 78f(b)(5).

regarding appeals from trading disputes, because potential conflicts of interest that may occur when members are tasked with ruling on appeals of trading disputes involving other members would be eliminated. Furthermore, the Commission notes that having an independent Referee rule on such appeals should help foster fair and neutral decisions with respect to the resolution of trading disputes. The Commission also notes that replacing the Review Panel with a Referee should help to streamline the Exchange's process for review of Floor Official rulings, thereby making the process for settling trading disputes more efficient. In addition, the Commission believes that allowing the Referee to act in the capacity of a Floor Official in making initial rulings on requests for relief from the requirements of those Exchange rules set forth in proposed Commentary .02(a) to Exchange Rule 124 should help promote prompt and efficient rulings on such requests.

The Commission has carefully considered the comments raised in the Citadel Letter. Specifically, the Citadel Letter asserts that the $250 fee for unsuccessful appeals is unfair. The Commission notes, however, that the proposed $250 fee would employ an objective standard with respect to the imposition of fees on unsuccessful appeals, rather than retaining the current method that permits such a fee to be imposed at the discretion of the Review Panel upon a finding that such appeal is frivolous. The Commission believes that the Exchange's proposal to impose a $250 fee on unsuccessful appeals is consistent with the Act.

The Citadel Letter also expressed concern that the decisions of the Referee would be final and not appealable to the Exchange's Board. The Commission notes that the Exchange's proposal is intended to provide for expeditious resolution of trading disputes and believes that the proposal is a reasonable effort to ensure prompt, efficient, and fair review of Floor Officials' decisions. The Commission further notes that the proposal does not alter any right that a member or member organization may have to pursue any other legal remedy that may be available, such as arbitration. In the Commission's view, the Exchange's proposal contains appropriate safeguards, including the requirement that the Chairman of the respective committees or their designees must refer a Referee to the Exchange's Audit Committee if he or she fails to make a ruling in accordance with Exchange rules. Moreover, the requirements that the Referee may not be a member of the Exchange, may not be directly or indirectly affiliated with any Exchange member and may not be a debtor or creditor of any Exchange member or member organization, should help to ensure that the Referee is neutral and that his or her rulings are fair and objective. In addition, the restrictions that provide that duties and responsibilities relating to disciplinary matters, that the issuance of citations for violations of Exchange rules, and that matters relating to order and decorum may not be assigned to the Referee should also further the goal of impartial, unbiased, and objective rulings on the part of the Referee. Finally, the Commission notes that, with respect to the Referee acting in the capacity of a Floor Official and making initial rulings to grant or deny relief from the requirements of the Exchange rules specified in proposed Commentary .02(a) to Exchange Rule 124, such Floor Official rulings currently are not considered final decisions of the Standing Committee and thus are not currently appealable to the Exchange's Board. For such initial rulings, the proposed rule change would not change the Exchange's current process with respect to such rulings. Based on these considerations, the Commission believes that the Citadel Letter has not raised any concerns that would preclude approval of the Exchange's proposal.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[44] that the proposed rule change (SR–Phlx–2005–42), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–5678 Filed 6–27–06; 8:45 am]

**BILLING CODE 8010–01–M**

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 54017; File No. SR–Phlx–2006–38]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Concerning Priority in Trades Involving Synthetic Option Orders

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 8, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend for an additional one-year period a pilot concerning Exchange Rule 1033(e), which affords priority to synthetic option orders (as defined below) traded in an open-outcry over bids and offers in the trading crowd but not over bids (offers) of public customers on the limit order book and not over crowd participants who are willing to participate in the synthetic option order at the net debit or credit price. The rule applies to orders for 100 contracts or more and is subject to a pilot program scheduled to expire on June 30, 2006. The Exchange proposes to extend the pilot through June 30, 2007.

The text of the proposed rule change is set forth below. Brackets indicate deletions; *italics* indicate new text.

* * * * *

**Bids and Offers—Premium**

Rule 1033. (a)–(d) No change.

(e) Synthetic Option Orders. When a member holding a synthetic option order, as defined in Rule 1066, and bidding or offering on the basis of a total

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–(f)(6).

credit or debit for the order has determined that the order may not be executed by a combination of transactions at or within the bids and offers established in the marketplace, then the order may be executed as a synthetic option order at the total credit or debit with one other member, provided that, the member executes the option leg at a better price than the established bid or offer for that option contract, in accordance with Rule 1014. Subject to a pilot expiring June 30, 200[6]*7,* synthetic option orders in open outcry, in which the option component is for a size of 100 contracts or more, have priority over bids (offers) of crowd participants who are bidding (offering) only for the option component of the synthetic option order, but not over bids (offers) of public customers on the limit order book, and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price.

(f)–(i) No change.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend for a one-year period the pilot that facilitates the execution of an option order that is represented in the crowd together with a stock component, known under the Exchange's rules as a synthetic option order,[5] which by virture of the stock component may be difficult to execute without a limited exception to current Exchange priority rules. The pilot was originally adopted in July 2005 [6] and was extended for an additional six-month period, currently scheduled to expire June 30, 2006.[7]

Currently, Exchange Rule 1033(e) provides that, if an Exchange member who is holding a synthetic option order and bidding or offering on a net debit or credit basis determines that such synthetic option order cannot be executed at the net debit or credit against the established bids and offers in the crowd, the member bidding for or offering the synthetic option on a net debit or credit basis may execute the synthetic option order with one other crowd participant, provided that the option portion of the synthetic option order is executed at a price that is better than the established bid or offer for the option. Thus, if the desired net debit or credit amount cannot be achieved by way of executing against the established bids and offers in the crowd, the member may elect to trade at the desired net debit or credit amount with one other member, provided that there is price improvement for the option component of the synthetic option order.

Exchange Rule 1033(e) affords synthetic option orders priority over bids (offers) of the trading crowd but not over bids (offers) of public customers on the limit order book and not over crowd participants that are willing to participate in the synthetic option order at the net debit or credit price. The effect of Exchange Rule 1033(e) is that a crowd participant bidding or offering for the synthetic option order has priority over other crowd participants that are bidding or offering only for the option component of the order. Exchange Rule 1033(e) applies only to synthetic option orders of 100 contracts or more.

In addition, Exchange Rule 1033(e) provides that members bidding and offering for synthetic option orders of 100 contracts or more do not have priority over bids (offers) of public customers on the limit order book.[8] Therefore, if members of the trading crowd wish to trade a synthetic option order that is marketable against public customer orders on the limit order book, public customers would have priority. Multiple public customer orders at the same price are accorded priority based on time.

The Exchange believes that the pilot, which provides a limited exception to the Exchange's priority rules only respecting controlled accounts [9] competing at the same price, should enable Floor Brokers representing synthetic option orders to provide best executions to customers placing such orders and should enable the Exchange to provide liquid markets and compete for order flow in such orders.

As stated above, the pilot applies only to synthetic option orders in which the option component is for a size of 100 contracts or more that are represented in the trading crowd in open outcry and would be subject to a pilot program through June 30, 2007.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [10] in general, and furthers the objectives of section 6(b)(5) of the Act [11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by adopting a limited exception to the Exchange's priority rules concerning synthetic option orders.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

### *C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

[5] Exchange Rule 1066(g) defines a synthetic option order as an order to buy or sell a stated number of option contracts and buy or sell the underlying stock or Exchange-Traded Fund Share in an amount that would offset (on a one-for-one basis) the option position. For example;

(1) Buy-write: An example of a buy-write is an order to sell one call and buy 100 shares of the underlying stock or Exchange-Traded Fund Share.

(2) Synthetic put: An example of a synthetic put is an order to buy one call and sell 100 shares of the underlying stock or Exchange-Traded Fund Share.

(3) Synthetic call: An example of a synthetic call is an order to buy (or sell) one put and buy (or sell) 100 shares of the underlying stock or Exchange-Traded Fund Share.

[6] *See* Securities Exchange Act Release No. 52140 (July 27, 2005), 70 FR 45481 (August 5, 2005) (SR–Phlx–2005–31).

[7] *See* Securities Exchange Act Release No. 53004 (December 22, 2005), 70 FR 72234 (December 29, 2005) (SR–Phlx–2005–78).

[8] *See* Exchange Rule 1080, Commentary .02.

[9] A controlled account includes any account controlled by or under common control with a broker-dealer. Customer accounts are all other accounts. Orders of controlled accounts are required to yield priority to customer orders when competing at the same price. Orders of controlled accounts generally are not required to yield priority to other controlled account orders. *See* Exchange Rule 1014(g)(i)(A).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] 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.

The Exchange requests that the Commission waive the 5-day pre-filing period and 30-day operative period under Rule 19b–(f)(6)(iii) [14] in order to ensure the continuity of the pilot. The Commission has waived the 5-day pre-filing requirement for this proposed rule change. In addition, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. [15] The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its pilot until June 30, 2007.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–38 on the subject line.

*Paper Comments*

- Send paper comments in triplicate in Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–38. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–38 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06–5679 Filed 6–26–06; 8:45 am]

**BILLING CODE 8010–01–M**

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 10503 and # 10504]**

### Indiana Disaster # IN–00007

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Indiana dated June 20, 2006.

*Incident:* Severe Storms and Tornadoes.

*Incident Period:* June 7, 2006 through June 8, 2006.

*Effective Date:* June 20, 2006.

*Physical Loan Application Deadline Date:* August 21, 2006.

*Economic Injury (EIDL) Loan Application Deadline Date:* March 20, 2007.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Jackson.

*Contiguous Counties:*

Indiana, Bartholomew, Brown, Jennings, Lawrence, Monroe, Scott, Washington.

*The Interest Rates are:*

| | Percent |
|---|---|
| *Homeowners with Credit Available Elsewhere:* | 5.875 |
| *Homeowners without Credit Available Elsewhere:* | 2.937 |
| *Businesses with Credit Available Elsewhere:* | 7.763 |
| *Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere:* | 4.000 |
| *Other (Including Non-Profit Organizations) with Credit Available Elsewhere:* | 5.000 |
| *Businesses and Non-Profit Organizations without Credit Available Elsewhere:* | 4.000 |

The number assigned to this disaster for physical damage is 10503 C and for economic injury is 10504 0.

The State which received an EIDL Declaration # is Indiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 20, 2006.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. E6–10072 Filed 6–26–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Small Business Size Standards: Waiver of the Nonmanufacturer Rule

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of Partial Waiver of the Nonmanufacturer Rule (NMR) for Furniture.

**SUMMARY:** The U.S. Small Business Administration (SBA) received a request for waiver of the NMR for Furniture for multiple NAICS codes. Based on our evaluation, SBA has determined that there are no small business manufacturers for the following products: Furniture Frames and Parts, Metal, Manufacturing; NAICS 337215; Furniture Frames, Wood, Manufacturing; NAICS 337215; Furniture Parts, Finished Metal, Manufacturing; NAICS 337215; Furniture Parts, Finished Plastics, Manufacturing; NAICS 337215; Furniture, Factory-type (e.g., cabinets, stools, tool stands, work benches), Manufacturing; NAICS 337127; Furniture, Hospital (e.g., hospital beds, operating room furniture), Manufacturing; NAICS 339111 and Furniture, Laboratory-type (e.g., benches, cabinets, stools, tables), Manufacturing, NAICS 339111. Therefore, the SBA is granting a waiver for the above items.

The SBA is denying a waiver of the NMR for the following; Furniture (except wood), office-type, padded, upholstered, or plain, manufacturing, NAICS 337214; Furniture parts, finished wood, manufacturing, NAICS 337215. SBA has determined that there are small business manufacturers of these classes of products.

**DATES:** This waiver is effective July 12, 2006.

**FOR FURTHER INFORMATI0N CONTACT:** Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail at *edith.butler@sba.gov.*

**SUPPLEMENTARY INFORMATION:** Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on a six digit coding systems. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA received a request on February 2, 2006 to waive the Nonmanufacturer Rule for Furniture. SBA has determined that there are no small business manufacturers for the following classes of products and is therefore granting the waiver of the Nonmanufacturer Rule for Furniture Frames and Parts, Metal, Manufacturing; NAICS 337215; Furniture Frames, Wood, Manufacturing; NAICS 337215; Furniture Parts, Finished Metal, Manufacturing; NAICS 337215; Furniture Parts, Finished Plastics, Manufacturing; NAICS 337215; Furniture, Factory-type (e.g., cabinets, stools, tool stands, work benches), Manufacturing; NAICS 337127; Furniture, Hospital (e.g., hospital beds, operating room furniture), Manufacturing; NAICS 339111 and Furniture, Laboratory-type (e.g., benches, cabinets, stools, tables), Manufacturing, NAICS 339111.

The SBA has determined that there are small business manufacturers of the following classes of products, and, is therefore denying the class waiver of the Nonmanufacturer Rule for Furniture (except wood), office-type, padded, upholstered, or plain, manufacturing, NAICS 337214; and Furniture parts, finished wood, manufacturing, NAICS 337215.

**Karen C. Hontz,**

*Associate Administrator for Government Contracting.*

[FR Doc. E6–10071 Filed 6–26–06; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 5457]**

### Bureau of Educational and Cultural Affairs (ECA); Request for Grant Proposals: Study of the United States Institute for Korean Undergraduate Student Leaders

*Announcement Type:* New Cooperative Agreement.

*Funding Opportunity Number:* ECA/A/E/USS–07–SK.

*Catalog of Federal Domestic Assistance Number:* 00.000.

*Key Dates: Application Deadline:* August 25, 2006.

*Executive Summary:* The Branch for the Study of the United States, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, invites proposal submissions for the design and implementation of the ''Study of the United States Institute for Korean Undergraduate Student Leaders'' to take place over the course of six weeks beginning in January 2007. The Institute is intended to provide a group of 15–18 highly motivated undergraduate students with an integrated and imaginatively designed academic and educational travel program that will give them a deeper understanding of U.S. politics, culture and society, while at the same time enhancing their leadership skills. Funding for this program is pending availability of FY–2007 funds.

### I. Funding Opportunity Description

*Authority*

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

*Purpose*

Study of the U.S. Institutes are intensive academic programs whose purpose is to provide groups of

undergraduate student leaders with a deeper understanding of the United States, while at the same time enhancing their leadership skills. The Study of the U.S. Institute for Korean Undergraduate Student Leaders should provide a group of 15–18 undergraduate student leaders with an integrated and imaginatively designed academic and educational travel program. The program will consist of an academic component that includes leadership training and community service, as well as an educational travel component in the United States.

The principal objective of the Institute is to heighten the participants' awareness of the history and evolution of U.S. society, culture, values and institutions, broadly defined. In this context, the Institute should incorporate a focus on contemporary American life, as it is shaped by historical and/or current political, social, and economic issues and debates. The role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, diversity and tolerance should be addressed.

In addition to promoting a better understanding of the United States, an important objective of the Institute is to develop the participants' leadership and collective problem-solving skills. In this context, the academic program should include group discussions, training and exercises that focus on such topics as the essential attributes of leadership; teambuilding; effective communication; and management skills for diverse organizational settings. There should also be a community service component, whereby the students experience firsthand how not-for-profit organizations and volunteerism play a key role in American civil society.

Local site visits and educational travel to cities and other destinations outside the immediate area of the grantee institution should provide opportunities to observe varied aspects of American life and discuss issues raised in the academic program. The program should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in South Korea.

The Bureau is seeking detailed proposals for the Institute from U.S. liberal arts colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: Political science, international relations, law, history, sociology, American studies, and/or other disciplines or sub-disciplines related to the study of the United States.

*Overview*

The Study of the U.S. Institute for Korean Undergraduate Student Leaders should provide the students with a uniquely designed program that focuses on U.S. politics, culture and society. While planning activities and student recruitment will commence in 2006, the study program itself is scheduled to begin in January 2007 to coincide with an extended break in the Korean academic calendar. The program will consist of a challenging academic program, as well as educational travel to other regions of the United States to illustrate the various topics explored in class. The program should be six weeks in length; participants will spend approximately four weeks at the host institution, and approximately two weeks on the educational study tour, including two to three days in Washington, DC, at the conclusion of the Institute. The educational travel component should directly complement the academic program, and should include visits to cities and other sites of interest in the region around the grantee institution, as well as to another geographic region of the country. The grantee institution will also be expected to provide participants with post-program opportunities for further investigation and research on the topics and issues examined during the institute.

*Program Design*

The Study of the U.S. Institute for Korean Undergraduate Student Leaders should be designed as an intensive academic program with an educational travel component that is organized through a carefully integrated series of panel presentations, seminar discussions, debates, individual and group activities, lectures and reading assignments, as well as local site visits, regional educational travel, and participation in community service activities. In addition to host college or university faculty and professionals from the region where the Institute takes place (*e.g.*, in government, media, religious and civic organizations), course presenters should include outstanding scholars and other professional experts from throughout the United States, as appropriate.

The Institute must not simply replicate existing or previous lectures, workshops, or group activities designed for American students. Rather, it should be a specially designed and well-integrated seminar that creatively combines lectures, discussions, readings, debates, local site visits and regional travel into a coherent whole. The grantee institution should take into account that the participants may have little or no prior knowledge of the United States and varying degrees of experience in expressing their opinions in a classroom setting; it should therefore tailor the curriculum and classroom activities accordingly. Every effort should be made to encourage active student participation in all aspects of the Institute. The grantee institution will be required to develop a program that provides ample time and opportunity for discussion and interaction among students, lecturers and guest speakers, not simply standard lectures or broad survey reading assignments. Reading and writing assignments should be adjusted to the participants' familiarity with English.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions, as well as upon the nationally recognized expertise of scholars and other experts throughout the United States.

*Program Administration*

The Institute should designate an academic director who will be present throughout the program to ensure the continuity, coherence and integration of all aspects of the academic program, including the study tour. In addition to the academic director(s), an administrative director or coordinator should be assigned to oversee all student support services, including supervision of the program participants, budgetary, logistical, and other administrative arrangements. For purposes of this program, it is important that the grantee institution also retain qualified mentors or escorts who exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to accompany the students throughout the program sessions, to the extent feasible.

*Participants*

Participants in the Study of the U.S. Institute for Korean Undergraduate Leaders will be highly motivated and exemplary undergraduate students from colleges, universities and teacher training institutions in South Korea who demonstrate leadership through academic work, community involvement, and extracurricular activities. Their major fields of study will be varied, and will include the humanities, social sciences, education

and business. All participants will have a good knowledge of English.

Participants will be identified and nominated by the U.S. Embassy in Seoul, with final selection made by the Branch for the Study of the United States at ECA, in consultation with representatives from the Bureau of East Asian and Pacific Affairs. Every effort will be made to select a balanced mix of male and female participants. The U.S. Embassy will make a particular effort to recruit participants who are from non-elite or underprivileged backgrounds, from both rural and urban areas, and have had little or no prior experience in the United States or elsewhere outside of their home country.

*Program Dates*

The Institute should be a maximum of 44 days in length (including participant arrival and departure days) and, pending availability of funds, is anticipated to begin in early January 2007 and conclude in mid-February 2007.

*Program Guidelines*

While the conception and structure of the institute agenda is the responsibility of the organizers, it is essential that proposals provide a detailed and comprehensive narrative describing the objectives of the Institute; the title, scope and content of each session; planned site visits; and how each session relates to the overall institute theme. A syllabus must be included that indicates the subject matter for each lecture, panel discussion, group presentation or other activity. The syllabus should also confirm or provisionally identify proposed speakers, trainers, and session leaders, and clearly show how assigned readings will advance the goals of each session. A calendar of all program activities must be included in the proposal, as well as a description of plans for public and media outreach in connection with the Institute.

**Please note:** In a cooperative agreement, the Branch for the Study of the United States is substantially involved in program activities above and beyond routine grant monitoring. The Branch will assume the following responsibilities for the Institute: participate in the selection of participants; oversee the Institute through one or more site visits; debrief participants in Washington, DC at the conclusion of the Institute; and engage in follow-on communication with the participants after they return to their home countries. The Branch may require changes in the content or scope of activities of the Institute, either before or after the grant is awarded. The recipient will be required to obtain approval of significant agenda/syllabus changes in advance of their implementation.

## II. Award Information

*Type of Award:* Cooperative Agreement. ECA's level of involvement in this program is listed under number I ''Note'' above.

*Fiscal Year Funds:* FY–2007 (pending availability).

*Approximate Total Funding:* $250,000.

*Approximate Number of Awards:* 1.

*Approximate Average Award:* $250,000.

*Floor of Award Range:* $225,000.

*Ceiling of Award Range:* $250,000.

*Anticipated Award Date:* Pending availability of funds, November 20, 2006.

*Anticipated Project Completion Date:* February 16, 2007.

*Additional Information:* Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

## III. Eligibility Information

*III.1. Eligible applicants:* Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

*III.2. Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau strongly encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

*III.3. Other Eligibility Requirements:* Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates awarding one grant in an amount up to $250,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition.

## IV. Application and Submission Information

**Note:** Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*IV.1. Contact Information to Request an Application Package:* Please contact the Branch for the Study of the United States, ECA/A/E/USS, Room 314, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel. (202) 453–8536; fax (202) 453–8533; e-mail: *caseysd@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–07–SK located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f. for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Sheila Casey and refer to the Funding Opportunity Number ECA/A/E/USS–07–SK located at the top of this announcement on all other inquiries and correspondence.

*IV.2. To Download a Solicitation Package via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov*. Please read all information before downloading.

*IV.3. Content and Form of Submission:* Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under section IV.3f, ''Application Deadline and Methods of Submission,'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the form SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package. It contains the mandatory PSI document and the POGI document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

*IV.3d.1. Adherence to all regulations governing the J visa:* The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

*IV.3d.2. Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section (V.2.) for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

*IV.3d.3. Program Monitoring and Evaluation:* Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau strongly recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.
2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

**Please note:** Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies

intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for overall program management, staffing, and coordination with Branch for the Study of the United States. The Branch considers these to be essential elements of your program; please be sure to give sufficient attention to them in your proposal. Please refer to the Technical Eligibility Requirements and the POGI in the Solicitation Package for specific guidelines.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $250,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs should be approximately $85,000.

IV.3e.2. Allowable costs for the program include the following:

(1) Institute staff salary and benefits.

(2) Participant housing and meals.

(3) Participant travel and per diem.

(4) Textbooks, educational materials and admissions fees.

(5) Honoraria for guest speakers.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*IV.3f. Application Deadline and Methods of Submission:*

*Application Deadline Date:* August 25, 2006.

*Reference Number:* ECA/A/E/USS–07–SK.

*Methods of Submission:* Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

*IV.3f.1. Submitting Printed Applications:* Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

**Important note:** When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547. Reference Number: ECA/A/E/USS–07–SK.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. Embassy in Seoul for its review.

*IV.3f.2. Submitting Electronic Applications:* Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Applicants have until midnight (12 a.m.) of the closing date to ensure that their entire application has been uploaded to the grants.gov site. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

*IV.3g. Intergovernmental Review of Applications:* Executive Order 12372 does not apply to this program.

## V. Application Review Information

*V.1. Review Process:* The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the ECA program office in consultation with the Bureau of East Asian and Pacific Affairs and the Public Affairs Section of the U.S. Embassy in Seoul, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

*V.2. Review Criteria:* Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

*1. Quality of Program Idea/Plan:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity.

*2. Ability to Achieve Overall Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

*3. Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity.

Achievable and relevant features should be cited in both program administration (program venue, study tour venue, and program evaluation) and program content (orientation and wrap-up sessions, site visits, program meetings and resource materials).

*4. Evaluation and Follow-Up:* Proposals should include a plan to evaluate the Institute's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original institute objectives is strongly recommended. Proposals should also discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

*5. Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

*6. Institutional Track Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the Institute's goals.

## VI. Award Administration Information

*VI.1. Award Notices:* Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

*VI.2. Administrative and National Policy Requirements:*

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

*VI.3. Reporting Requirements:* You must provide ECA with a hard copy original plus one (1) copy of the final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. Please refer to Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

*VI.4. Program Data Requirements:* Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and academic major of all participants.

(2) Itineraries of international and domestic travel for all participants, providing dates of travel and cities in which any exchange experiences take place. Final itineraries must be received by the ECA Program Officer at least three work days prior to the participants' arrival in the United States.

## VII. Agency Contacts

For questions about this announcement, contact: Sheila Casey, Branch for the Study of the United States, ECA/A/E/USS, Room 314, ECA/A/E/USS–07-SK, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel. (202) 453–8536; fax (202) 453–8533, e-mail: *caseysd@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the title ''Study of the U.S. Institute for Korean Undergraduate Student Leaders'' and number ECA/A/E/USS–07–SK.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

## VIII. Other Information

*Notice*

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: June 20, 2006.

**Dina Habib Powell,**

*Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–10110 Filed 6–26–06; 8:45 am]

BILLING CODE 4710–05–P

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 9, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier

permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–1995–969.

*Date Filed:* June 5, 2006.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 26, 2006.

*Description:* Application of Northwest Airlines, Inc., requesting renewal of segment 2 of its certificate of public convenience and necessity for route 378, authorizing Northwest to provide scheduled foreign air transportation of persons, property and mail between Detroit, MI and Beijing, People's Republic of China.

*Docket Number:* OST–2000–8505.

*Date Filed:* June 6, 2006.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 27, 2006.

*Description:* Application of Delta Air Lines, Inc., (''Delta'') requesting renewal of its certificate of public convenience and necessity for Route 585, which authorizes Delta to engage in scheduled foreign air transportation of persons, property and mail between the terminal point Los Angeles, CA, and the terminal point Tokyo, Japan.

*Docket Number:* OST–1996–1318.

*Date Filed:* June 9, 2006.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 30, 2006.

*Description:* Application of Continental Airlines, Inc., requesting renewal of its Route 645 certificate authorizing Continental to provide scheduled air transportation of persons, property and mail between Houston and the coterminal points Barranquilla, Bogota and Cali, Colombia, via the intermediate point San Jose, Costa Rica for a period of no less than five years.

*Docket Number:* OST–2006–25050.

*Date Filed:* June 9, 2006.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 30, 2006.

*Description:* Application of Air Greenland A.S. requesting an foreign air carrier permit and exemption authorizing it to engage in scheduled foreign air transportation of persons, property and mail between a point or points, in Greenland, on the one hand, and a point or points in the United States, on the other hand.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison .*

[FR Doc. E6–10086 Filed 6–26–06; 8:45 am]

BILLING CODE 4910–9X–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2006–25071]**

### Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

**SUMMARY:** This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards or because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

**DATES:** These decisions became effective on the dates specified in Annex A.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No substantive comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

### Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is either (1) substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal

motor vehicle safety standards or (2) has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(A), (a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

**Annex A—Nonconforming Motor Vehicles Decided To Be Eligible for Importation**

*1. Docket No. NHTSA–2005–23433*

Nonconforming Vehicles: 2000–2005 Komet Standard, Classic and Eurolite Trailers
Substantially Similar U.S.—Certified Vehicles: 2000–2005 Komet Standard, Classic and Eurolite Trailers
Notice of Petition Published at: 70 FR 77450 (December 30, 2005)
Vehicle Eligibility Number: VSP–477 (effective date February 7, 2006)

*2. Docket No. NHTSA–2006–23698*

Nonconforming Vehicles: 2002–2005 Mercedes Benz CLK-Class (209) Passenger Cars
Substantially Similar U.S.—Certified Vehicles: 2002–2005 Mercedes Benz CLK-Class (209) Passenger Cars
Notice of Petition Published at: 71 FR 5113 (January 31, 2006)
Vehicle Eligibility Number: VSP–478 (effective date March 8, 2006)

*3. Docket No. NHTSA–2006–23699*

Nonconforming Vehicles: 2005 and 2006 Ferrari F430 Passenger Cars Manufactured Before September 1, 2006
Substantially Similar U.S.—Certified Vehicles: 2005 and 2006 Ferrari F430 Passenger Cars Manufactured Before September 1, 2006
Notice of Petition Published at: 71 FR 5114 (January 31, 2006)
Vehicle Eligibility Number: VSP–479 (effective date March 10, 2006)

*4. Docket No. NHTSA–2006–24071*

Nonconforming Vehicles: 1995 Pontiac Firebird Trans Am Passenger Cars
Substantially Similar U.S.—Certified Vehicles: 1995 Pontiac Firebird Trans Am Passenger Cars
Notice of Petition Published at: 71 FR 11702 (March 8, 2006)
Vehicle Eligibility Number: VSP–481 (effective date April 17, 2006)

*5. Docket No. NHTSA–2006–24310*

Nonconforming Vehicles: 2005 Mini Cooper Convertible Passenger Cars Manufactured for the European Market
Substantially Similar U.S.—Certified Vehicles: 2005 Mini Cooper Convertible Passenger Cars
Notice of Petition Published at: 71 FR 17955 (April 7, 2006)
Vehicle Eligibility Number: VSP–482 (effective date May 18, 2006)

*6. Docket No. NHTSA–2006–24491*

Nonconforming Vehicles: 1999 BMW Z3 Passenger Cars Manufactured for the European Market
Substantially Similar U.S.—Certified Vehicles: 1999 BMW Z3 Passenger Cars
Notice of Petition Published at: 71 FR 20158 (April 19, 2006)
Vehicle Eligibility Number: VSP–483 (effective date May 26, 2006)

*7. Docket No. NHTSA–2005–23434*

Nonconforming Vehicles: 2005 Heku 750kg Boat Trailers
Because there are no substantially similar U.S.-certified versions of the 2005 Heku 750kg Boat Trailers, the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).
Notice of Petition Published at: 70 FR 77246 (December 29, 2005)
Vehicle Eligibility Number: VCP–33 (effective date February 7, 2006)

*8. Docket No. NHTSA–2005–23391*

Nonconforming Vehicles: 2006 Smart Car Passion, Pulse, and Pure (Coupe and Cabriolet) Passenger Cars Manufactured Prior to September 1, 2006
Because there are no substantially similar U.S.-certified versions of the 2006 Smart Car Passion, Pulse, and Pure (Coupe and Cabriolet) Passenger Cars Manufactured Prior to September 1, 2006, the petitioner sought import eligibility under 49 U.S.C. 30141(a)(1)(B).
Notice of Petition Published at: 70 FR 77245 (December 29, 2005)
Vehicle Eligibility Number: VCP–34 (effective date February 7, 2006)

[FR Doc. E6–10061 Filed 6–26–06; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Senior Executive Service Performance Review Board

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice.

**SUMMARY:** The Surface Transportation Board (STB) publishes the names of the persons selected to serve on its Senior Executive Service Performance Review Board (PRB).

**FOR FURTHER INFORMATION CONTACT:** Ernest A. Cameron, Director of Human Resources (202) 565–1691.

**SUPPLEMENTARY INFORMATION:** Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on STB's PRB.

Ellen D. Hanson, General Counsel.
Joseph H. Dettmar, Deputy Director, Office of Proceedings.
Leland L. Gardner, Director, Office of Economics, Environmental Analysis, and Administration.
David M. Konschnik, Director, Office of Proceedings.

Issued in Washington, DC, on June 22, 2006.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E6–10112 Filed 6–26–06; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 2210 and 2210–F

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2210, Underpayment of Estimated Tax by Individuals, Estate, and Trusts, and Form 2210–F, Underpayment of Estimated Tax by Farmers and Fishermen.

**DATES:** Written comments should be received on or before August 28, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, (202) 622–3634, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Underpayment of Estimated Tax by Individuals, Estate, and Trusts (Form 2210), and Underpayment of Estimated Tax by Farmers and Fishermen (Form 2210–F).

*OMB Number:* 1545–0140.

*Form Number:* 2210 AND 2210–F.

*Abstract:* Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. Form 2210 is used by individuals, estates, and trusts and Form 2210–F is used by farmers and fisherman to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether taxpayers are subject to the penalty, and to verify the penalty amount.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, and farms.

*Estimated Number of Respondents:* 599,999.

*Estimated Time Per Respondent:* 8 hr., 32 min.

*Estimated Total Annual Burden Hours:* 2,342,663.

*The following paragraph applies to all of the collections of information covered by this notice:*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 20, 2006.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6–10064 Filed 6–26–06; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1120–FSC and Schedule P (Form 1120–FSC)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission.

**DATES:** Written comments should be received on or before August 28, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 1120–FSC, U.S. Income Tax Return of a Foreign Sales Corporation, and Schedule P (Form 1120–FSC), Transfer Price or Commission.

*OMB Number:* 1545–0935.

*Form Number:* 1120–FSC and Schedule P (Form 1120–FSC).

*Abstract:* Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 30,000.

*Estimated Time Per Respondent:* 165 hours, 52 minutes.

*Estimated Total Annual Burden Hours:* 1,089,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 20, 2006.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6–10066 Filed 6–26–06; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5306

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306, Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

**DATES:** Written comments should be received on or before August 28, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Approval of Prototype or Employer Sponsored Individual Retirement Account.

*OMB Number:* 1545–0393.

*Form Number:* 5306.

*Abstract:* This application is used by employers who want to establish an individual retirement account trust to be used by their employees. The application is also used by banks and insurance companies that want to establish approved prototype individual retirement accounts or annuities. The data collected are used to determine if the individual retirement account trust or annuity contract meets the requirements of Code section 408(a), 408(b), or 408(c) so that the IRS may issue an approval letter.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 600.

*Estimated Time Per Respondent:* 13 hours, 8 minutes.

*Estimated Total Annual Burden Hours:* 7,878.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 20, 2006.

**Glenn Kirkland,**

*IRS Reports Clearance Office.*

[FR Doc. E6–10067 Filed 6–26–06; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5500–EZ

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5500–EZ, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

**DATES:** Written comments should be received on or before August 28, 2006 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, 202–622–3634, at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

*OMB Number:* 1545–0956.

*Form Number:* 5500–EZ.

*Abstract:* Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the Internal Revenue Code or whether the plan should be audited.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and farms.

*Estimated Number of Respondents:* 250,000.

*Estimated Time Per Respondent:* 27 hours, 5 minutes.

*Estimated Total Annual Burden Hours:* 6,770,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 20, 2006.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E6–10068 Filed 6–26–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
June 27, 2006

# Part II

# Department of Energy

## Federal Energy Regulatory Commission

**18 CFR Part 284**

**Rate Regulation of Certain Natural Gas Storage Facilities; Final Rule**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 284**

**[Docket Nos. RM05–23–000, AD04–11–000; Order No. 678]**

## Rate Regulation of Certain Natural Gas Storage Facilities

Issued June 19, 2006.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending its regulations to establish criteria for obtaining market-based rates for storage services offered under part 284. First, the Commission is modifying its market-power analysis to better reflect the competitive alternatives to storage. Second, pursuant to the Energy Policy Act of 2005, the Commission is promulgating rules to implement new section 4(f) of the Natural Gas Act, to permit underground natural gas storage service providers that are unable to show that they lack market power to negotiate market-based rates in circumstances where market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services, and where customers are adequately protected. These revisions are intended to facilitate the development of new natural gas storage capacity while protecting customers.

**DATES:** *Effective Date:* The rule will become effective July 27, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Sandra Delude, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8583.

Robert McLean, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8156.

Ed Murrell, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8703.

Berne Mosley, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8625.

**SUPPLEMENTARY INFORMATION:**

**Before Commissioners: Joseph T. Kelliher, Chairman; Nora Mead Brownell, and Suedeen G. Kelly**

### I. Introduction

1. The Final Rule reforms the Commission's current pricing policies to ensure access to storage services on a nondiscriminatory basis at just and reasonable rates and to ensure that sufficient storage capacity will be available to meet anticipated increases in market demand. To achieve these goals, the Commission is modifying its market-power analysis to permit the consideration of close substitutes to storage in defining the relevant product market. This will ensure that market-based rates are not denied because of an overly narrow definition of the relevant market. Second, the Commission is adopting regulations implementing section 312 of the Energy Policy Act of 2005 (EPAct 2005 or the Act),[1] which permits the Commission, in appropriate circumstances, to authorize storage providers to charge market-based rates for service utilizing new capacity even when the storage providers cannot (or do not) demonstrate that they lack market power. The revisions adopted in the Final Rule are intended to facilitate the development of new natural gas storage capacity while protecting customers.

### II. Background

2. On August 8, 2005, EPAct 2005 was signed into law. Section 312 of the Act, adding a new section 4(f) to the Natural Gas Act (NGA),[2] permits the Commission to allow a natural gas storage service provider placing new facilities in service to negotiate market-based rates even if it is unable to show that it lacks market power if the Commission determines that market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services, and that customers are adequately protected.[3]

3. The enactment of EPAct 2005 added momentum to efforts already underway at the Commission to adopt policy reforms that would encourage the development of new natural gas storage facilities while continuing to protect consumers from the exercise of market power. On September 30, 2004, the Commission issued a staff report that examined underground natural gas storage.[4] On October 21, 2004, the Commission held a public conference with representatives of the industry to discuss the Staff Storage Report and issues relevant to underground storage.[5] The Commission received oral and written comments in connection with the Staff Storage Report and conference.

4. On December 22, 2005, the Commission issued a notice of proposed rulemaking (NOPR) in which it proposed a two-prong approach for reforming its current storage pricing policy.[6] First, the Commission proposed modifications to its traditional market-power analysis to permit the consideration of close substitutes to storage in defining the relevant product market. Second, the Commission proposed regulations to implement section 312 of EPAct 2005 that permits the Commission, in appropriate circumstances, to authorize storage providers to charge market-based rates for service utilizing new capacity even when the storage providers cannot (or do not) demonstrate that they lack market power.

5. The Commission received numerous comments from a variety of entities.[7] Based on careful consideration of the comments submitted in response to the NOPR, the Commission adopts a Final Rule that generally follows the approach of the NOPR with certain exceptions.

6. First, the Final Rule modifies the Commission's market-power analysis to better reflect the competitive alternatives to storage. Specifically, we adopt a more expansive definition of the relevant product market for storage to explicitly include close substitutes for gas storage services, including pipeline capacity, local production, and liquefied natural gas (LNG) supplies. The Commission will evaluate potential substitutes in the context of individual applications for market-based rates. The Final Rule eliminates the NOPR's requirement that storage providers

[1] Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

[2] 15 U.S.C. 717, *et seq.* (2000).

[3] Energy Policy Act of 2005, Pub. L. 109–58, section 312, 119 Stat. 594, 688 (2005).

[4] Current State of and Issues Concerning Underground Natural Gas Storage, FERC Staff Report, Docket No. AD04–11–000 (Sept. 30, 2004) (Staff Storage Report).

[5] *State of the Natural Gas Industry Conference*, Docket No. PL04–17–000, October 21, 2004; *see* State of Natural Gas Industry Conference; Staff Report on Natural Gas Storage; Notice of Public Conference, 69 FR 59917 (Oct. 6, 2004) (summarizing the issues to be discussed at the conference).

[6] *Rate Regulation of Certain Underground Storage Facilities*, Notice of Proposed Rulemaking, 70 FR 77079 (Dec. 22, 2005), FERC Stats. & Regs., Regulations Preambles ¶ 32,595 (Dec. 29, 2005).

[7] A list of the commentors is included as an appendix to this Final Rule. We have not considered the supplemental reply comments filed by INGAA on May 31, 2006, due to the lateness of the filing.

granted market-based rates on the basis of a market power analysis file updated market-power analyses every five years. Instead, storage providers with market shares of ten percent or less would generally be exempt from such a requirement. We will consider in individual cases whether the specific facts and circumstances presented require additional reporting for other storage providers.

7. Second, the Final Rule adopts regulations implementing section 312 of EPAct 2005, which permits the Commission to authorize market-based rates even if a lack of market power has not been demonstrated, in circumstances where market-based rates are in the public interest and necessary to encourage the construction of storage capacity in the area needing storage services and that customers are adequately protected. Finding that the definition of facilities eligible for treatment under new NGA section 4(f) is ambiguous, the Commission defines ''facilities'' as it traditionally has for purposes of the certification requirements of section 7(c). However, to receive market-based rate authorization, the storage provider will still need to satisfy the other requirements of section 4(f).

## III. Need and Purpose for the Rule

8. The underground storage of natural gas is critical in assuring that overall demands and specific requirements of natural gas customers are met. Currently, there are approximately 200 storage facilities subject to the Commission's jurisdiction, with an aggregate working gas capacity of approximately 2.5 Tcf. Estimates of total domestic working gas capacity (both subject to and exempt from NGA jurisdiction) range up to 4.7 Tcf.[8] Considering future storage needs of the United States and Canada together, the National Petroleum Council (NPC) estimates an additional 700 Bcf will be required by 2025.[9] Although current and projected storage development is keeping pace with aggregate national storage demands, underground storage development in some market areas, such as New England [10] and the Southwest, is not.[11]

9. Over the last several years, there has been a marked increase in the cost of natural gas and sharp swings in gas prices. Storage can have a moderating influence on gas prices. As a physical hedge, customers can build up underground inventories during times of lower demand, and then rely on these supply stores to avoid paying high spot market gas prices. Among the key findings highlighted by the Staff Storage Report is that the ''continued commodity price volatility indicates that more storage may be appropriate'' and that storage ''may be the best way of managing gas commodity price, so the long-term adequacy of storage investment depends on how much price volatility customers consider 'acceptable.' '' [12]

10. In consideration of these factors, the Commission is amending its regulatory policies in the Final Rule in order to facilitate the development of new natural gas storage capacity to ensure that adequate storage capacity will be available to meet anticipated market demand and to mitigate natural gas price volatility, while continuing to protect consumers from the exercise of market power.

## IV. Discussion

### *A. Market-Power Test*

11. The Commission evaluates requests to charge market-based rates for storage services under the analytical framework of its 1996 Policy Statement on *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines (Policy Statement).*[13] In the NOPR, the Commission observed that in applying its market-concentration and market-share screens in these cases to date, the Commission has looked only to the availability of other storage alternatives (in the relevant geographic market), in assessing whether a storage provider can exercise significant market power. Noting that its current approach to analyzing market power may be too limiting in some circumstances in today's natural gas markets, the Commission proposed to reform its market-power test for natural gas storage operators to more accurately reflect the competitive conditions in the market for gas storage services. The Commission proposed to adopt a more expansive definition of the relevant product market for storage to explicitly include close substitutes for gas storage service, such as appropriate combinations of available pipeline capacity, and local gas production or LNG terminals, on a case-by-case basis in the context of individual applications for market-based rates. We posited that consideration of these alternative products will ensure that the Commission's market-power analysis accurately reflects whether a storage applicant is able to exercise significant market power.

12. We explained that, as a general matter, competition to a storage provider can come from entities that have the ability to deliver gas in the same market as the storage facility. In producing areas, storage may compete with production or LNG supply, in addition to other storage facilities. In market areas, there may also be local production or LNG available. In addition, available pipeline capacity can function as a close substitute by delivering gas at peak times to compete with storage. For these reasons, we suggested it would be appropriate to permit applicants to present evidence that both available pipeline capacity and local production/LNG supply in the geographic market area can reasonably be considered as alternative products to storage services.

13. In addition, we suggested that firm capacity available through capacity release can be a good alternative in appropriate circumstances. Under the Commission's capacity release regulations, holders of firm capacity are free to release the capacity to other shippers, as well as to make bundled sales at alternate delivery points. Because of this flexibility, some portion of firm, contracted-for capacity may have a sufficiently elastic demand (a willingness to re-sell firm capacity when price rises) to serve as a good alternative to an applicant's storage service. While pipeline capacity held by a local distribution company (LDC) that is needed to meet state-mandated service obligations for captive retail customers may not be considered a good alternative during peak periods, LDCs

[8] The Department of Energy's Energy Information Administration (EIA) reports that in 2002 working gas storage capacity varied between 4.4 and 4.7 Tcf, whereas the Department of Energy's Office of Fossil Energy reports that in 2003 there were 415 underground storage facilities with a working gas capacity of 3.9 Tcf. The Staff Storage Report considered the range of estimated aggregate existing working gas and concluded that the present working gas capacity is 3.5 Tcf, of which 2.5 Tcf is subject to NGA jurisdiction, and that by improving existing storage reservoirs (*i.e.*, by reengineering existing facilities to enhance efficiency, rather than by expanding cavern capacity), there is the potential to obtain another 200 to 500 Bcf. *See* Staff Storage Report at 7–10.

[9] Balancing Natural Gas Policy—Fueling the Demands of a Growing Economy, NPC, Volume II at 261 (2003).

[10] New England appears to have little geologic potential for the development of underground storage facilities.

[11] *See, e.g.*, Southwestern Gas Storage Technical Conference, Docket No. AD03–11–000, Transcript at 23, lines 10–14 (Aug. 26, 2003).

[12] Staff Storage Report, at 1 (Sept. 30, 2004).

[13] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines,* 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied,* 75 FERC ¶ 61,024 (1996), *petitions denied and dismissed, Burlington Resources Oil & Gas Co.* v. *FERC,* 172 F.3d 918 (D.C. Cir. 1998).

and marketers also serve industrial and other customers under interruptible contracts. That portion of the LDC's capacity might constitute a reasonable alternative.

14. Moreover, we stated that, in some circumstances, an applicant may be able to show that even when firm capacity on a pipeline is reserved for captive customers, *e.g.*, residential and small commercial customers, potential product or service substitution in downstream markets might result in capacity becoming available in upstream markets to compete with storage while captive customers continued to be served. Under the Commission's open-access program, competition in a downstream market may create competition in upstream markets, particularly due to Order No. 636's requirement that pipelines provide flexible receipt and delivery points and segmentation including backhaul. Thus, an LDC's ability to buy capacity from another pipeline or storage facility or to purchase gas in the downstream market may free it to release upstream capacity to compete with storage in the upstream market. This ability to buy capacity from another pipeline or storage facility or to buy gas in the market area is present in the large downstream markets in the United States including California, Chicago and the Northeast.

15. The Commission requested comments on these alternatives, as well as suggestions regarding other approaches for quantifying the amount of pipeline capacity that might be available to compete with an applicant's storage services.

1. Expansion of the Product Market Definition

Comments

16. A number of commentors generally support the Commission's proposal to liberalize the Commission's market-power test for market-based rate authorization by expanding the kinds of storage alternatives that it will consider in analyzing an applicant's market power with certain proposed changes discussed below.[14] They agree with the Commission that available pipeline capacity, capacity release, local gas production and LNG terminals all may serve as adequate substitutes for gas storage in appropriate circumstances. These commentors also state that they believe that the Commission's proposal should provide further incentives for the development of new natural gas storage capacity that will improve gas service reliability and promote price stability in the future. The NYPSC agrees with the Commission that local gas production, pipeline capacity and LNG potentially can be offered as alternatives to storage service but requests the Commission to adhere to the case-by-case approach and to allow for consideration of whether there are realistic alternatives available on a firm and long-term basis.

17. On the other hand, several commentors oppose changes to the current market-power standards on grounds that liberalizing these standards is unnecessary and potentially harmful to customers. AGA, APGA, NGSA, SGR and UET all question whether the proposed changes would actually encourage meaningful development of new storage facilities. APGA questions the NOPR's assumption that a storage capacity shortage exists. APGA states that while the NOPR discusses the upcoming need for an additional 700 Bcf of storage capacity by 2025, the NOPR does not suggest, much less demonstrate, that the need will not be fulfilled. NGSA submits that there is little evidence to suggest that the Commission's current pricing policies have had a major influence on developers' decisions to move forward with potential storage projects. Rather, NGSA contends that there are multitudes of technical and commercial factors that influence a potential storage developer's decision to build storage that are equal or paramount to the Commission's regulatory pricing policies including geological limitations, environmental requirements and NIMBY issues.

18. AGA and SGR assert that the proposed changes would simply provide existing storage providers the opportunity to charge higher prices for services already available to the market and create opportunities for cross-subsidies between storage and transportation services. AGA also fears that liberalizing the market-power standards would vastly increase the scope and complexity of the market-power determination, while APGA submits that the NOPR's proposal to expand the definition of the relevant product market for storage would diminish substantially the showing required to obtain market-based rates.

19. APGA also argues that the proposal is inconsistent with the *Policy Statement* that defines a ''good alternative'' as one that must have the same qualities of timeliness, price and quality of the storage service it would replace. Specifically, APGA submits that pipeline capacity (and local production/LNG and released capacity) are not good alternatives, much less ''close substitutes'' in terms of quality of service to the high deliverability storage service that the NOPR seeks to promote. Similarly, APGA argues that in terms of price, pipeline capacity is not a good alternative or close substitute to storage service, because pipeline capacity is more expensive than storage capacity.

20. NGSA submits that the expansion of the relevant product market will not provide customers with the equivalent services uniquely offered by new storage facilities and examining market elasticity to determine whether product substitution can occur in downstream markets, as suggested in the NOPR, is simply not realistic. NGSA and PGC stress that the criteria and framework that the Commission utilizes to review market-based rate applications have proven to be effective and flexible, resulting in the approval of market-based rates for the majority of applicants. Moreover, NGSA points out there are flexible cost-based rates available to promote new storage capacity without making wholesale changes to the Commission's exiting market-power analysis. NGSA urges the Commission to consider whether it would be more appropriate instead to adopt changes that will rectify the unique problems identified in specific regions by undertaking a generic proceeding to: (1) Identify where new storage capacity is needed; (2) document known proposals in these regions; (3) determine what specific obstacles may exist; and (4) establish regulatory policies to encourage additional storage construction in those areas.

21. IPAA expresses concern with the Commission's proposal to adopt a more expansive definition of the relevant product market for storage to explicitly include close substitutes for gas storage services. IPAA urges the Commission to carefully consider the potential impact of this expanded definition of relevant product market for storage on other cost-based services regulated by the Commission. (*e.g.*, the regulation of interstate pipeline transportation rates). For example, IPAA states that if pipeline capacity and released capacity can serve as possible substitutes for competing storage, then the potential exists for storage to serve as a substitute for the availability of competing pipeline capacity in evaluating applications for market-based transportation rates. IPAA states it most likely would have concern with efforts to expand the acceptance of market-

[14] Comments of INGAA, Northern Natural, Duke, Williston Basin, the NiSource Pipelines, Dominion, Sempra, DTE, NYPSC, Falcon, EnCana, Bridgeline, Unocal, Enstor and Jefferson Storage. The full names of commentors and the abbreviations used in this document are shown in the appendix.

based transportation rates. Thus, IPAA strongly encourages the Commission to consider the effect the expanded definition of relevant product market could have on all services under the Commission's jurisdiction, not just within the confines of an individual application by a storage operator. NGSA requests that the Commission clarify that these changes will not be used for the future evaluation of market power for interstate transportation services but only for new storage facilities as it has proposed for the EPAct 2005 provisions.

22. UET asserts that the Commission has not demonstrated that the proposed change in the market-power analysis is needed to reduce natural gas price volatility because price volatility is mitigated on a national, as opposed to a regional basis, and storage development is keeping pace with national demands. UET also argues the proposed change is not necessary to solve regional storage capacity shortages in underserved markets such as New England and the Southwest, because proposals for new storage in these areas have failed for reasons other than rate treatment. Finally, UET asserts that the proposed rule is not necessary to cater to power generation load because the Commission is able to meet the needs of power generation customers by developing rate designs that would permit storage operators to earn higher revenues from short-term services during peak periods.

23. UET also maintains that changing the market-power analysis as proposed could discourage rather than encourage expansion of existing storage facilities. It asserts that cost-based rates treat the storage company fairly and also enable storage customers to participate sufficiently in the natural gas value chain that runs from the wellhead to the burner tip. UET alleges that market-based rates may disrupt the value chain to such an extent that potential storage customers, particularly marketers, will simply choose to exit the market rather than serve as the vehicle for funneling market-based rate revenues to storage providers. Thus, UET maintains that storage projects, for which there is a demand at cost-based rates, may not be built because the demand is not there for a project that would qualify for market-based rates under the relaxed proposed standards. In addition, noting that price volatility has increased as the number of major marketers has decreased, UET urges the Commission to exercise care in embracing market-based rates to encourage new storage in the name of price volatility mitigation when those rates may actually increase price volatility by further decreasing the number of marketers.

24. Finally, AGA, NGSA and Process Consumers argue that the NOPR is unnecessary given the alternative of section 4(f) of the NGA. For example, AGA asserts that the proposed regulations pursuant to new NGA section 4(f) fully address the need to provide incentives for new storage services and there is no need to provide more latitude for qualifying for market-based rates for existing storage facilities. At most, AGA asserts the Commission should considering broadening the market-power test only after it has had an opportunity to assess the impact and outcome of the new rules under section 4(f), a minimum of two years after implementing regulations under section 4(f). Similarly, NGSA while supporting the Commission's goal of maximizing storage believes that liberalizing the traditional market-power test is unsupported and unnecessary. Given that Congress enacted EPAct 2005 as the primary vehicle to encourage the development of new storage facilities, NGSA urges the Commission to focus its attention in this proceeding on properly implementing EPAct 2005, and not engaging in an unnecessary effort to provide incentives for new storage by revising the existing market-power test. At a minimum, NGSA urges the Commission to take an incremental approach and maintain the existing market-power procedures, at least until it can assess whether its implementation of the EPAct 2005 provisions can provide a sufficient and workable program that provides a valid incentive to potential new storage developers.

Commission Determination

25. The Commission finds it is appropriate to adopt a more expansive definition of the relevant product market for storage to explicitly include close substitutes for gas storage services, including pipeline capacity and local production/LNG supplies. As explained below, this modification to our market-power analysis better reflects the competitive alternatives to storage and is supported by changes in the natural gas markets that have occurred since the mid 1990s. In today's markets, these non-storage products may well serve as adequate substitutes for gas storage in appropriate circumstances.

26. As we explained in Order No. 637, the deregulation of wellhead natural gas prices, the advent of open-access transportation and the requirement that interstate pipelines offer unbundled open-access transportation service, has increased competition and efficiency in both the gas commodity and transportation market.[15] Market centers have developed both upstream in the production area and downstream in the market area, providing shippers with greater gas and capacity choices. The wholesale market has grown with new participants that have the ability to deliver gas into many markets. The expansion of the product market definition to include close substitutes simply recognizes that buyers and sellers have a greater number of alternatives from which to choose in order to obtain and deliver gas supplies. From an end-use customer's perspective, gas is fungible, whether it comes from storage, local production or more distant supplies transported by pipelines. Competition with storage can come from any of these sources that can deliver gas in the same market as the storage facility. For these reasons, we will permit a storage applicant to include non-storage products and services, including pipeline capacity and local production/LNG supply in the calculation of its market concentration and market share.

27. The Commission recognizes, however, that local production, LNG and pipeline capacity may not be good alternatives to an applicant's storage services in all circumstances. For a non-storage product to be a good alternative it must be available soon enough, have a price low enough and have a quality high enough to permit customers to substitute the alternative for the applicant's services. For this reason, we will evaluate potential substitutes in the context of individual applications for market-based rates. In those proceedings, the applicant will have the burden to demonstrate that the non-storage products and services, as well as the other storage services, used in its calculation of market concentration and market share are good substitutes. Any party to the proceeding can challenge the inclusion of a particular product on the grounds that it does not meet the qualifications for a good alternative. Based on the record in the proceeding, the Commission will determine if the proposed product is in fact a good alternative that will limit the exercise of significant market power by the applicant.

28. In the NOPR, we noted that although current and projected storage development is keeping pace with aggregate demands, underground storage development in some market

[15] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000) ¶ 31,091 at 31,249–63 (Feb. 9, 2000).

areas, such as New England and the Southwest, is not.[16] We also acknowledged that our rate policies will not guarantee the proliferation of new storage projects because storage projects fail to for reasons other than rate treatment.[17] A few commentors claim that the proposed expansion of the product market is not supported because we have not shown that a storage capacity shortage exists or that market-based rates will ensure that storage gets built. We disagree that such findings are necessary to support the proposed change to our market-power analysis. The courts have permitted the Commission to institute flexible pricing to improve market efficiency so long as the overall regulatory scheme protects against the exercise of market power and protects and results in just and reasonable rates.[18] Where the Commission determines that an applicant lacks market power, the Commission may depart from a strictly cost-based determination of rates, and approve rates reached as the result of competition. The Commission's authority to approve market-based rates has been approved by the courts when the Commission has found sufficient protection against the exercise of market power.[19]

29. The Commission finds that its proposed regulatory change will protect against the exercise of market power. In analyzing market-based rate storage proposals, the Commission will continue to addresses whether the applicant has market power; that is, can the applicant: (1) Withhold or restrict services to increase price a significant amount for a significant period of time, or (2) discriminate unduly in terms of price or conditions. Before the Commission can conclude that a seller cannot exercise market power it must either: (1) Find that there is a lack of market power because customers have sufficient ''good alternatives,'' or (2) mitigate the market power (i.e. permit market-based pricing only if specified conditions are met that prevent the exercise of market power). The only change the Commission is adopting in this Final Rule is to recognize that in today's market, a storage applicant's ability to exercise market power can be constrained not only by other storage services but also by some combination of pipeline and other gas supply alternatives.

30. Similarly, we do not share commentors' views that we should not adopt the proposed revisions to the product market definition because it may result in more complex proceedings or that there are flexible cost-based rates available to storage providers. The Commission's proposal is justified because it better reflects the competitive alternatives to storage.

31. We also find that commentors' assertion that our action here will inappropriately raise rates ignores the connection recognized by the courts between competition and just and reasonable rates. In *Elizabethtown,* the court concluded that because of the competition in the pipeline's sales market it appeared that the pipeline would not be able to raise its price above the competitive level without losing substantial business to other sellers. ''Such market discipline provides strong reason to believe that Transco will be able to charge only a price that is 'just and reasonable' within the meaning of section 4 of the NGA.''[20] Granting market-based rates in situations where there are sufficient alternatives prevents the exercise of significant market power. A new entrant found to lack market power offers another choice to existing customers, and in the Commission's experience, more choice frequently leads to lower, not higher, rates.

32. We also reject commentors' claim that Congress' enactment of section 312 of EPAct 2005 bars the Commission from expanding the product market definition for storage applicants seeking a finding that the applicant does not possess market power. These commentors fail to cite to any provision in section 312 of the Act that suggests Congress intended to limit in any way the Commission's ability to revise or modify its traditional market-power analysis. Rather in section 312, Congress established an alternative procedure to permit storage service providers that are unable to show that they lack market power to negotiate market-based rates if the Commission determines that market-based rates are in the public interest, are necessary to encourage needed storage infrastructure and that customers are adequately protected. The Commission finds it is reasonable to proceed under both prongs.

33. As to IPAA's and NGSA's concern that our actions here not prejudge the issue of whether storage can serve as a substitute for the availability of competing pipeline capacity in evaluating applications for market-based transportation rates, we clarify that it is not our intent. Our actions here only address what non-storage products may be considered a good alternative to storage services, and should not be construed to address what products may be considered a good alternative to transportation services.

34. Finally, we do not share UET's views that our action here will negatively impact the number of marketers. Marketers, too, will have choices in contracting for service from a newly authorized storage service provider authorized to charge market-based rates and, as discussed above, the price will remain just and reasonable within the meaning of section 4 of the NGA due to the absence of significant market power.

2. Scope of Applicability of Expanded Product Market Definition

Comments

35. Bay Gas requests that the Commission revise proposed § 284.501, Applicability, to clarify that the newly proposed subpart M requirements do not apply automatically to previously-ordered market-based rate authorizations. Specifically, Bay Gas requests that the Commission add the following language to the end of that section: ''provided, if such pipeline or storage service provider was authorized to charge market-based rates before subpart M effective date, it need not conform under that authorization to subpart M.''

36. Should the Commission decide to adopt its proposal to expand the product market, AGA and NGSA urge the Commission to expressly limit the application of any revised market-power regulations to new storage capacity rather than to existing storage capacity that is currently subject to cost-based rates.

37. NiSource Pipelines request that the Commission clarify whether existing storage providers are permitted to seek market-based rate authority using the proposed modified market-power analysis.

Commission Determination

38. As requested by Bay Gas, we clarify that applicants previously granted market-based rates need not resubmit an application under the broader definition of product market we are adopting in the Final Rule. If an applicant has demonstrated a lack of market power under the traditional definition of product market, it follows

[16] NOPR at P 8.

[17] *Id.* at P 14.

[18] *Environmental Action* v. *FERC,* 996 F.2d 401, 410 (D.C. Cir. 1993).

[19] *Elizabethtown Gas Co.* v. *FERC,* 10 F.3d 866, 870–71 (D.C. 1993) (*Elizabethtown*); *Louisiana Energy and Power Authority* v. *FERC,* 141 F.3d 364, 369–370 (D.C. Cir. 1998); *Interstate Natural Gas Association of America* v. *FERC,* 285 F.3d 18, 31–34 ((D.C. Cir.) 2002); *California ex rel. Lockyer* v. *FERC,* 383 F.3d 1006, 1013–1014 (9th Cir. 2004).

[20] 10 F.3d 866, at 871 (D.C. Cir. 1993).

that the applicant would qualify for market-based rates using an expanded definition of product market that includes additional substitutes. However, we do not agree that a revision to the regulatory text is necessary.

39. We find that NGSA and AGA have provided no support for their request to limit the applicability of the expanded product market definition to only new storage capacity. Pursuant to the *Policy Statement,* an entity can file an application for market-based rates for storage services if it can demonstrate that it does not have significant market power or has sufficiently mitigated that market power. Where a company can show a lack of market power, then competition in the market will ensure that the company's rates will be just and reasonable and the purpose of the NGA is met. Accordingly, existing storage providers are permitted to seek market-based rate authority using the proposed modified market-power analysis. However, the Commission will consider in the case of existing storage all relevant facts of the applicant's potential to exercise market power, including for example, impacts on existing customers and the applicant's relationship with transmission service providers in the relevant market.

3. Determination and Quantification of a Good Alternative

40. In order to show that a non-storage product or service such as transportation is a good alternative, the Commission stated that the storage applicant would need to meet the criteria set forth in the Commission's Policy Statement. A good alternative is one that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for the applicant's services.

Comments

41. SCE stresses that the Commission needs to adopt an analysis that is as robust as its analysis of the electric markets and takes into consideration the interdependence of gas and electric markets' competitiveness. SCE urges the Commission to seriously examine the limits on ''substitutability'' among the various products in each market, noting the complex dynamic relationships involved in determining this. SCE states that storage serves three basic functions: price arbitrage, balancing and peak reliability, and customers consider different kinds of storage and transportation products to perform each function. Thus, each alternate product must be examined in the context of its ability to provide competitive discipline on the operation of an applicant's storage facility. Depending on the market structure, SCE asserts that some facilities or products may only be able to perform one of the three storage functions while others might serve all of these functions. In addition, SCE stresses that the Commission also must be willing to examine whether, and the extent to which, an exercise of market power in the storage market may ultimately result in supracompetitive prices elsewhere in the gas markets, *i.e.*, other geographic markets or other products.

42. Enstor urges the Commission to provide more clarity as to what is, and is not, a good alternative, and how a market-based rate applicant can demonstrate the same. In addition, Enstor seeks further Commission amplification on whether an alternative is ''available.'' For example, Enstor asks in regards to LNG terminals in service, will availability depend on the terminals' capacity or their deliverability?

43. EEI supports the Commission's proposal to include alternatives to storage in its market-power analysis. EEI submits that this analysis is fact specific and should be applied in the context of the region of the country and the users that would be supplied by the proposed storage services. With regard to released capacity as a competitive alternative to storage, EEI asserts that the applicant should be required to demonstrate that there is a viable market in released capacity. In making this determination, EEI urges the Commission to rely on historic information on the extent of trading in released capacity on a relevant pipeline because such information is a better indicator of substitutes for storage service than a theoretical analysis of possible releases in the future.

44. With respect to quantifying firm transportation capacity that could be available to compete with an applicant's storage service, DTE recommends that all firm transportation capacity on all pipeline systems that serve the applicant's geographic market that is not committed to meeting the state-mandated obligation of LDCs to serve captive customers be considered as available to compete with the applicant's storage services, particularly during swing periods when deliverability is most critical. DTE explains that capacity not under LDC contract is generally held by marketers, end users, and producers who are in a position to divert gas on short notice from contractual primary delivery points to higher-valued markets in response to rapidly changing market conditions.

45. Given that non-LDC shippers are in the best position to respond to swings in the market and control where gas is delivered, DTE recommends that firm transportation capacity be quantified on a shipper-by-shipper basis for the purpose of calculating swing period deliverability market shares and a Herfindahl-Hirschman Index (HHI). Under this approach, each pipeline shipper would be considered a potential competitor to the applicant. On the other hand, DTE claims that market-power studies should not assume that pipelines control deliverability and can use shipper deliverability to respond to market swings in a manner and time period that is competitive with storage. That is, pipeline deliverability should not be quantified and assigned to each individual pipeline for the purpose of calculating market shares and HHIs. Pipelines are purely transporters and are not in a position to divert gas on short notice to higher valued markets in response to changes in market conditions.

46. DTE agrees with the Commission's statement in the NOPR that to the extent an LDC holds pipeline capacity in order to meet state-mandated service obligations to captive customers, it is not likely that such pipeline capacity would be available to respond to market needs nor would it be a good substitute for storage capacity and deliverability. Similarly, DTE urges the Commission to exclude storage capacity and deliverability associated with storage fields owned by LDCs and used to meet state-mandated service obligations to captive customers from market share and HHI calculations contained in market-power studies submitted by applicants seeking market-based rates. DTE states that like firm transportation used to meet LDC market needs, firm storage capacity and deliverability associated with storage fields owned by LDCs are committed to meet captive retail customer needs and should not be considered available to the market to meet changing economic conditions.

Commission Determination

47. As we have stated above, we intend to continue to evaluate requests for market-based rates for storage on a case-by-case basis. An applicant is required to identify ''the specific products or services and the suppliers of those products and services that provide good alternatives to the applicant's ability to exercise market power.[21] A

[21] Policy Statement at 61,230–231.

good alternative has been defined as one that is available soon enough, has a price that is low enough, and has a quality high enough to permit customers to substitute the alternative for the applicant's service. The burden is on the applicant to ''show how each of the substitute services in the product market are adequate substitutes to the applicant's service in terms of quality, price, and availability.'' [22] Therefore, we will not endorse any particular method for determining the substitutability of a product here, but rather base our determination on the record developed in individual proceedings. Regarding Enstor's request that we clarify whether the availability of LNG terminal service will depend on the terminal's capacity or deliverability, we find that both elements would be relevant in analyzing the availability of LNG supply.

48. In order for an applicant to show that non-storage products are a good alternative to storage, they must demonstrate that for peak demand periods customers will be able to choose the non-storage product as a comparable substitute for storage services offered by the applicant. This demonstration must show that in terms of quality, timeliness, and price that non-storage products will be able to serve customers' needs as well as storage service. For example, an applicant may be able to demonstrate that pipeline capacity in combination with spot market purchases and appropriate financial market instruments, such as futures contracts, can reasonably be expected to be available at prices competitive with storage service so that it can act as a substitute for storage gas purchased, stored and/or redelivered when needed. Applicants may also be able to show that available park and loan services or liquid market-center spot markets provide sufficient liquidity during peak periods to constitute an adequate substitute to storage for balancing purposes or to serve peak demand.

4. Additional Revisions to Market-Power Test

a. Inclusion of Other Gas Supply Alternatives in the Product Market

Comments

49. In addition to the pipeline capacity and LNG supply identified by the Commission in its NOPR, Duke urges the Commission to recognize that other gas supply alternatives may be available in a given market, such as financial instruments, that can compete with storage. Duke explains that storage allows a consumer of natural gas to manage price risk by allowing the consumer to choose a price at which to buy natural gas, store it, and then withdraw that gas as needed. According to Duke, there are an increasing number of financial instruments that can be used to manage this same natural gas price risk. Williston Basin claims that other types of alternatives may exist as well, and accordingly market-based rate applications should be looked at individually, to determine what types of alternatives are available.

Commission Determination

50. As discussed above, we will continue to evaluate requests for market-based rates on a case-by-case basis. An applicant may propose to include other non-storage products as alternatives to storage services to the extent it can demonstrate the proposed alternatives can be delivered into the relevant geographic market and otherwise meet the criteria of a good alternative.

b. Modification to HHI Threshold

51. Under the *Policy Statement*, the Commission's initial screening tool for significant market power is the HHI, a formula that focuses on the relevant market's concentration as an indicator of the potential of an applicant to act together with other sellers to raise prices.[23] The Commission uses an HHI of 1,800 as an indicator of the level of scrutiny to be given to an applicant for market-based rates. An HHI at this level indicates that there are four to five good alternatives to the applicant's service in the relevant market. An HHI below 1,800 suggests limited market concentration with less potential for any participant to exercise significant market power. However, an HHI above 1,800 suggests a higher level of concentration, and will cause the Commission to increase its scrutiny of other factors such as the applicant's market share, ease of entry into the market, the relative size of the applicant's capacity, and/or the sustainability of a potential attempt by the applicant to exercise market power.[24]

Comments

52. INGAA and KM urge the Commission to adopt an HHI level of 2,500 rather than the 1,800 that it currently employs as a benchmark for measuring market concentration. INGAA asserts the current level is far too conservative and is inconsistent with standards recommended by the Antitrust Division of the Department of Justice (DOJ) for analogous oil pipeline cases.

53. KM asserts that the Commission's reliance on the 1,800 HHI level inappropriately relies on the DOJ's and the Federal Trade Commission's (FTC) Horizontal Merger Guidelines (Merger Guidelines) which apply to merger cases where two companies are merging and the number of competitors is reduced. KM argues that the 1,800 threshold is too conservative as applied to potential new storage entrants seeking market-based rates because, in this situation, the number of competitors will be increasing and the Commission will exercise regulatory oversight. KM also points out that the Commission applies the 2,500 threshold to oil pipelines where there is no merger issue and the adoption of that threshold was supported by DOJ in filed comments. Similarly, KM argues the Commission should adopt a 2,500 HHI threshold for applicants seeking market-based rate authority for gas pipelines where continued regulation of an industry rather than a merger is at issue. KM also asserts that adherence to the 1,800 HHI threshold is at odds with the actual DOJ and FTC enforcement decisions regarding horizontal merger review, where it states that out of 11,263 challenges initiated by the agencies, only 175 involved markets with HHIs under 2,500.[25]

54. Finally, KM asserts that in today's markets, purchasers of storage capacity are generally large LDCs or even larger and more powerful marketing arms of large producers and the presence of this buyer power is not accounted for in the Commission's HHI analysis. According to KM, use of a higher initial screen would partially take into account other factors such as buying power.

Commission Determination

55. We are not persuaded by the commentors' arguments that there is a need to change the HHI threshold level. Significantly, as recognized by KM and INGAA, the 1,800 HHI level is not a bright-line test below which an applicant would automatically qualify for market-based rates, or above which an applicant would be excluded from market-based rates. Rather, the Commission uses the 1,800 HHI level as

[22] *Id.*

[23] The HHI is the sum of the squared market shares. For example, in a market with five equal size firms, each would have a 20 percent market share. For that market, HHI = $(20)^2 + (20)^2 + (20)^2 + (20)^2 + (20)^2 = 400 + 400 + 400 + 400 + 400 = 2{,}000$.

[24] *Policy Statement* at 61,235–36.

[25] *Citing* Federal Trade Commission and the U.S. Department of Justice, Merger Challenges Data, Fiscal years 1999–2003, December 18, 2003.

an indicator of the level of scrutiny to be given to the applicant. As explained in the Policy Statement, if the HHI is above 1,800 the Commission will give the applicant closer scrutiny because the index indicates that the market is more concentrated and the applicant may have significant market power. Conversely, an HHI below 1,800 would result in less scrutiny of the applicant's potential to exercise significant market power because it would indicate that the market is less concentrated.[26] The Commission has applied this policy in its analysis of individual cases and has approved market-based rates for several applicants with HHIs above 1,800 after examining other competitive factors. For example, in *Avoca Natural Gas Storage (Avoca),*[27] the Commission approved market-based rates despite an HHI for deliverability of 4,100 in the relevant New York/Pennsylvania market, specifically noting the small size of Avoca's market share and the apparent ease of entry into the market as factors mitigating the market concentration reflected in the HHI.[28]

56. We disagree with INGAA's and KM's assertion that the 1,800 HHI level is too conservative. First of all, it is not true that applicants seeking market-based rates will always increase the number of competitors in a market. For example, a storage provider may apply for market-based rates for existing cost-based service. More importantly, we believe that use of the more conservative approach will ensure that the impact of other competitive factors will be given careful scrutiny when the market is relatively concentrated (less than four or five good alternatives). In addition, contrary to KM's assertion, we have not adopted a generic 2,500 HHI level in analyzing whether an oil pipeline has market power.[29] Moreover, the use of HHI levels in determining whether an oil pipeline has market power in individual cases reflects the specific competitive circumstances affecting oil pipelines. Specifically, oil pipelines face competition not only from other oil pipeline providers but also from other modes of delivering oil such as rail, barges and trucks.[30] In general, there are not similar alternative modes of delivering or storing natural gas. Further, as common carriers, oil pipelines operate in a different regulatory context.

57. Additionally, we do not agree with KM that a higher initial screen is appropriate to take into account the fact that purchasers of storage capacity are generally large LDCs or marketing arms of large producers. First of all, the purchasers of storage services are not always large LDCs and marketers and to implement an analysis premised on the assumption that they are is not appropriate. Under the Policy Statement we consider issues related to buyer power separately (outside the context of the HHI threshold) which permits the Commissions to consider the specific facts presented in a case. We find this approach superior to the approach advocated by KM.

c. Entry and Other Competitive Factors

Comments

58. Duke asserts that while the inclusion of currently available competitive alternatives in the definition of the market for the purposes of calculating market concentration and market share values, as advocated above, is a good starting point, such a revision alone, while necessary, will not address the barriers to development faced by markets with little existing gas supply infrastructure. To promote the development of additional storage infrastructure in these areas, Duke urges the Commission to shift the overall focus of its market-based rate analysis away from requiring evidence of an existing market to an analysis of the extent to which a new entrant increases the potential gas supply options available to market participants. Duke states the Commission's market-based rate policy should focus on: (1) Whether the new entrant adds new storage options to the market, and (2) whether there are further opportunities for additional entrants to take similar risks and develop competitive storage. Duke urges the Commission to adjust its existing approach to focus less on the status of existing competition and more upon the potential benefits of adding additional storage by: (1) Making it clear that applicants may rely upon evidence of potential developments of storage in circumstances where there is little or no existing competition, or (2) by making a generic determinations concerning the potential competitiveness of particular areas of the country.

Commission Determination

59. The Commission believes that the analytical framework for establishing market-based rates set forth in the *Policy Statement* already adequately accommodates other competitive factors such as the ability of other entities to enter the market. In the *Policy Statement,* the Commission specifically recognized that having a large market share in a concentrated market does not constitute market power if ease of entry and other competitive factors can prevent the applicant from exercising significant market power.[31] In a recent order in *Rendevous Gas Services, L.L.C.,* the Commission granted market-based rates for hub transportation service based on the ease of entry into the market center and the fact that the proposed pipeline was a new entrant with no captive customers.[32] Similarly, when requesting market-based rates for storage services, an applicant is permitted to establish that it lacks market power by demonstrating that if it increases its price, ease of entry by other providers into the market will make such a price increase unprofitable. Moreover, in response to Duke's assertion that we should focus more on the benefits of new entry than market concentration statistics, we recognize that there are significant benefits to competition and customers from new storage and note that, under our policy, HHI calculations of market concentration are used as a screening tool and are not dispositive of whether we will grant a request for market-based rates. Instead, we will consider all relevant factors, including the benefits of new entry, in determining whether to approve market based rates. The Commission will evaluate such proposals on a case-by-case basis.

d. Definition of Geographic Market

Comments

60. DTE states that while the Commission's NOPR takes the important step of presenting an expanded definition for storage substitutes, the NOPR does not clarify how an applicant seeking to demonstrate a lack of market power

[26] *Policy Statement* at 61,235.

[27] 68 FERC ¶ 61,045 (1994).

[28] The Commission reached a similar result analyzing storage services in *Steuben Gas Storage Co.*, 72 FERC ¶ 61,102 (1995); *New York State Electric and Gas Corp.*, 81 FERC ¶ 61,020 (1997); *N.E. Hub Partners, L.P.*, 83 FERC ¶ 61,043 (1998); *Seneca Lake Storage, Inc.*, 98 FERC ¶ 61,163 (2002); and *Honeoye Storage Corp.*, 91 FERC ¶ 62,165 (2000).

[29] *Market-Based Ratemaking for Oil Pipelines*, Order No. 572, FERC Stats. & Regs. ¶ 31,007 at 31,192 (Oct. 28, 1994) (''[T]he Commission is not proposing any particular HHI level, such as 1,800 or 2,500, as a screen or presumption, rebuttable or otherwise. All factors must be considered in determining whether an oil pipeline lacks significant market power.'').

[30] *Id.* at 31,191.

[31] *Policy Statement* at 61,235.

[32] *Rendevous Gas Services, L.L.C., order issuing certificates,* 112 FERC ¶ 61,141; *reh'g.* denied, 113 FERC ¶ 61,169 (2005). See *also Avoca,* 68 FERC ¶ 61,045 (1994); *Steuben Gas Storage Co.,* 72 FERC ¶ 61,102 (1995); *New York State Electric and Gas Corp.,* 81 FERC ¶ 61,020 (1997); *N.E. Hub Partners, L.P.,* 83 FERC ¶ 61,043 (1998); *Seneca Lake Storage, Inc.,* 98 FERC ¶ 61,163 (2002); and *Honeoye Storage Corp.,* 91 FERC ¶ 62,165 (2000).

should define its geographic market. DTE seeks Commission guidance as to how to define the relevant geographic storage market in order to provide more certainty to an applicant seeking market-based rates for new storage capacity in more competitive markets needing new capacity or improved service flexibility. DTE recommends that, in developing a geographic market definition for a market power study, the Commission should base its geographic market definition on the ability of storage customers to access storage providers in various regions. In addition, DTE argues that customer access to alternative storage providers can be confirmed by reviewing the applicant's potential shippers or shippers accessed by comparably located and situated storage providers, for example, as shown in a shipper index.

Commission Determination

61. In the Policy Statement, the Commission provided guidance on defining the geographic market. In general, the relevant geographic is the geographic area containing those suppliers that can affect any attempt by the applicant to exercise market power. Since we are not changing the geographic definition in the Final Rule, the *Policy Statement's* guidance regarding the geographic market is still applicable.

e. Treatment of Affiliate Capacity

62. In § 284.503(b)(4) we proposed to codify our current practice [33] that capacity on pipeline systems owned or controlled by the applicant's affiliates should not be considered among the customers' alternatives and should be included in the market share calculated for the applicant.

Comments

63. A number of commentors request that the Commission amend its proposed regulations in § 284.503(b) to eliminate the requirement that the capacity of a market-based rate applicant's affiliates is automatically to be included in the market share calculated for the applicant.[34] They argue that this requirement is unnecessary in light of the Commission's Standards of Conduct for Transmission Providers promulgated in Order No. 2004 which requires interstate pipelines to function independently from their affiliates.[35] For example, Dominion submits that Order No. 2004 is a comprehensive and effective regulatory regime governing the relationship between a pipeline and its energy affiliates such that there is no realistic possibility for an interstate pipeline with storage and its affiliates with storage assets to collude to exercise market power in the provision of storage services. Additionally, INGAA states the Commission's rules regarding price transparency, and the requirement that an open-access pipeline must make all capacity publicly available, under the terms, conditions, and rates specified in the tariff, provide further assurances that a storage applicant cannot control or manipulate the capacity of its affiliated companies.

64. Several commentors also maintain that the notion that capacity held by an affiliated company cannot provide a competitive alternative is inconsistent with the Commission's open-access policies.[36] Specifically, they assert that under the Commission's open-access regime, an interstate pipeline cannot control storage capacity that is subscribed. Rather, they submit it is the shipper with the contractual rights who determines when or if the capacity is used and if, when and to whom it is released. The Dominion LDCs assert that the Commission itself has concluded that current regulatory controls minimize the ability of pipelines to use market power to force captive customers to enter into longer term contracts than would be required in a competitive market.[37] Thus, the Dominion LDCs assert the Commission should find that a pipeline has neither the legal ability to withhold existing capacity nor an incentive to refuse to build new capacity, and that this, together with the fact that pipeline activity to act with an affiliated LDC to exercise market power by withholding capacity would violate other Commission rules and be actionable, leads to the conclusion that a pipeline and its affiliated LDC are unlikely to be able to jointly exercise market power.

65. These commentors conclude that there is not sufficient justification for requiring a pipeline to include the capacity of its affiliates when calculating market share. In recognition of the effect of shipper control over contracted pipeline capacity, INGAA urges the Commission to establish a rebuttable presumption that such capacity is properly considered as a substitute for the storage service at issue in a market-based storage rate application, assuming the capacity otherwise meets the ''substitutability'' criteria. Duke states that only storage and transportation capacity controlled by the affiliates of a storage applicant should be aggregated with the capacity of the applicant's proposed storage facility for the purposes of the market concentration measure and the market share calculated for the applicant. At a minimum, these commentors urge the Commission to eliminate the *per se* rule, and evaluate on a case-by-case basis whether affiliated capacity presents a competitive alternative. Several commentors claim that adoption of the proposed rule will discourage otherwise meritorious storage applicants and undermine the Commission's goal of stimulating the construction of vital new storage infrastructure.[38]

66. To the extent the Commission does not delete this requirement, INGAA requests that the Commission clarify proposed § 284.503(b)(4) that reads in pertinent part, that ''[a]vailable capacity * * * owned or controlled by affiliates of the applicant in the relevant market shall be clearly identified and may not be considered as alternatives competing with the applicant'', to clarify that while the pipeline affiliate's capacity is to be included in the market share calculated for the applicant, it should also be reflected in the total market share for the geographic area.

67. On the other hand, Falcon urges the Commission to recognize that the storage services being evaluated for market power may well be affiliated with the ''storage surrogate'' services permitted to be considered in the evaluation. Falcon maintains that the Commission should provide for additional safeguards to prevent the affiliated storage providers from exercising market power in such a situation and/or avoid, through separate treatment and analysis of the affiliated services, the actual market power or market share associated with the alternative affiliated services and providers.

[33] *See Policy Statement,* 74 FERC ¶ 61,076 at 61,234 (1996).

[34] Comments of INGAA, Dominion, Duke, NiSource Pipelines, Dominion LDCs and Jefferson Storage.

[35] *Standards of Conduct for Transmission Providers,* Order No. 2004, 105 FERC Stats. & Regs., Regulation Preambles ¶ 31,155 (2003), *order on reh'g,* Order No. 2004–A, FERC Stats. & Regs. ¶ 31,161 (2004), *order on reh'g and clarification,* Order No. 2004–B, FERC Stats. & Regs. ¶ 31,166 (2004), *order on reh'g and clarification,* Order No. 2004–C, FERC Stats. and Regs. ¶ 31,172 (2004), *order on reh'g.,* Order No 2004–D, 110 FERC ¶ 61,320 (2005).

[36] Comments of INGAA, Duke, Dominion and Dominion LDCs.

[37] *Citing* Order No. 637, 101 FERC ¶ 61,127 at 61,522.

[38] Comments of INGAA, Dominion and the NiSource Pipelines.

Commission Determination

68. The requirement that the capacity of a market-based rate applicant's affiliates is to be included in the market share calculated for the applicant is consistent with our established practice and is supported as discussed below.

69. We disagree with commentors' claim that the fact that the Commission has adopted Standards of Conduct for Transmission Providers which require interstate pipelines to function independently from affiliates removes the necessity of requiring that the capacity of the applicant and its affiliates be combined. While affiliates are required to act independently under the Commission's rules, this does not mean that affiliates will compete for the same service or product in a given market. As recognized by the Supreme Court in *Copperweld Corporation* v. *Independence Tube Corporation,* ''[a] parent and its wholly-owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousnesses, but one. * * * With or without a formal 'agreement,' the subsidiary acts for the benefit of the parent, its sole shareholder.'' [39]

70. We are also not persuaded by commentors arguments that only affiliate capacity that is not held under firm contracts should be attributable to the applicant. This proposal ignores the fact that pipelines control the conditions under which transportation and storage services are provided through the operation of their systems. We are not willing to create situations in which the pipeline, the dominant owner of capacity, does not have an incentive to build new capacity because it or an affiliate can benefit from an artificial shortage of capacity. As noted in Order No. 637, the Commission has carefully tailored its regulations so that pipelines will not have an incentive to use their monopoly power to create scarcity.[40] We see no compelling reason to deviate from that policy here. For these reasons, we find it is appropriate to attribute affiliate capacity to the storage provider even though the capacity is contracted for by a shipper under a firm contract. We have made revisions to § 284.503(b)(4) of the regulations to clarify our intent.

71. As requested by INGAA, we clarify that the applicant's affiliate's capacity that is included in the market share calculated for the applicant should also be reflected in the total market share for the relevant geographic area.

72. Finally, we find that Falcons's concerns over affiliate capacity are adequately addressed by the requirement that the capacity of a market-based rate applicant's affiliates is to be included in the market share calculated for the applicant.

f. Filing Procedures

73. The Commission proposed to add a new subpart M to part 284 that requires, among other things, that applications by storage providers requesting market-based rates contain certain information. The Commission stated it would continue its practice of approving market-based rate proposals on a prospective basis only. We also noted that approval of blanket certificate authority to provide open-access storage services at market-based rates will subject the storage service provider to the existing reporting requirements applicable to open-access service providers under § 284.13 of the Commission's regulations.

Comments

74. Sempra asserts that it is unnecessary to impose on market-based rate storage providers the full panoply of 18 CFR § 284.13 reporting requirements applicable to pipelines operating under cost-based regulation, given that the requisite showing of absence of, or mitigation of, market power has already been made. Instead, Sempra urges the Commission to utilize a lighter-handed reporting regime modeled after the electronic quarterly reports applicable to holders of electric market-based rate authority. Sempra asserts that these are sound requirements for the Commission to require of entities holding market-based rate authority.

75. Enstor submits that the Commission's statement that storage operators cannot charge market-based rates until the Commission determines that they lack market power or have established adequate customer protections conflicts with our current policies implementing section 311 of the NGPA. Enstor states that under the Commission's current regulations, section 311 service providers may begin charging (subject to refund) their proposed rates, including market-based rates, upon the filing of a petition for rate approval with the Commission. Enstor urges the Commission to reconcile this discrepancy and to leave intact the current rate filing regime that governs section 311 service providers in § 284.123(b)(2)(i). Enstor also seeks express clarification that nothing in the NOPR is intended to upset the current 150-day window within which the Commission must act on rate petitions filed by section 311 service providers, or otherwise the proposed rates are deemed fair and equitable.

76. Enstor further requests that the Commission allow flexibility in its proposed requirements for market-based rate filings under new § 284.503. While Enstor agrees that such information may be necessary in certain circumstances, Enstor urges clarification in the Final Rule that some or all of these procedural requirements may be waived for good cause when an applicant files for market-based rates.

77. Finally, Enstor urges the Commission to incorporate some sort of time limitation for its review of rate filings in the Final Rule. For example, Enstor states the Commission can adopt a five-month review period, beginning from the date on which a complete rate application is filed under proposed Rule 503, during which it could evaluate the application and any responsive protests. At the end of the five-month period, the proposed rates would be deemed approved in the absence of a formal Commission ruling.

Commission Determination

78. Regarding the applicability of § 284.13 reporting requirements, we disagree with Sempra that we should not impose these requirements on storage providers granted market-based rates, but rather impose a reporting regime modeled after the electric quarterly reports. Under the Commission's Part 284 program, all open-access transporters and storage providers are required to post or file with the Commission transaction reports, quarterly index of customer reports, and semi-annual storage reports. These reports are required of all open-access service providers and provide crucial transparency. This information allows both the Commission and market participants to monitor the market and detect undue discrimination. Sempra has provided no reasonable basis to exempt market-based storage service providers from the § 284.13 reporting requirements.

79. As requested by Enstor, we clarify that section 311 service providers may begin charging (subject to refund) their proposed rates, including market-based rates, upon the filing of a petition for

[39] 467 U.S. 752, 771 (1984) (holding that a parent and its wholly-owned subsidiary were incapable o conspiring with each other for purposes of section 1of the Sherman Act).

[40] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs., Regulations Preambles (July 1996–Dec. 2000) ¶ 31,091 at 31,270–71 (Feb. 9, 2000).

rate approval with the Commission pursuant to § 284.123(b)(2)(i) and that the 150-day time frame in that section is applicable to such requests. In § 284.502, we are adopting regulations that provide that applicants providing service under subpart C (transportation by intrastate pipelines under section 311) of part 284 must file in accordance with that section.

80. However, we reject Enstor's additional request that we impose a time limitation on our review of market-based rate filings by interstate storage providers, after which time the proposed rate would be deemed approved. It would be unreasonable to approve a market-based rate proposal without a specific finding that the applicant lacks market power. However, the Commission intends to process any request for market-based rates as expeditiously as possible.

81. Finally, the Commission clarifies, as requested by Enstor, that it may file to waive the procedural requirements in § 284.503 for good cause shown.

g. Periodic Review

82. Proposed § 284.504 of the regulations requires storage applicants receiving market-based rates on the basis of a market-power analysis to file updated market-power analyses within five years of the date of the Commission order granting authority to charge market-based rates, and every five years thereafter. The Commission stated that imposition of a periodic review is necessary to ensure that our grant of market-based rates to an applicant remains just and reasonable.

Comments

83. Several commentors including the majority of interstate pipelines and independent storage providers urge the Commission to eliminate its proposal for an automatic five-year market-power review under § 284.504 for storage operators that have demonstrated they lack market power. These commentors assert that this requirement is unduly burdensome, not necessary to protect customers and will deter new storage development.[41] Specifically, the commentors submit that the current requirement that market-based rate grantees report any changes in circumstances that are pertinent to their original absence-of-market-power showing, along with ongoing reporting obligations under existing regulations, are adequate to protect consumers. DTE also notes that it is unaware of any abuse complaints submitted by customers of storage companies granted market-based rate authority in the past that would necessitate the imposition of a five-year market-power review requirement.

84. A number of these commentors assert that an automatic review is unnecessarily burdensome in this context for the same reasons proffered by the Commission in support of reliance on regular monitoring of posted information and the NGA section 5 complaint processes for market-based storage rates under new NGA section 4(f). For example, Duke submits that if regular monitoring and the section 5 complaint provisions are sufficient to protect consumers in instances where the Commission presumes that a storage provider has market power under new NGA section 4(f), these same provisions in addition to the Commission's existing policy of conditioning its certificate authorization with a notice of changed circumstance requirement are more than sufficient to protect consumers in circumstances where the Commission has found the applicant not to possess market power.

85. If the Commission adopts an automatic review requirement, several commentors urge the Commission to make clear that the new requirement does not apply to projects that have previously received market-based rate approval,[42] arguing that any required periodic review must be prospective only and not affect existing contractual terms and conditions agreed upon in light of the Commission's initial grant of market-based rate authority to a service provider.[43] Duke argues that placing a new periodic-review condition on existing market-based rate authorizations would constitute an impermissible retroactive revision of the certificate authorizations for the underlying facilities, frustrate the investment expectations of the owners of those facilities, and undermine investor confidence in the storage market.

86. INGAA submits that the threat of revocation of market-based rate authority in the middle of a contract term may present an unacceptable level of risk to potential storage developers. In order to minimize the uncertainty that would be created by a new periodic review requirement, SGR argues the Commission must make it clear that any review of a storage provider's market-based rate authorization will be conducted under NGA section 5, with the Commission bearing the burden of showing that the market-based rate authorization and the rates it permits a storage provider to charge have become unjust and unreasonable, and the further burden of establishing prospectively the ratemaking methodology that would yield just and reasonable rates.

87. If the periodic review is adopted, Honeoye and SGR propose that the first such update should not be due until the later of 5 years after the effective date of proposed § 284.504 or the date the relevant storage facilities are placed in commercial operation. Honeoye also seeks confirmation that an existing holder of market-base rate authority can comply with this requirement by demonstrating that the facts that permitted the Commission to authorize market-base rates in the first instance are still true.

88. On the other hand, NGSA, EEI and PGC support the Commission's proposal to require storage applicants granted market-based rates to file an updated market-power analysis every five years. PGC asserts that without such periodic reviews, the Commission is unable to perform the regulatory oversight necessary to prevent unjust and unreasonable rates against captive gas customers. EEI notes that there is a similar requirement for electric utilities that sell at market-based rates, and suggests this requirement is necessary to protect customers from changes in the marketplace that may no longer justify market-based rate authority.

89. SCE also supports the Commission's five-year periodic report requirement in § 284.504 and submits that this review should also consider any cost-of-service facilities and interconnected facilities that could serve as substitutes for one another and should assess the competitive functioning of the market and impose remedial measures such as adjustments to mitigation measures or the complete withdrawal of market-based rate authority as necessary to ensure just and reasonable rates.

Commission Determination

90. We will not impose a generic five-year reporting requirement on storage providers granted market-base rates although we reserve the option of imposing a reporting requirement in any individual case. We have carefully considered the comments and have concluded that any benefits that would be achieved by a generic requirement

[41] Comments of INGAA, Dominion, KM, DTE, Duke, SGR, Honeoye, Bridgeline, Unicol, Falcon, SGR and Jefferson Storage.

[42] Comments of Bay Gas, INGAA, EnCana, Bridgeline, and Unocal.

[43] Comments of INGAA, KM, and Haddington Ventures. SGR argues that such a modification must be made in accordance with the *Mobile-Sierra* doctrine, with the Commission determining, on the basis of substantial record evidence, that the public interest requires such modification.

are outweighed by the additional costs that such a generic requirement would create. The Commission believes that existing reporting requirements and its ongoing market monitoring programs generally give us sufficient information to know whether storage markets where applicants have been authorized to charge market-based rates remain competitive, and the Commission has the ability to take appropriate action if market-power issues arise.

91. A central factor in the Commission's decision is the fact that in the majority of cases where we have authorized market-based rates for storage services, the applicant has not had a large presence in the market. For example, the Commission has approved all requests for market-based rates where the applicant was located in the production area based on findings that HHIs in that geographic region are well below 1,800 and the market shares of the applicants were small.[44] In consuming regions, such as the Northeast portion of the United States, where there are fewer providers, some with large market shares whose services are regulated, the Commission has approved requests to implement market-based rates by considering factors other than market concentration including the small size of the applicant's market share.[45] In these situations, we find that market-power concerns are low. Additionally, in individual cases the Commission has imposed on applicants permitted to charge market-based rates for storage services the requirement to notify the Commission when there have been changes of circumstances that affect the applicant's ability to exercise market power,[46] and we will codify this requirement in § 284.504(b). For storage providers with market shares of ten percent or less, we believe that the notice of change of circumstance requirement, together with the transparency provided by the existing reporting requirements in § 284.13, are adequate to permit the effective monitoring of market-power concerns related to storage providers charging market-based rates and enable the Commission to initiate section 5 proceedings where appropriate.[47] For storage providers with a market share greater than ten percent, we intend to consider in individual cases whether the specific facts and circumstances presented require additional reporting. We believe that this approach achieves an appropriate balance between the need to monitor for market power and the goal of creating a regulatory environment that will promote infrastructure.

92. However, the Commission wishes to emphasize that the failure to timely file a change in circumstance report or failure to comply with reporting requirements as required by the regulations would constitute a violation of the Commission's regulations. A storage provider would be subject to disgorgement of profits and/or civil penalties from the date on which the violation occurred. Such storage provider may also be subject to suspension or revocation of its authority to sell at market-based rates (or other appropriate non-monetary remedies). Additionally, if subsequent experience with the changes enacted here demonstrates a need for a generic five-year market-power analysis requirement, we reserve the right to initiate such a change.

h. Cross Subsidies and Customer Protection Comments

93. Xcel states that it is concerned that the proposed rule does not sufficiently protect storage customers served by a storage provider under cost-based rates from bearing costs associated with storage services provided by the same provider at market-based rates. Xcel explains that the temptation to increase revenues by misallocating costs will be difficult to resist and difficult for customers and the Commission to detect in a rate proceeding. Therefore, Xcel requests that the Commission protect customers by modifying the regulations to require storage service providers to account for costs incurred in providing market-based rate storage services separately from cost-based storage services. Xcel maintains this requirement is similar to the Commission's policy of requiring pipelines to account separately for the revenues received under negotiated rate agreements.

94. Falcon asserts that pipeline and utility affiliated storage providers (collectively, ''Affiliated Storage Providers'') have a natural advantage over independents because of their ability to provide a rate subsidy, bundling, or other preference, enabling them to charge lower rates for their storage services and placing independent storage providers at a distinct competitive disadvantage. Accordingly, Falcon requests that the Commission take steps to minimize any subsidization or preference afforded Affiliated Storage Providers by requiring Affiliated Storage Providers to: (1) Unbundle storage and transportation services, and (2) allocate the appropriate level of fixed and variable costs to storage and transportation services. Absent such actions, Falcon alleges that independent storage providers will never be able to effectively compete on a ''level playing field'' with Affiliated Storage Providers, to the detriment of the ultimate consumer.

95. Similarly, SGR submits that the broader availability of market-based rate authority proposed in the NOPR could increase the possibility that pipeline-owned storage could take advantage of a liberalized market-power test to gain an unfair competitive advantage over independent storage developers/operators. It argues that pipeline-owned storage enjoys considerable advantages in the marketplace; given the ability pipeline-owned storage has to share a customer base with the pipeline, to benefit from operational integration with the pipeline and to enjoy revenue support offered by pipeline transportation services. If left unchecked, SGR submits that these advantages could present insurmountable barriers to entry for independent storage developers.

96. UET asserts that moving from cost-based rates to market-based rates for existing storage facilities and expansions of existing storage facilities would be unfair to existing storage customers. For example, UET submits that in many cases cost-based rates have paid for facilities with the potential for cheap expansibility. If, as the result of the proposed change in market-power analysis, the expansion capacity is offered only at market-based rates, UET alleges that the storage provider will

[44] *See, e.g., Caledonia Energy Partners, L.L.C.,* 111 FERC ¶ 61,095 (2005) (market share of working gas capacity and deliverability each approximately two percent); *Copiah County Storage Co.* 99 FERC ¶ 61,316 (2002) (market share of working gas capacity and deliverability each less than two percent).

[45] *See, e.g., Avoca Natural Gas Storage,* 68 FERC ¶ 61,045 (19940. *Steuben Gas Storage Co.,* 72 FERC ¶ 61,102 (1995) (market share of working gas capacity and deliverability each less than four percent); *New York State Electric and Gas Corp.,* 81 FERC ¶ 61,020 (1997) (working gas capacity and deliverability each less than one percent); *N.E. Hub Partners, L.P.,* 83 FERC ¶ 61,043 (1998) (working gas capacity and deliverability each less than five percent); *Seneca Lake Storage, Inc.,* 98 FERC ¶ 61,163 (2002) (working gas capacity and deliverability each less than two percent); and *Honeoye Storage Corp.,* 91 FERC ¶ 62,165 (2000) (working gas capacity and deliverability each less than two percent).

[46] *See, e.g., Caledonia Energy Partners, L.L.C.,* 111 FERC ¶ 61,095 (2005) (requiring that Caledonia notify the Commission of future circumstances affecting its present market power status within ten days of acquiring knowledge of any such changes).

[47] This approach is similar to the Commission's proposal to exempt sellers of wholesale electric power who own or control 500 MW or less of generating capacity in aggregate from filing triennial reviews. *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,602 at P 152 (2006).

reap the benefits of the cheap expansibility for which the customers have paid.

97. Finally, APS requests that the Commission take all available steps to encourage the development of independent storage facilities in the southwest including eliminating barriers to entry such as the ''bundled'' pipeline storage and transmission services being offered by El Paso.

Commission Determination

98. In granting market-based rates for pipelines that provide cost-based services, the Commission intends to ensure that no subsidization by existing cost-based shippers takes place. To date, when granting market-based rates in these circumstances, the Commission has required that the applicant separately account for all costs and revenues associated with facilities used to provide the market-based services.[48] We intend to continue this practice and will codify in new § 284.504 of the regulations the requirement that pipelines that provide cost-based services must separately account for all costs and revenues associated with facilities used to provide the market-based services. This will ensure that market-based services are not subsidized by cost-based services, as well as ensure that pipeline-owned storage is not afforded an unfair rate advantage over independent storage providers.

99. Regarding Falcon's request to require unbundling, we note that our regulations already require that pipelines offer their customers firm and interruptible storage on an open-access contract basis.[49] Issues regarding whether a pipeline has sufficiently unbundled its services in compliance with our policies should be raised in individual pipeline proceedings.[50]

i. Additional Incentives

Comments

100. As an alternate to market-based rates, Dominion urges the Commission to consider offering incentives to promote the development of new storage facilities reflecting the increased investment risk of these projects, including: (1) Authorizing higher rates of return on equity for new cost-of-service storage projects as compared to new pipeline projects to reflect the increasingly riskier nature of identifying new geologic structures and the shorter-term contracts that customers are entering into; (2) allowing the authorized rate of return for a new cost-of-service project to remain unchanged over the duration of the initial shipper contract as revenue certainty is necessary to provide good incentives for new investment; (3) offering regulatory incentives to compensate for the enormous cost of purchasing base gas for a new facility, particularly reservoir and aquifer types of storage facilities, such as permitting the roll in of the costs of base gas associated with a new incrementally-priced storage facility into its system-wide rates in its next rate case with a five percent cap placed on the increase to system rates from this roll-in; and (4) permitting interstate pipelines to recover the prudently incurred development cost of storage facilities that are cancelled or abandoned prior to being placed into service, similar to the initiative being considered in the rulemaking to promote the construction of new transmission facilities in the electric utility industry.

Commission Determination

101. The Commission agrees with Dominion that there may be alternatives to market-based rates that would appropriately address the risk faced by storage applicants. We note that the Commission's policies already incorporate considerable flexibility in deriving cost-based pricing options that are responsive to the market pressures faced by jurisdictional companies. For example, in Order No. 637 the Commission revised its regulatory policies to enable pipelines to file for peak/off peak and term differentiated rates.[51] In addition, rates for storage services can be negotiated between the storage provider and a shipper under the Commission's negotiated rate policies.[52] The Commission is willing to entertain requests to implement other cost-based pricing proposals that may serve to add flexibility and efficiency to storage services on a case-by-case basis.[53]

*B. Energy Policy Act of 2005*

102. Section 312 of EPAct 2005 adds new NGA section 4(f), which permits the Commission to authorize new natural gas storage projects (*i.e.*, projects placed in service after the passage of the Act) to provide service at market-based rates notwithstanding the fact that the applicant is unable to demonstrate that it lacks market power. New NGA section 4(f) requires that, to authorize market-based rates, the Commission must find that ''market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services'' and ''customers are adequately protected.'' The Act further requires that the Commission ''ensure that reasonable terms and conditions are in place to protect consumers'' and that the Commission ''review periodically whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.'' Intrastate pipelines also provide storage services, and new NGA section 4(f)(1) extends the market-based rate authority to intrastate pipelines subject to Commission authority under the Natural Gas Policy Act of 1978.[54] We discuss below the relevant aspects of new NGA section 4(f).

1. Storage Capacity Eligible for Market-Based Rates

103. New NGA section 4(f) states that the Commission may authorize ''market-based rates for new storage capacity related to a specific facility placed in service after the date of enactment of the Energy Policy Act of 2005.'' In the NOPR, the Commission posited that the phrase ''placed in service after the date of enactment'' modifies the term ''facility,'' not the term ''capacity,'' such that it is the facility which must be placed into service after August 8, 2005,

[48] *See, e.g., Gulf South Pipeline Co.*, 101 FERC ¶ 61,204 (2002); *Koch Gateway Pipeline Co.*, 66 FERC ¶ 61,385 (1994).

[49] *See* 18 CFR 284.1(a) of the Commission's regulations that defines transportation as including storage. Thus, storage is included within the nondiscriminatory access and other requirements of Part 284 for interstate pipelines.

[50] APS' request that the Commission take steps to encourage the development of independent storage facilities in the southwest including eliminating the bundled pipeline storage and transmission services being offered by El Paso is outside the scope of this proceeding. This issue has been raised in El Paso's rate proceeding in Docket No. RP05–422–000 and will be addressed there.

[51] *See Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulation Preambles July 1996–Dec. 2000 ¶ 31,091 (Feb. 9, 2000).

[52] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines,* 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co.* v. *FERC*, 172 F.3d (D.C. Cir. 1998); *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042 (1996).

[53] *See, e.g., Saltville Gas Storage Company L.L.C.*, 109 FERC ¶ 61,200 (2004) (approving a modified *Equitable* method for designing firm storage rates).

[54] 15 U.S.C. 3301–3432 (2000). We note that the Commission has authorized Hinshaw pipelines to be treated the same as LDCs and we intend the same here. See *Certain Transportation, Sales and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs,. Regulations Preambles (1997–1981) ¶ 30,118 (Jan. 9, 1980).

rather than the storage capacity. Noting that the statute does not define the term ''specific facility,'' the Commission proposed to interpret that term to consider a new cavern, reservoir or aquifer that is developed after August 8, 2005, as a facility potentially qualifying for market-based rates under the Act. However, the Commission requested comments on alternative constructions of the Act. Moreover, the Commission also invited comments concerning how, if the Act is construed differently, the Commission may adequately protect other customers already receiving service under cost-based authorizations that pre-date the Commission's new NGA section 4(f) authority.

Comments

104. A number of commentors argue that the statutory language concerning the capacity eligible for market-based rates under section 4(f) is ambiguous and open to alternative interpretation. Thus, they assert the Commission has discretion in implementing the language.

105. INGAA argues that the Commission interprets new NGA section 4(f) too narrowly, so as to exclude new storage capacity resulting from the expansion of existing fields or reservoirs. INGAA submits interstate pipelines and pipeline affiliates, which own substantial amounts of existing storage capacity, should be allowed to apply for market-based rates to develop either new or expanded storage fields. Northern concurs with INGAA and argues that a broader statutory interpretation is necessary. DTE maintains that there is no reason to treat expansion facilities any differently than entirely new storage fields. Duke adds that the best assurance against the exercise of market power is the creation of a competitive marketplace and that granting market-based rate treatment to only entirely new storage facilities may place existing storage at a significant disadvantage and discourage the expansion of existing storage.

106. Williston Basin argues that there is no material distinction between expanding existing storage facilities and developing a new, separate storage facility, and that the Commission's interpretation might unnecessarily influence companies to choose construction of a new facility over expansion of an existing facility. Northern asserts that the risks involved in developing new storage capacity, whether at a new or existing facility, are greater than those involved in constructing new pipeline capacity and justify the use of market-based rates. It states that a broader interpretation of the subject provision will recognize the risk of storage expansions and provide a proper incentive for developers.

107. Northern maintains that existing storage customers served by a pipeline will not be harmed by including expansions of existing capacity because customers' existing storage service will not be affected by the expansion. In this vein, Williston Basin asserts that, in the case of an expansion of existing storage facilities, existing customers under cost-based authorizations can be adequately protected if the incremental capacity and associated costs are accounted for separately and addressed in each storage service provider's next rate proceeding.

108. KM states that granting market-based rates to expansions of capacity will remove economic distortions associated with limiting this provision to new storage fields. KM asserts that it is faster and more cost-effective to expand existing storage facilities rather than to construct new storage facilities and that such expansions should be placed on equal footing with greenfield projects.

109. Other commentors support the interpretation of the Act proposed in the NOPR.[55] AGA argues that broadening the definition of ''facility'' would largely benefit interstate pipelines, and potentially harm existing customers of cost-based storage service. AGA asserts that the Commission's policies should not encourage storage owners to invest in reshaping the operations of existing storage facilities in order to maximize the scope of market-based services. APGA agrees, and contends that the NOPR's interpretation is required by the language in the statute and is reasonable because there is no reason to provide financial incentives to a storage provider for an expansion of a facility that has already been constructed. PGC agrees arguing that interpreting section 4(f) to apply only to new facilities is most consistent with the goal of increasing storage capacity.

110. Falcon requests that the Commission ensure that new gas storage projects that are developed by Affiliated Storage Providers do not receive any direct or indirect subsidy from their affiliated companies. NGSA and EnCana assert that if the provision is interpreted to permit storage services made possible by incremental capacity at an existing, cost-based facility to be priced on a market basis, there would be no set of conditions that would adequately protect customers against the risk of abuse.

[55] AGA, Falcon, EnCana, Enstor, NGSA, PGC, and SCE.

111. Beyond the risk of cross-subsidy, EnCana is also concerned that there is nothing to prevent a storage service provider with both cost-based rate facilities and market-based rate facilities from placing its marketing emphasis on the market-based rate side in order to ensure that those storage services are fully subscribed at the highest possible rate, while, at the same time, deemphasizing the sale of their regulated cost-based services, which are theoretically underwritten by the regulated ratepayers. ESGI asserts that, in order to provide safeguards against such practices, the Commission would need to vigilantly review the provider's marketing efforts in section 4 rate cases.

112. Enstor contends that allowing expansion capacity at existing storage facilities to qualify for market-based rate treatment under section 4(f) would place new storage projects (many of which are developed by independent operators) at a competitive disadvantage relative to market incumbents such as interstate pipelines. Enstor argues that allowing virtually all new capacity to fall within the scope of section 4(f) would enable interstate pipelines to use their cost-based transportation monopoly to subsidize new services offered under this authority.

113. The NiSource Pipelines assert that the Commission's interpretation of the phrase ''specific facility placed *in service* after the date of enactment to mean ''a new cavern, reservoir or aquifer that is *developed* after August 8, 2005'' is not consistent with the gas industry's or the Commission's own definition of that term, which defines ''in service'' to mean when the facilities are actually placed into service. NiSource advocates that the Commission revise its interpretation to incorporate the more appropriate definition of ''in service.''

Commission Determination

114. The meaning of new NGA section 4(f) is ambiguous. Early drafts of bills stated that the Commission could authorize a natural gas company ''to provide storage and storage-related services at market-based rates *for new storage capacity placed in service after the date of enactment of the Energy Policy Act of 2005,* notwithstanding the fact that the company is unable to demonstrate that it lacks market power * * *.''[56] Under these early versions of the Act, it was clear that all new storage capacity would have been eligible for

[56] S. 10, 109th Cong. sec. 382 (2005).*See also,* H.R. 6, 109th Cong. sec 382 (with engrossed amendment as agreed to by the Senate, June 28, 2005); H.R. 6, 109th Cong. sec. 382 (as passed and ordered to be printed by the Senate, July 14, 2005).

market-based rates. However, in the final bill, the phrase, ''related to a specific facility'' was added so that the subject language read, ''to provide storage and storage-related services at market-based rates for new storage capacity related to a specific facility placed in service after the date of enactment of the Energy Policy Act of 2005 * * *''[57] The addition of the specific facility language indicates that it is the facility, not the storage capacity, that must be placed in service after the date of the Act.[58]

115. Congress, however, provided no definition of the term facility. Upon review of the comments and further consideration, the Commission concludes that a more traditional interpretation of ''facility'' than that posited in the NOPR may be more consistent with Congressional intent and existing precedent, and better serve to further the Commission's goal of facilitating the development of new natural gas storage capacity. The Commission recognizes that significant and substantial enhancements to storage capacity can be achieved at existing fields and finds that it is unnecessary to exclude service from such expansions from consideration for market-based rates by narrowly interpreting the term ''facility'' in the context of section 4(f). For purposes of implementing the certification requirements of section 7(c) of the NGA, the Commission defined ''facilities'' broadly, in exclusionary terms—everything except ''auxiliary installations'' and certain facilities constituting replacement facilities are ''facilities'' for which a natural gas company must obtain a certificate.[59] Applying that same definition here, in the context of section 4(f), would be consistent with our longstanding practice in applying that term under the NGA and therefore consistent with the rule that Congress is deemed to be aware of existing administrative interpretations when amending a particular statute that contains such interpretations.[60] This definition would enable storage providers to seek market-based rates for service associated with capacity related to any ''specific facility'' requiring certification placed in service after the date of the Act, be it a new storage cavern or a facility which expands capacity at an existing cavern or reservoir. However, to receive such authorization, the storage provider will still need to satisfy the other requirements of section 4(f) discussed below. In addition, such rates will only be found to be in the public interest if the storage provider demonstrates that the market-based services will not be subsidized by existing customers and that customers receiving cost-based service from expanded facilities will be adequately protected.

116. Regarding the NiSource Pipelines' concern over the Commission's definition of ''in service,'' we clarify that our intent is to define ''in service'' to mean when the facilities are actually placed into service.

2. Market-Based Rates Are in the Public Interest and Necessary to Encourage the Construction of Storage Capacity in the Area Needing Storage Services

117. Section 4(f) of the NGA states that in order to allow a company to charge market-based rates under this section, the Commission must determine that: ''market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services.''[61] In the NOPR, the Commission stated that applicants for authorization under section 4(f) will bear the burden of showing that in its specific circumstances, market-based rates are necessary to encourage the construction of storage capacity and that storage services are needed in the area. To make this showing, the Commission suggested that the applicant could present evidence that it had offered its capacity at cost-based rates through an open season and was unable to obtain sufficient long-term commitments at those cost-based rates. However, the Commission invited comments concerning other ways a project applicant might make these showings.

Comments

118. AGA supports the suggestion that an applicant under this section might demonstrate the need for market-based storage rates by showing that the market failed to subscribe under long-term contracts at cost-based rates offered through an open season. INGAA also supports the Commission's suggestion, but suggests such a showing should not be required. Rather, the Commission should allow the applicant substantial discretion as to how to make the requisite showing based on the facts of its project. EEI agrees that the applicant should have the burden to show that market-based rates are necessary to encourage construction of storage capacity; specifically, EEI urges the Commission to require an applicant to show why such capacity cannot be developed under cost-based rates. SCE asserts that in the event an applicant relies on a failed open season as evidence of need, other parties must have the opportunity to contest the open season's reasonableness.

119. The NYPSC expresses concern that the NOPR did not discuss ''public interest'' as a standard separate and apart from ''need,'' as the language of section 4(f) treats these as separate standards. The APGA also states that the Commission must revise § 284.505 to require a specific public interest demonstration.

120. NYPSC acknowledges that the ''public interest'' standard could encompass a broad range of factors. It argues, however, that while the Commission may find it is in the ''public interest'' to authorize market-based rates to encourage the entrance of independent, third party storage providers into the market, it may not be in the public interest to encourage the construction of new storage facilities by a pipeline with a dominant market share.

121. Haddington Ventures asserts that the Commission should recognize three distinct categories of new storage projects and treat each differently under its section 4(f) policy. The three categories are: (1) Independent storage projects owned by entities unaffiliated with existing natural gas infrastructure subject to cost-based rate regulation; (2) storage projects owned by entities affiliated with existing natural gas infrastructure subject to cost-based rate regulation, but which are not physically connected to such existing infrastructure; and (3) storage projects owned by entities affiliated with existing natural gas infrastructure subject to traditional cost-based rate regulation to which such storage projects are connected or upon which such storage projects otherwise rely.

122. Haddington Ventures submits that the Commission's proposal adequately addresses Category 2 projects, but should be adjusted to better account for Category 1 and Category 3 projects. With regard to Category 1 projects, Haddington Ventures asserts

[57] H.R. Rep. No. 109–190, at 97 (2005) (Conf. Rep.).

[58] *See Jama* v. *Immigration & Customs Enforcement,* 543 U.S. 335, 343 (2005) (noting the '' 'grammatical 'rule of the last antecedent,' according to which a limiting clause or phrase * * * should ordinarily be read as modifying only the noun or phrase that it immediately follows.'' ' (*quoting Barnhart* v. *Thomas,* 540 U.S. 20, 26 (2003)).

[59] *See* 18 CFR 2.55 (2005).

[60] *See Bragdon* v. *Abbott,* 524 U.S. 624, 645 (1998) (when administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well).

[61] Energy Policy Act of 2005, Pub. L. 109–58, section 312, 119 Stat. 594, 688 (2005) (to be codified at 15 U.S.C. 717c(f)(1)(A)).

that the consumer protection required will be satisfied by: (a) The Commission's rate regulation of existing infrastructure, which establishes a ceiling on the price that the facility owner can command for storage, and (b) the relative ease of entry by potential competitors.

123. Haddington Ventures asserts that a Category 3 project should be granted market-based rates only after the project has met the burden of demonstrating that (a) no mechanisms remain that could be exploited to unfairly advantage such projects, and (b) any safeguards imposed are administrable. Category 3 projects should be required to demonstrate annually and whenever material changes in the market or of the project may undermine customer protections. In addition, Haddington Ventures maintains that Category 3 projects that do not achieve the desired level of return at market-based rates should not be allowed to fold the costs of the project back into a regulated rate structure, except where (a) a bona fide change of circumstances has occurred that eliminates the original grounds for granting the market-based rate authority, and (b) the Commission is satisfied that the regulated rate would be lower than the market rate.

124. Enstor takes a different approach, asserting that those that oppose market-based rates should have the burden of showing that such rates are *not* ''necessary to encourage the construction of the storage capacity in the area needing storage services.'' Enstor proposes that the Commission establish a presumption that storage capacity will not be built in the absence of market-based rate authorization. Enstor asserts that, in the alternative, if the Commission does not adopt such a presumption, the objective financial criteria that the applicant's lenders are requiring for the development of the particular project should be the basis for the required determination of need.

Commission Determination

125. In order to authorize market-based rates under section 4(f), the Commission must determine that: (1) Market-based rates are in the public interest; (2) market-based rates are necessary to encourage the construction of the storage capacity; and (3) the area in which the storage project is proposed needs storage services. We agree with the NYPSC and APGA that the public interest requirement is a separate standard under the Act and we have revised § 284.505 accordingly. The Commission will expect each applicant to address each of these requirements in its applications explaining and supporting its contentions with respect to each element.

126. In determining whether market-based rates for a particular project are in the public interest, the Commission will consider, among other things, the risk of the project, and the investment required to fund it. Generally, the Commission would expect that for market-based rates to be in the public interest for services proposed under section 4(f), market-based rates would be necessary for the project sponsor to secure financing and move forward with the project. In the Commission's view, it is unlikely that market-based rate authorization would be necessary, or in the public interest, to encourage relatively risk-free expansions of storage.

127. We also agree with the NYPSC and Haddington that another factor to consider in determining whether market-based rates are in the public interest is whether the applicant is a new independent storage provider or an existing pipeline in the relevant market. In general, we believe that an existing pipeline will face fewer difficulties in securing financing for incremental expansions of existing storage facilities. As a going concern with existing customers and financial relationships, the risk associated with acquiring financing is lower for incremental expansions than the risk associated with a greenfield project undertaken by a new entrant in the market. Therefore, we believe it may be more difficult for an existing pipeline to meet the public interest standard than it will be for a new independent storage provider.

128. Ultimately, the Commission's finding that market-based rates are in the public interest will reflect its consideration of all aspects of 4(f) proposals, including, but not limited to, the risk faced by the project sponsors, the extent to which additional capacity is needed in the area of the project, and the strength of the applicant's showing that the facilities would not be built but for market-based rate treatment.

129. In order to receive authorization to charge market-based rates under section 4(f), each applicant must make a showing as to why market-based rates are necessary to encourage the construction of the storage capacity. As the Commission stated in the NOPR, one way that the applicant could make such a showing is to present evidence that it offered its capacity at cost-based rates through an open season and was unable to obtain sufficient long-term commitments at those cost-based rates. On the basis of the record, we believe such an open season is the best means of demonstrating that cost-based rates will not be sufficient. However we are open to applicants making another type of showing. Applicants may also cite to other marketing factors to explain why market-based rates are necessary. As suggested by SCE, parties will have an opportunity to comment upon this evidence.

130. The Commission will not establish a presumption that storage capacity will not be built in the absence of market-based rate authorization, as suggested by Enstor. The statute requires that the Commission make an affirmative finding that market-based rates are necessary to encourage the construction of storage. Also, in the Commission's experience, storage has been built in the absence of market-based rate authorization. Regarding Enstor's assertion that the objective financial criteria that the applicant's lenders are requiring for the development of the particular project should be the basis for the determination of the necessity of the project, the Commission will afford applicants significant discretion in demonstrating that market-based rates are necessary to encourage the development of additional storage. Enstor can cite to requirements imposed by its lenders if it believes that such requirements justify the authorization of market-based rates. The Commission cannot make a generic determination on such issues, but must look at the positions of the parties in individual cases.

131. Applicants will also have to show that storage services are needed in the area in which they are proposing a project. An applicant can demonstrate need by including evidence of a general lack of storage in the area or that existing storage capacity is fully utilized, pipeline constraints leading into the area, projected increased demand for natural gas in the area to be served, customer interest, high natural gas prices and/or volatility and other information the applicant believes supports its determination that additional storage is needed. As noted above, the Commission will balance the strength of an applicant's showing of need with the other requirements of the Act in determining whether to approve a request for market-based rates under NGA section 4(f).

132. The Commission notes that the subject of this rule is whether and in what circumstances authorization of market-based rates would be appropriate pursuant to NGA section 4(f). To the extent an applicant is also requesting authority to construct and operate new storage facilities pursuant to NGA section 7(c), the applicant will be subject to the full range of

requirements of the Commission's certificate process.[62]

3. Customer Protection

133. New NGA section 4(f) requires that the Commission, as a prerequisite for granting market-based rate authority, determine that customers are adequately protected, and requires the Commission to ensure that reasonable terms and conditions are in place to protect them. In the NOPR, the Commission proposed to allow the applicant to propose a relevant method of protecting customers.

134. The Commission stated that in general, customers will be better off if more storage infrastructure is constructed. Therefore, the Commission sought a balance in considering requests for market-based rate authority under new NGA section 4(f), between the obvious benefits of additional storage capacity in areas needing storage services against adverse impacts which might arise from the potential exercise of market power by the storage provider. In doing so, the Commission stated that it remained mindful of the fact that to the extent unnecessary conditions are imposed, the additional storage infrastructure and the additional service options would be lost to potential customers. Accordingly, the Commission sought comments concerning how to achieve this balance.

135. The Commission stated that the appropriate method of customer protection may vary according to the facts and circumstances of the individual project proposals and therefore, the Commission proposed to allow each applicant to propose a method of protecting customers best suited to its project. However, the Commission sought comments on whether it would be beneficial to identify certain acceptable approaches to protect customers. The Commission reasoned that the establishment of generic safeguards would facilitate the application process for NGA section 4(f) market-based rate authority, but stated that each applicant would retain the right to propose other methods of protecting customers that might better fit the circumstances of its project.

136. Therefore, in addition to seeking suggestions for possible generic safeguards, the Commission outlined two generic safeguards for comment. The Commission reasoned that entities with market power can exercise that power in two general areas: (1) The withholding of capacity; and (2) the extraction of monopoly rents. Therefore, the Commission set forth two approaches to protecting customers against the exercise of market power. The first approach would involve conditions that limit the withholding of capacity and the second approach would involve rate protections.

137. The Commission reasoned that market power can be exercised in circumstances where a storage operator can withhold capacity from the market and thereby raise prices. The Commission stated that as long as storage capacity has not been withheld, ''the fact that shippers may at times bid up contract length likely reflects not an exercise of [the pipeline's] market power, but rather competition for scarce capacity.''[63] The Commission requested that comments address whether by ensuring that the storage operator has sold or made available to the market all of its capacity (and thus it is not withholding capacity), customers can be assured that market power is not being exercised by the storage service provider and that any increase in price is due to customers' demand for storage relative to the available supply.[64]

138. The Commission recognized that one difficulty in applying this standard is defining when withholding should be found to be indicative of the exercise of market power. Therefore, the Commission requested comment on how to apply a prohibition against withholding which balances the competing needs of the project sponsor to secure revenues adequate to attract necessary investment in new infrastructure and of the needs of customers to be protected from the abuse of market power.[65]

139. The Commission also pointed out that market power can be exercised in those circumstances where a storage operator can extract monopoly rents and stated that rate protections could take several forms. The Commission stated that rate caps could be designed to provide adequate customer protection while also supporting the financing of new storage projects. The Commission sought comment on whether there are certain approaches to rate caps that could be adopted as a generic safeguard. The Commission also proposed that it allow an applicant to establish a long-term (*e.g.,* 5–10 years) recourse rate that was cost-based and allow the applicant to negotiate contracts under market-based rates for shorter-term transactions and requested comment on this approach or whether there were other cost-based rate designs or price cap methodologies that the Commission should consider.

Comments

140. With respect to the ''customer protection'' findings required under section 4(f)(1)(B), INGAA and Williston Basin submit that the Commission can rely on the same reporting requirements and NGA section 5 complaint process that it proposes with respect to compliance with the statutory periodic review requirement. INGAA and Williston Basin also support the Commission's suggestion that it may rely on a showing that a storage operator has sold or made available all of its capacity.

141. INGAA asserts that the focus of customer protection should be those customers receiving storage service at cost-based rates. Other commenters, including AGA, APGA, and NGSA, place the focus on storage customers seeking service under market-based rates authorized pursuant to section 4(f). EGSI requests the Commission to also ensure protection for competitors.

142. Williston maintains that the applicant should be allowed to propose an adequate method of protecting customers and the Commission should address each application individually. Duke also asserts that the Commission should not adopt any generic safeguards that will be the equivalent of price controls. Duke argues that imposing on storage participants an obligation to sell available capacity is unworkable and, if adopted, would eliminate any of the potential advantages that would result from market-based rates. Duke explains that for an obligation to sell to be meaningful, that obligation must be

[62] Pursuant to § 157.20(b) of the Commission's regulations, any authorization granted for the construction of a proposed project will establish a time within which construction of the facility must be completed and made available for service. We have in the past granted extensions of time within which to complete construction of proposed projects. With regard to projects for which NGA section 4(f) authorization is sought, we note that we would not anticipate granting an extension of time to complete construction based on an argument that market demand for the project has not materialized.

[63] *Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (D.C. Cir. 2002).

[64] *Id.* (affirming Commission determination that prices determined through an uncapped bidding process were the product of competitive forces, not the exercise of market power).

[65] The Commission sought comment on several consumer protection questions including: (1) whether allowing the storage operator to set a reserve price would provide an appropriate balance; and (2) whether a withholding prohibition should apply all the time, or only during periods of peak demand for storage services? The Commission also request comment on how terms such as ''reserve price'' and ''period of peak demand'' should be defined, if such conditions were to be adopted. The Commission also requested comment on whether a formal auction process under which the applicant is obligated to sell all capacity above a reserve price should be considered?

imposed with respect to some price, which inevitably leads to the imposition of price controls.

143. Northern, Sempra, INGAA and Enstor state that the circumstances of a project should determine the appropriateness of any given customer protection. Northern maintains there are some additional protections that should apply, including an open season bidding process with or without a minimum reserve price, known terms and conditions of service defined in the storage provider's tariff, a restriction on the storage provider requesting during a contract term that the market-based rates it agreed to be increased, a commitment by the pipeline to existing customers that it will not allocate incremental costs associated with a market-based storage expansion to existing shippers receiving storage services under cost-based rates in a general rate case proceeding, and a requirement that market-based rates should be subject to the Commission's reporting and posting requirements. SCE urges the Commission to perform a contemporaneous market-wide analysis in determining whether to grant market-based rate authority as well as considering mitigation methods tailored to the specifics of each application.

144. Dominion supports both the case-specific approach to reviewing the adequacy of customer protections, and establishing generic protections that will expedite the process. Dominion submits that customers will be protected from the exercise of market power if they are offered long-term, cost-based storage rates as a recourse service option. Dominion asserts that this will prevent a storage provider from extracting monopoly rents because a customer can always opt for the long-term recourse service. Withholding of capacity is therefore not possible, Dominion stresses, because the services will be offered under open-access, non-discriminatory FERC-approved tariffs.

145. PGC states it is appropriate to establish a general rule requiring the use of certain pre-established safeguards where market-based rate authority is granted. However, because some concerns may be case-specific, PGC supports requiring individual applicants to carry the burden of demonstrating that consumers are adequately protected, separate and apart from their compliance with any universally established safeguards. PGC supports the requirement that all capacity be offered for sale and made available to customers on a non-discriminatory basis.

146. NYPSC supports the establishment of generic safeguards. Specifically, the NYPSC maintains that a condition prohibiting the withholding of capacity would serve to protect consumers. It states that the Commission could address the pricing issues associated with this condition by allowing applicants to propose and support a reasonable recourse rate on a case-by-case basis. The NYPSC also supports allowing intervenors to propose other protective conditions on a case-by-case basis. NASUCA asserts that restrictions on withholding of capacity would limit the ability of a storage operator to exercise market power. NASUCA urges the Commission to require the storage applicant to post, both continuously and on a real-time basis, the amount of contracted storage service and storage capability for each storage service offered, the identified differences being considered an offer to sell.

147. AGA urges the Commission to lift the cap on capacity releases in order to permit greater competition with storage operators to place downward pressure on prices.

148. APGA maintains that the NOPR errs in its assumption that the consumer will be protected by requiring that a market-based-rate storage service provider sell all of its existing capacity. APGA contends that the Commission's reliance on *Process Gas* is misplaced because that decision relied on the fact that the rates for the capacity in question were regulated and thus the pipeline would have no incentive for refusing to build additional capacity. This is not the situation the Commission faces in the instant case. APGA also contends that the NOPR erred in fashioning customer and consumer protections that disregard the statutory requirement that rates and services cannot be unduly discriminatory or preferential.

149. To prevent the imposition of either excessive or unduly discriminatory rates, APGA proposes that: (1) The Commission cap the price of long-term storage service (*i.e.* contracts with a term of one year or more) and require tariff terms and conditions for this service; (2) these long-term contracts be subject to the right-of-first-refusal; (3) storage operators be allowed to sell any excess capacity as short-term storage service; (4) an auction be used to award storage capacity where the storage operator must make all capacity available at or above a reserve price (a rate no higher than the cost-based rate for short-term capacity); (5) storage operators be required to continually provide timely information on storage capacity availability and to initiate an auction upon a prospective customer request; (6) storage providers be required to maintain a record for three years of the quantities, rates, terms and conditions and date of each market storage purchase; (7) the Commission review, every three years, whether the availability and rates offered are just and reasonable and not unduly discriminatory or preferential; (8) the Commission be allowed to proceed sua sponte or based on a complaint to determine whether the rates, terms and conditions were or are just and reasonable; (9) the Commission be granted the authority to require the disgorgement of unjust profits, invoke civil fines, and suspend or revoke the certificate or market-based rate authority where it determines that the availability or rates charged for market-based rates were or are not just and reasonable or are unduly preferential or discriminatory; and (10) the costs of the storage capacity for which market based rates are sought be prohibited from inclusion in recourse rates.

150. EGSI urges the Commission to be sensitive to the need to protect competitors as well as customers, because a storage provider that has market power and market-based rates could use that market power in anti-competitive ways. EGSI agrees that one way of guarding against such an abuse of market power is the establishment of a minimum ''reserve'' rate or rate floor. EGSI suggests that such rate floor be set at or above the facility's short-term marginal costs.

151. Enstor does not support the adoption of the Commission's suggested generic consumer safeguards. Enstor asserts that the Commission's proposed prohibition on the withholding of capacity, and its suggested rate protections, would upset the balance between the customer and the storage provider such that new storage projects would never get built. INGAA also rejects the ''rate cap'' protections suggested by the Commission as simply incompatible with market-based rates. Enstor would support an approach where the rate applicant would state upfront whether it would be willing to submit to an annual reporting requirement detailing the agreements and rates that it negotiated during the preceding 12 months, similar to those that section 311 service providers submit. Enstor advocates that the Commission adopt a 60-day ''safe harbor'' review period during which the market-based rate arrangements could be evaluated. If the Commission took no action during this time frame, the arrangements would be left intact.

152. NGSA suggests that the Commission take the following steps to ensure consumer protection: (1) Assess whether the applicant has provided sufficient evidence that its rates will be just and reasonable by examining whether the proposed rates are ''in line'' with other storage rates within the region that are charging market-based rates; (2) assess other specific safeguards as proposed by the applicant that indicate that the applicant is willing to mitigate market power, including whether the applicant has negotiated contracts that permit customers to ratchet down levels or permit mandatory ''out'' clauses or contracts that include indexed-based rates where the risk is shared by the applicant and the customer; (3) require the applicant to hold an open season, which if structured correctly, will provide transparency and enhance the Commission's ability to analyze and review the conduct of the storage operator; (4) apply generic customer safeguards which would include a no withholding requirement requiring that all storage capacity be available at all times with a ''reserve price'' based on the range of rates charged for storage area facilities with market-based rates; (5) reaffirm existing policies including the filing of a tariff that contains all terms and conditions of service, as well as standard forms of service agreements, and the ability of customers to release capacity and application of the affiliate rules under Order No. 2004; and (6) employ several prospective generic actions for all applications which would include the monitoring of an applicant's compliance with the implementation of the safeguards and acting swiftly upon receiving a customer complaint.

Commission Determination

153. As a prerequisite for granting market-based rate authority, new NGA section 4(f) requires that the Commission, determine that customers are adequately protected, and requires the Commission to ensure that reasonable terms and conditions are in place to protect them. The Commission will require an applicant for this authorization to show that granting its application can be done consistent with the requirement of section 4(f)(1)(B).[66] This may be done in different ways, and as the NOPR proposed, we will leave applicants with the discretion to fashion proposals that will operate effectively given the unique situations involved. However, we will also describe methods that an applicant might employ to satisfy the Commission that the customer protection requirement has been met.

154. Customer protection starts with potential storage customers having a fair and open opportunity to contract for proposed new capacity. One way for an applicant requesting section 4(f) authority to demonstrate that interested customers were given non-discriminatory access to new storage capacity would be to show that it had conducted a fair and transparent open season. The industry has conducted open seasons for quite a few years, and the Commission has provided guidance in individual cases on issues that have arisen.[67] A properly conducted open season will allow a project sponsor to test the market, attempt to negotiate mutually agreeable rates which support the project financially, and provide a means to give the market fair notice of and open access to potential new services. Allegations that the process offered by an applicant failed to provide such fair notice and access can be raised by potential customers in individual proceedings.

155. APGA argues that the NOPR erred in disregarding the statutory requirement that rates and services cannot be unduly discriminatory or preferential. The Commission disagrees. With respect to rates, nothing in this Final Rule transgresses the statutory requirement that they be ''just, reasonable and not unduly discriminatory or preferential.'' With respect to services, every part 284 transporter, which includes storage service providers, must comply with the non-discriminatory access requirements of those regulations.[68] This rule deals with the setting of rates and does not disturb nor set aside other provisions of the Commission's open-access requirements.

156. Another necessary component of customer protection is ensuring that existing customers are not subject to additional costs, risks, or degradation of service resulting from new services provided under section 4(f). Potentially, existing storage service providers, including interstate pipelines and intrastate pipelines, may request authority to charge market-based rates pursuant to section 4(f). Any applicant which already serves customers under prior authorization must ensure that existing customers will not be subject to additional costs, risks, or degradation of service as a result of a section 4(f) authorization, and must explain how its application is consistent with this requirement.

157. In addition, successful applicants will be required to separately account for the costs, services, and commitments provided pursuant to section 4(f) authorizations, and to retain these records for as long as they may be required under the Commission's existing practices for pipelines operating under the Uniform System of Accounts.[69]

158. A third fundamental protection is an open-access tariff stating the terms and conditions of service offered. While the rates would be left to individual negotiation, within the customer protections offered by that provider and accepted by the Commission, the terms and conditions of service must be provided in a generally-applicable tariff. As acknowledged and supported in the comments of Northern and NGSA, a tariff provides essential transparency and basic knowledge about the nature and quality of service to be provided. It is also a touchstone by which all customers may be assured that the quality of service provided is comparable for all customers.[70] Although the NOPR did not refer to tariff-filing requirements, we note that the context of these authorizations is the provision of open-access storage and storage-related services offered under Part 284 of the Commission's regulations. While parts of these regulations are routinely waived in market-based rate authorizations upon applicant's request and for good cause shown, the Commission has consistently required generally applicable tariffs for these services and intends to continue this practice for authorizations pursuant to section 4(f). This will also allow the Commission to ''ensure that reasonable terms and conditions are in place to protect consumers'' as required by new section 4(f).

159. EGSI asks the Commission to expand customer protection to require that competitors also be protected. While the Commission does not generally require that competitors be protected, and does not read the

[66] In its comments, NYPSC requests the Commission allow interveners to propose other protective conditions on a case-by-case basis. While the burden rests with the applicant, interveners may also propose protective conditions. The Commission will give full consideration to such proposals when it considers an individual case.

[67] *See, e.g., Ouachita* River *Gas Storage Co., L.L.C.,* 68 FERC ||61,402 (1994); *Avoca Natural Gas Storage,* 68 FERC ||61,045 (1994); *Northwest Pipeline Corp., order denying reh'g,* 61 FERC ||61,047 (1992); *Pacific Gas Transmission Co.,* 54 FERC ||61,291 (1991).

[68] 18 CFR 284.7(b), 284.7(c) and 284.9(b) (2005).

[69] 18 CFR part 225 (2005).

[70] For transporters offering service pursuant to NGPA section 311, their statement of operating conditions will provide similar transparency and consistency of service for all customers.

customer protection requirement of new section 4(f) to require such protection, the Commission agrees that as a general matter, storage service providers, like other natural gas companies, should not charge rates less than their marginal costs.[71] However, the Commission is not here requiring that a storage service provider authorized to collect market-based rates under section 4(f) state a minimum average variable cost rate below which it would not be allowed to charge. Rather, in the event of a complaint, the Commission will require the storage service provider to demonstrate that marginal costs were recovered under every rate charged.

i. Withholding

160. In the NOPR, the Commission requested comment on whether customers can be assured that market power is not being exercised if all capacity is made available to the market, and how to apply a prohibition against withholding. NiSource Pipelines assert that the Commission's Part 284 regulations already contain a generic safeguard against withholding of capacity.[72] INGAA states that an auction process with an appropriate reserve price would be an appropriate means of complying with a no-withholding rule. However, INGAA urges the Commission not to attempt to establish generic requirements for how such a reserve price should be established. Northern believes that an open season with or without a reserve price (and with other stated conditions) would be an appropriate method of compliance.

161. PGC, NYPSC and NASUCA all support the concept of prohibiting withholding. PGC and NYPSC would leave the method for achieving this result to be worked out in individual cases. NASUCA would impose continuous and real-time posting requirements on capacity, contracted capacity and available capacity. APGA would also require more capacity postings, and would require the storage operator to initiate an auction upon customer request.

162. Williston and Duke, on the other hand, argue that a formal auction requirement with a reserve price would reduce or eliminate the incentive for storage service providers and customers to enter into market-based rates contracts and they urge the Commission to allow the applicant to propose an adequate method of customer protection. They argue that any mandated reserve price would constitute de facto cost-based rate regulation and would nullify any benefits offered by market-based rates under these circumstances. Enstor objects to any generic requirements or prohibitions.

163. The Commission believes that an applicant's proposal that adequately prevents withholding is one good way to meet the customer protection requirement. The Commission's existing part 284 open access regulations require interstate pipelines to provide service on a non-discriminatory basis to the extent capacity is available and a qualified shipper is willing to pay the maximum tariff rate. In the absence of proof that the service provider lacks market power and a just and reasonable rate, the Commission has no reason to believe (and no basis for reasonably deciding) that an applicant for section 4(f) market-based rates does not have the potential to exercise market power. In this context, a proposal that acts to prevent withholding as a method of exercising substantial market power, tempered with a reasonable reserve price which would allow a section 4(f) applicant to recover its investment appears to be the best way to satisfy the test.

164. Several commenters have suggested specific methods for setting reserve prices. For example, NGSA suggests use of the range of rates charged for other area storage facilities with market-based rates. APGA would require a cost-based rate to be used. However, the Commission acknowledges the objections of Williston and Enstor that a mandatory reserve price is tantamount to indirect cost-based ratemaking. Many other commenters advocate leaving it to the individual applicant to establish a reasonable method of compliance. The Commission believes that the most reasonable course is to allow the individual applicant to propose a method that balances adequate customer protections against withholding as a tool for exercising significant market power against the applicant's need for revenue sufficiency.

165. In its application for section 4(f) authority to charge market-based rates, the applicant must demonstrate how it intends to comply with the no-withholding requirement, and must also specify whether, and if so, how it will establish a reserve price. The Commission will entertain reserve prices which represent a reasonable price in the market to be served. A few examples of how this price may be set include: prices offered by competing storage sellers in the same market, as suggested by NGSA; applicant's total costs; applicant's other already agreed upon rates (*e.g.*, the highest initial rate agreed to at arms-length with a non-affiliate in the initial open season); or another type of reserve price for which the applicant can provide a just and reasonable basis convincing to the Commission based on the facts of a specific case. Applicants proposing a method of forestalling attempts to withhold capacity in an effort to exert market power which does not include a reserve price must convincingly demonstrate how the proposal will prevent the withholding of capacity.

ii. Other Rate and Service Protections

166. In the NOPR, the Commission also sought comments on rate caps that might provide protection against the extraction of monopoly rents. In response, Dominion advocates that the offer of a long-term cost-based storage service as a recourse service offering, would satisfy the customer protection requirement. APGA proposes a two-prong approach where long-term storage services are first offered at price-capped rates, with unbooked capacity available to be auctioned for short-term services; the short-term auction would be subject to a reserve price no higher than the cost-based rate for short-term capacity. Many of the pipelines and storage operators oppose any cost-based pricing restraints as nullifying the incentives to build new storage infrastructure.

167. The Commission will not mandate cost-based price controls as a method for ensuring customer protection. On balance, we agree with the comments that a mandated price cap would undermine and perhaps nullify the incentive to build new storage infrastructure, which is the Commission's primary goal here, and is otherwise tantamount to imposing a cost-based rate, rather than granting authority to sell at market-based rates. However, the Commission views the suggestion of a long-term cost-based recourse storage service as a viable approach that an applicant may propose. In addition, some of the concepts discussed above on the reserve price issue may offer other methods of capping prices which an applicant may use in its proposal. For example, a price cap based on the range of prices offered by competing sellers in the same market could be adopted without an auction process.

[71] *See Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 436, FERC Stats. and Regulations, Regulations Preambles 1982–1985 ¶ 30,665, at 31,543–45 (1985) (permitting the discounting of transportation rates between the maximum and minimum approved rates with the minimum rate based on average variable costs).

[72] *Citing, Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 837 (D.C. Cir. 2002) (Process Gas) and *Natural Gas Pipeline Negotiated Rate Policies and Practices,* 114 FERC ¶ 61,042 at P 10 (2006).

4. Periodic Review

168. In the NOPR, we suggested that regular Commission monitoring of market-based storage operators based on existing forms and data postings, supplemented as necessary with more specific information, would satisfy the periodic review requirement of the new NGA section 4(f). Appropriate action under section 5 of the NGA would be available should the Commission determine, based on its own review or in response to a complaint, that rates charged by the storage operator were not just and reasonable.

169. The Commission requested comments on this approach, whether further reporting or transparency requirements should be imposed, and whether the applicant's proposed customer protection requirements should be reviewed every five years.

Comments

170. Several commentors generally agreed with the approach described in the proposed rule to rely on existing reporting requirements, and NGA section 5, to comply with the periodic review requirement.[73] INGAA submits that the information currently reported, along with the public information regularly reviewed by Commission staff and the information provided in response to any specific complaint, as well as the existing compliance regulations, are sufficient to ensure compliance with the statute. Williston Basin and Enstor state that a more formal review process, such as every five years, would add unnecessary expense and is unlikely to present any additional information than is already publicly distributed on a regular basis. Sempra states that the reporting requirements should be designed to provide information that updates the information that was initially relied upon by the Commission in concluding that market-based rates were appropriate and to assure that such rates remain just and reasonable.

171. AGA, on the other hand, supports a periodic review of market-based rates every five years in addition to the proposed Commission monitoring of public postings by storage operators. AGA suggests that the Commission provide an opportunity every five years for customers and interested parties to submit comments regarding storage rates and consumer protection measures. Similarly, NGSA also suggests that the Commission institute a periodic review at least every five years or earlier if potential issues are detected as a result of the Commission's monitoring or a filed complaint. APGA disagrees with the Commission's suggestion that a section 5 complaint complies with the section 4(f) mandate that the Commission periodically review whether the market-based rate is just and reasonable and not unduly discriminatory or preferential. According to APGA, a section 5 complaint procedure suggests that the Commission can impose only a prospective remedy, which would fall short of the consumer and customer protections mandated by section 4(f).

Commission Determination

172. We find that the regular Commission staff monitoring based on existing forms and data postings, supplemented as necessary with more specific information required during the course of any necessary inquiry, coupled with our authority under NGA section 5 will satisfy the periodic review requirement of the new NGA section 4(f). Ongoing review of storage operations, capacity subscription, and transaction details would provide a greater degree of customer protection than would a formal review on a multi-year periodic cycle. Ongoing review, as part of the Commission's regular market oversight and enforcement efforts, would identify potentially problematic situations faster and initiate solutions sooner than a formal periodic proceeding.

173. Existing reporting requirements provide a wide range of information regarding storage service operations and rates. The Index of Customers filing under § 284.13(c) reports contract entitlements quarterly. The semi-annual storage report under § 284.13(e) filed at the end of the injection and withdrawal seasons identifies the capacity applicable to each storage customer, the actual volume injected or withdrawn, the revenues received, and any discounts permitted. The information in these reports, supplemented with ad-hoc staff inquiries will provide tools to identify potential unlawful withholding of storage capacity.

174. Storage operators are also required to post a daily report of available storage on their electronic bulletin board or Web site under § 284.13(d). This data will allow the detection of daily storage operating patterns inconsistent with appropriate market operations.

175. Storage providers also must report the rates and terms of storage service transactions under § 284.13(b) at the time service commences. These reports will provide the opportunity to detect potential undue discrimination or preference in storage rates or services. The Commission reminds storage operators that this requirement will be monitored closely by our oversight and audit staff to assure full compliance.

176. Financial and operational data reporting in Form 2 or 2a is another source of information useful in monitoring section 4(f) storage operations, rates, and services. We will require section 4(f) storage companies to fully comply with the financial and accounting information required for Forms 2 and 2a. While we have waived these requirements for storage operators found to lack market power, we will not do so for firms seeking market-based rates under section 4(f). Full compliance is necessary to provide the Commission with a more complete picture of market-based storage operations for firms presumed to possess market power.

177. The above sources of information are available for regular monitoring by the Commission staff and current or potential storage service customers. These sources, plus the ability of the Commission staff to seek further information as needed, will provide for more timely review and remediation of section 4(f) storage rates and service that might fall outside of a range of reasonableness or fail to meet the just and reasonable standard than a formal periodic review proceeding.

178. While the ongoing review of section 4(f) storage operations by the Commission staff would not be a formal proceeding in which customers could file comments, as suggested by the AGA, customers would still have the opportunity to make their views known in several ways. Customers could contact the Commission's Enforcement Hotline to bring problem situations to the attention of the Commission. Interventions in proceedings involving section 4(f) operators provide another venue for communication. Alternate dispute resolution processes are available through the Dispute Resolution staff. The formal complaint process under section 5 is available for more serious concerns.

179. Although we believe that these reporting requirements will be sufficient to allow the Commission and other interested parties to ensure that customer protections remain adequate over time, as required by the Act, in the event it is demonstrated that this is not the case for a particular project, we will take whatever additional steps are necessary to ensure that the periodic review provision of the statute is satisfied.

180. We disagree with the assertion by the APGA that a section 5 complaint procedure would fall short of the

[73] Comments of INGAA, Williston Basin, Enstor, Dominion, and DTE.

consumer and customer protections mandated by section 4(f) because under section 5 remedies can only be prospective remedy. There is nothing in the new section 4(f) that implies a remedial procedure for rates under this section other than the prospective remedy afforded by section 5 of the NGA.

181. Finally, as noted *infra,* failure to comply with the § 284.13 filing requirements would constitute a violation of the Commission's orders and regulations. A storage provider would be subject to disgorgement of profits and/or civil penalties from the date on which the violation occurred. Such a storage provider may also be subject to suspension or revocation of its authority to sell at market-based rates (or other appropriate non-monetary remedies).

5. Presumption of Market Power

182. Proposed § 284.505(b) provides that any storage service provider seeking market-based rates for storage capacity pursuant to section 4(f) will be presumed to have market power.

Comments

183. INGAA urges the Commission to eliminate proposed § 284.505(b) that establishes a presumption that an applicant has market power. INGAA submits that new NGA section 4(f) does not require it and without a clear picture of the implications of the presumption, potential applicants may be dissuaded from pursuing otherwise meritorious storage projects.

184. Similarly, the NiSource Pipelines claim that this presumption is not consistent with section 312 of EPAct 2005. They submit that applying the presumption would create precedent for all subsequent proceedings that the applicant possesses market power, regardless of the fact that no market power analysis has ever been performed.

185. EnCana argues that consistent with the intent of Congress, the Commission should revise proposed § 284.505(b) by: (i) Removing the presumption of market power, and (ii) adding language which requires a traditional market power study to be filed by a storage service provider as part of its § 284.505 application. EnCana argues that the presumption of market power is not present in section 4(f); rather, EnCana asserts that Congress contemplated that a traditional market power analysis would be filed in connection with a market-based rate authorization granted under that section. EnCana maintains that the Commission should use this market power study to determine what terms and conditions to impose upon a given authorization in order to provide the protection required by section 4(f) of the NGA. Encana asserts that the terms and conditions imposed by the Commission should be proportionate to the results of the market power study; the strictest terms and conditions should be imposed when a storage service provider fails both parts of the market power test, namely that the market it plans to enter is found to be heavily concentrated, or it will have a high market share in that market. Where a storage service provider fails the first part of the test (high market concentration due to the small number of participants), but shows that it will, in that concentrated market, have low market share, EnCana asserts that the Commission should be able to impose more lenient conditions based on a finding that, despite having market power, admitting the new entrant into the market would increase competition by diluting the market concentration of the dominant player(s) in the market area.

Commission Determination

186. In implementing new section 4(f) of the NGA, we find that the establishment of a presumption of market power is warranted in order to meet our consumer protection obligation under the NGA to protect ratepayers from excessive rates.[74] Because new section 4(f) permits market-based rates without a finding that the applicant lacks significant market power, we can not rely on competition to ensure that rates remain just and reasonable as we do under our traditional market power analysis. Rather, in order to ensure that the rates we authorize under section 4(f) will be just and reasonable, it is necessary to establish a presumption of market power in implementing the consumer protection provision of the Act. However, we clarify that the presumption of market power is intended to apply only for the purpose of implementing section 4(f); and is not a generic finding that would apply in other situations.

187. We reject EnCana's request that we require section 4(f) applicants to submit a market power study. We find that implementation of such a requirement is inconsistent with the intent of Congress in implementing section 4(f) which specifically permits the Commission to authorize market-based rates not withstanding the fact that the applicant is unable to demonstrate that it lacks market power. Under the Final Rule, an applicant can choose whether to file a market power study under the traditional approach for obtaining market-based rates or by submitting an application under the provisions of section 4(f) that does not require a showing of a lack of market power but requires the applicant to meet other requirements including that market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services and customers are adequately protected.

6. Applicability of Section 4(f) Treatment

Comments

188. Enstor seeks clarification that the Commission's requirements related to implementation of section 4(f) are not applicable to an applicant that seeks a determination that it lacks market power.

189. Dominion seeks clarification that new section 4(f) applies only to rate treatment and not to the storage service itself. Dominion states that it utilizes all of its storage assets together to achieve operational efficiency. Dominion seeks confirmation from the Commission that should it receive market-based rate authority for a new storage project under section 4(f), it will be able to operate that field on an integrated basis in conjunction with the other storage assets that are subject to cost-based rates.

Commission Determination

190. We clarify that the requirements adopted in § 284.505 related to implementation of section 4(f) are not applicable to applicants seeking a finding that they lack market power. Rather, those applicants are subject to the requirements set forth in §§ 284.503 and 284.504 which require an applicant to submit a traditional market power analysis. An applicant is free to choose the procedures it wishes to be subject to.

191. We do not have a sufficient basis to rule on Dominion's request that we find that if Dominion receives market-based rate authority for a new storage project under section 4(f), it will be able to operate that field on an integrated basis in conjunction with its other storage assets. Dominion may file and support such a request in any proceeding it files pursuant to section 4(f).

[74] *See generally FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 610 (1944).

*C. Other Issues*

1. Section 284.126(d) Notification of Termination

Comments

192. Bay Gas requests that the Commission remove § 284.126(d), Notification of termination, from its regulations consistent with Order No. 581.[75] Bay Gas asserts the Commission stated it was removing that provision in the preamble of Order No. 581 but failed to delete that section from the regulations.

Commission Determination

193. Bay Gas's request is beyond the scope of this proceeding. However, we note that on March 23, 1999, an errata was issued in Docket No. RM95–4–000 modifying the regulatory text to Order No. 581 to include the deletion of § 284.126(d). We have placed Bay Gas' request in the rulemaking docket in which Order No. 581 was issued and will correct the matter there.

2. Encouragement of Certain Types of Storage

Comments

194. Falcon Gas is concerned that statements made in the NOPR regarding the operations of salt caverns v. reservoir storage may be read to favor one storage project over another. Falcon maintains that the Commission should be clear with respect to its comments and intentions and let the market determine which form of gas storage capacity is best suited to any particular area of need. Falcon submits that reservoir storage, with the appropriate reservoir characteristics and equipped with the appropriate number of properly-configured wells and attendant surface facilities, can very closely match the operating characteristics of salt cavern storage, typically at a fraction of the unit development cost.

Commission Determination

195. The Commission clarifies that it did not intend by its statements in the NOPR to prejudge whether one form of gas storage capacity is better suited to any particular area of need. Rather, our intent was to provide a general statement of the function of certain types of storage capacity. We affirm our intent to continue to evaluate the merits of a particular storage project on a case-by-case basis.

3. Storage and Related Services Eligible for Market-based Rates

196. The NiSource Pipelines contend that the Final Rule should not limit the availability of market-based rates to firm storage services. Noting that the Commission has typically approved market-based rate authority for small storage projects, not storage services provided by major interstate pipeline companies, the NiSource Pipelines contend that the Commission should broaden the two methods proposed in the NOPR for obtaining market-based rates to include interruptible storage services, short-term firm and seasonal storage services. They also state that the Commission should consider applications for market-based rates for park and loan services and other services that provide storage-type imbalance management functions.

Commission Determination

197. We clarify that the applicability of the provisions we are adopting in subpart M are not limited to firm storage services. An applicant may seek market-based rate treatment for any storage services that it proposes to provide. We will grant requests to charge market-based rates for storage services to the extent the applicant is able to meet the requirements set forth in the regulations.

## V. Summary of Regulations

198. The Commission, therefore, is revising its Part 284 regulations as follows. New subpart M will be added, which addresses applications for market-based rates for storage. Within new subpart M, § 284.501, Applicability, explains which pipelines or storage service providers are eligible to apply for market-based rates under subpart M, § 284.502, Procedures for applying for market-based rates, explains what procedures must be followed for submitting an application. Section 284.503, Market-power determination, explains what must be submitted as part of an application for market-based rates, including what information must be submitted related to an applicant's market power. Section 284.504, Requirements for market-power authorizations, requires storage service providers granted the authority to charge market-based rates who also provide cost-based service(s) to separately account for all costs and revenues associated with facilities used to provide the market-based services. This section also requires storage providers to notify the Commission of significant changes occurring in its market power status. Section 284.505, Market-based rates for storage providers without a market-power determination, explains what a storage service provider that does not seek a market-power determination must submit to the Commission in an application for market-based rates.

## VI. Information Collection Statement

199. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure (collections of information) imposed by an agency.[76] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB for review under section 3507(d) of the Paperwork Reduction Act of 1995.[77]

200. The Commission identifies the information provided under part 284 subpart M as contained in FERC–545, FERC–546 and FERC–549.

201. The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule, as modified to reflect the elimination of the requirement that applicants granted market-based rate approval after the effective date of a Final Rule file an updated market power analysis once every five years. The burden estimates for complying with additional filing requirements of this rule pursuant to the procedures in proposed new sections 284.503 and 284.505 are set forth below. For the most part, the burden on applicants seeking market-based rates for open-access storage services will not be changed by this proposed rule. Since 1996, applications for authority to charge market-based rates have been filed under the Commission's procedures applicable to NGA section 7 initial rate determinations, NGA section 4 rate changes, or NGPA section 311 rate determinations under the Commission's existing data collection authorities. This rule codifies application procedures and filing requirements which are little changed from the process followed since 1996. Codification of filing requirements will allow applicants to know what information must be filed with such an application and should reduce the need for staff to send out follow-up data requests and respondents to file data responses. To the extent respondents seek market-based rate authority under the new NGA section 4(f) authorization process, also codified in these regulations, the burdens may be lower than if they had filed to seek authorization under the Commission's

[75] *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies,* FERC Stats. & Regs., Regulations Preambles (January 1991–June 1996) ¶ 31,026 (Sept. 28, 1995).

[76] 5 CFR 1302.11 (2005).

[77] 44 U.S.C. 3507(d) (2000).

1996 Policy Statement. On average, we expect the burden of making an application for authority to charge market-based rates under this proposed rule to be 350 hours.

202. Over the past several years the Commission has approved market-based rates for storage services at an average pace of about 4.5 per year. The Commission is issuing this Final Rule in hopes that more storage will be constructed and operated, especially in underserved areas. In reflection of this policy goal, the Commission estimates that up to 8 filings may be made in a typical year. While this estimate may be high, in light of recent experience, at worst the Commission is overestimating the burden.

| Data collection | Number of respondents | Number of responses per respondent | Hours per response | Total annual hours |
|---|---|---|---|---|
| FERC–545, FERC–546, or FERC–549 | 8 | 1 | 350 | 2,800 |

*Total Annual Hours for Collection:* 2,800 hours.

203. *Information Collection Costs:* The Commission sought comments on the cost to comply with these requirements. No comments were received. The Commission has projected the average annualized cost for all respondents to be $280,000 (3,500 hours × $80.00 per hour).

204. *Title:* Gas Pipeline Rates: Rate Change (FERC–545); Certificated Rate Filings: Gas Pipeline Rates (FERC–546); and Gas Pipeline Rates: NGPA Title III Transactions (FERC–549).

205. *Action:* Proposed Information Collection.

206. *OMB Control Nos.:* 1902–0154, 1902–0155 and 1902–0086.

207. The applicant shall not be penalized for failure to respond to these collections of information unless the collections of information display valid OMB control numbers.

208. *Respondents:* Business or other for profit.

209. *Frequency of Responses:* On occasion.

210. *Necessity of Information:* On August 8, 2005, Congress enacted EPAct 2005. Section 312 of EPAct 2005 amends the NGA to insert a new section, 4(f), which allows the Commission to permit natural gas storage service providers authority to charge market-based rates, subject to conditions and requirements set forth in the statute. The Commission considers the issuance of these regulations necessary to implement this Congressional mandate and to encourage the development of new natural gas storage facilities. The proposed rule updates the Commission's market power analysis to better reflect the competitive alternatives to storage available in today's wholesale natural gas marketplace. These changes should ease the applicant's burden in showing that a Commission grant of market-based rate authority is appropriate, thus encouraging the construction and operation of needed new storage infrastructure. The proposed rule in implementing EPAct 2005 creates regulations that allow qualifying storage providers to seek authority to charge market-based rates when the providers cannot or do not demonstrate they lack market power. The proposed rule revises the requirements contained in 18 CFR part 284 to add a new subpart M to require that applications by storage providers requesting market-based rates contain certain information showing why market-based rates are necessary to encourage storage services and including a method for protecting customers.

211. *Internal Review:* The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission staff will review the data included in the application to determine whether the proposed rates are in the public interest as well as for general industry oversight. The Commission staff will review periodically the transactional and operational information provided by those granted authority to charge market-based rates pursuant to NGA section 4(f) to determine ''whether the market-based rate is just, reasonable, and not unduly discriminatory or preferential.'' These requirements conform to the Commission's plan for efficient information collection, communication and management within the natural gas industry.

212. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415, fax: 202–273–0873, e-mail: *michael.miller@ferc.gov*).

213. For submitting comments concerning the collection of information and the associated burden estimate(s) including suggestions for reducing this burden, please send your comments to the contact listed above and to the Office of Management and Budget, Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, 202–395–4650, fax: 202–395–7285).

## VII. Environmental Analysis

214. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[78] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[79] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[80] Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking. We note that environmental review will be prepared in each proceeding in which an applicant requests authority to construct facilities that might become subject to the rate-setting requirements of this rule.

## VIII. Regulatory Flexibility Act Certification

215. The Regulatory Flexibility Act of 1980 (RFA)[81] generally requires a description and analysis of the impact the proposed rule will have on small

[78] Order No. 486, *Regulations Implementing the National Environmental Policy Act*, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[79] 18 CFR 380.4 (2005).

[80] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2005).

[81] 5 U.S.C. 601–612.

entities or a certification that the proposed rule will not have significant economic impact on a substantial number of small entities. The Commission concludes that the Final Rule would not have such an impact on small entities. The amendments to our regulations would apply only to natural gas companies, most of which are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

## IX. Document Availability

216. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

217. From FERC's Home Page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available in eLibrary, in PDF and Microsoft Word format for viewing, printing, and downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

218. User assistance is available for eLibrary and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

## X. Effective Date

219. These regulations are effective July 27, 2006. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[82] The Commission will submit the Final Rule to both houses of Congress and the Government Accountability Office.[83]

[82] *See* U.S.C. 804(2) (2000).

[83] *See* U.S.C. 801(a)(1)(A) (2000).

**List of Subjects in 18 CFR Part 284**

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

**Magalie R. Salas,**

*Secretary.*

■ In consideration of the foregoing, the Commission amends part 284, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 2. New subpart M is added to read as follows:

### Subpart M—Applications for Market-Based Rates for Storage

Sec.

284.501 Applicability.
284.502 Procedures for applying for market-based rates.
284.503 Market-power determination.
284.504 Standard requirements for market-power authorizations.
284.505 Market-based rates for storage providers without a market-power determination.

#### § 284.501 Applicability.

Any pipeline or storage service provider that provides or will provide service under subparts B, C, or G of this part, and that wishes to provide storage and storage-related services at market-based rates must conform to the requirements in subpart M.

#### § 284.502 Procedures for applying for market-based rates.

(a) Applications for market-based rates may be filed with certificate applications. Service, notice, intervention, and protest procedures for such filings will conform with those applicable to the certificate application.

(b) With respect to applications not filed as part of certificate applications,

(1) Applicants providing service under subpart B or subpart G of this part must file a request for declaratory order and comply with the service and filing requirements of part 154 of this chapter. Interventions and protests to applications for market-based rates must be filed within 30 days of the application unless the notice issued by the Commission provides otherwise. An applicant providing service under subpart B or subpart G of this part cannot charge market-based rates under this subpart of this part until its application has been accepted by the Commission. Once accepted, the applicant can make the appropriate filing necessary to set its market-based rates into effect.

(2) Applicants providing service under subpart C of this part must file in accordance with the requirements of that subpart.

#### § 284.503 Market-power determination.

An applicant may apply for market-based rates by filing a request for a market-power determination that complies with the following:

(a) The applicant must set forth its specific request and adequately demonstrate that it lacks market power in the market to be served, and must include an executive summary of its statement of position and a statement of material facts in addition to its complete statement of position. The statement of material facts must include citation to the supporting statements, exhibits, affidavits, and prepared testimony.

(b) The applicant must include with its application the following information:

(1) *Statement A—geographic market.* This statement must describe the geographic markets for storage services in which the applicant seeks to establish that it lacks significant market power. It must include the market related to the service for which it proposes to charge market-based rates. The statement must explain why the applicant's method for selecting the geographic markets is appropriate.

(2) *Statement B—product market.* This statement must identify the product market or markets for which the applicant seeks to establish that it lacks significant market power. The statement must explain why the particular product definition is appropriate.

(3) *Statement C—the applicant's facilities and services.* This statement must describe the applicant's own facilities and services, and those of all parent, subsidiary, or affiliated companies, in the relevant markets identified in Statements A and B in paragraphs (b)(1) and (2) of this section. The statement must include all pertinent data about the storage facilities and services.

(4) *Statement D—competitive alternatives.* This statement must describe available alternatives in competition with the applicant in the relevant markets and other competition constraining the applicant's rates in those markets. Such proposed

alternatives may include an appropriate combination of other storage, local gas supply, LNG, financial instruments and pipeline capacity. These alternatives must be shown to be reasonably available as a substitute in the area to be served soon enough, at a price low enough, and with a quality high enough to be a reasonable alternative to the applicant's services. Capacity (transportation, storage, LNG, or production) owned or controlled by the applicant and affiliates of the applicant in the relevant market shall be clearly and fully identified and may not be considered as alternatives competing with the applicant. Rather, the capacity of an applicant's affiliates is to be included in the market share calculated for the applicant. To the extent available, the statement must include all pertinent data about storage or other alternatives and other constraining competition.

(5) *Statement E—potential competition.* This statement must describe potential competition in the relevant markets. To the extent available, the statement must include data about the potential competitors, including their costs, and their distance in miles from the applicant's facilities and major consuming markets. This statement must also describe any relevant barriers to entry and the applicant's assessment of whether ease of entry is an effective counter to attempts to exercise market power in the relevant markets.

(6) *Statement F—maps.* This statement must consist of maps showing the applicant's principal facilities, pipelines to which the applicant intends to interconnect and other pipelines within the area to be served, the direction of flow of each line, the location of the alternatives to the applicant's service offerings, including their distance in miles from the applicant's facility. The statement must include a general system map and maps by geographic markets. The information required by this statement may be on separate pages.

(7) *Statement G—market-power measures.* This statement must set forth the calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index. The statement must also set forth the applicant's market share, inclusive of affiliated service offerings, in the markets to be served. The statement must also set forth the calculation of other market-power measures relied on by the applicant. The statement must include complete particulars about the applicant's calculations.

(8) *Statement H—other factors.* This statement must describe any other factors that bear on the issue of whether the applicant lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) *Statement I—prepared testimony.* This statement must include the proposed testimony in support of the application and will serve as the applicant's case-in-chief, if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statements of fact contained in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

**§ 284.504 Standard requirements for market-power authorizations.**

(a) Applicants granted the authority to charge market-based rates under § 284.503 that provide cost-based service(s) must separately account for all costs and revenues associated with facilities used to provide the market-based services. When it files to change its cost-based rates, applicant must provide a summary of the costs and revenues associated with market-based rates with applicable cross references to §§ 154.312 and 154.313 of this chapter. The summary statement must provide the formulae and explain the bases used in the allocation of common costs between the applicant's cost-based services and its market-based services.

(b) A storage service provider granted the authority to charge market-based rates under § 284.503 is required to notify the Commission within 10 days of acquiring knowledge of significant changes occurring in its market power status. Such notification should include a detailed description of the new facilities/services and their relationship to the storage service provider. Significant changes include, but are not limited to:

(1) The storage provider expanding its storage capacity beyond the amount authorized in this proceeding;

(2) The storage provider acquiring transportation facilities or additional storage capacity;

(3) An affiliate providing storage or transportation services in the same market area; and

(4) The storage provider or an affiliate acquiring an interest in or is acquired by an interstate pipeline.

**§ 284.505 Market-based rates for storage providers without a market-power determination.**

(a) Any storage service provider seeking market-based rates for storage capacity, pursuant to the authority of section 4(f) of the Natural Gas Act, related to a specific facility put into service after August 8, 2005, may apply for market-based rates by complying with the following requirements:

(1) The storage service provider must demonstrate that market-based rates are in the public interest and necessary to encourage the construction of the storage capacity in the area needing storage services; and

(2) The storage service provider must provide a means of protecting customers from the potential exercise of market power.

(b) Any storage service provider seeking market-based rates for storage capacity pursuant to this section will be presumed by the Commission to have market power.

**Note:** The following appendix will not be published in the *Code of Federal Regulations.*

## Appendix—Commentors Filing Initial Comments

American Gas Association (AGA)
American Public Gas Association (APGA)
Arizona Public Service Company (APS)
Bay Gas Storage Company, LTD (Bay Gas)
Bridgeline Storage Company LLC (Bridgeline)
Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, and Granite State Gas Transmission, Inc. (collectively NiSource Pipelines):
Dominion Transmission Inc. (Dominion)
DTE Gas Storage, Pipelines, and Processing Company (DTE)
Duke Energy Gas Transmission, LLC (Duke)
EnCana Gas Storage Inc. (EnCana)
The East Ohio Gas Company, d/b/a Dominion East Ohio, The Peoples Natural Gas Company, d/b/a Dominion Peoples, and Hope Gas, Inc. d/b/a Dominion Hope (collectively, Dominion LDCs)
Edison Electric Institute and the Alliance of Energy Suppliers (together, EEI)
Enstor Operating Company, LLC (Enstor)
Falcon Gas Storage Company, Inc. (Falcon Gas)
Haddington Ventures, LLC (Haddington Ventures)
Honeoye Storage Corporation (''Honeoye'')
Independent Petroleum Association of America (IPAA)
Interstate Natural Gas Association of America (INGAA)
Kinder Morgan Interstate Pipelines (KM)
National Association of State Utility Consumer Advocates (NASUCA)
Natural Gas Supply Association (NGSA)
New York Public Service Commission (NYPSC)
Northern Natural Gas Company (Northern)
Port Barre Investments, LLC (Port Barre)
Process Gas Consumers Group (PGC)
Sempra Energy (Sempra)
SGR Holdings, L.L.C. (SGR)
Southern California Edison Co. (SCE)
Williston Basin Interstate Pipeline Company (Williston Basin)

United Energy Trading LLC (UET)
Unocal Keystone Gas Storage, LLC (Unocal)
Xcel Energy Services, Inc. (Xcel)
Commentors Filing Reply Comments
Duke Energy Gas Transmission LLC (Duke)
El Paso Natural Gas Company (El Paso)
Enstor Operating Company, LLC (Enstor)
Interstate Natural Gas Association of America (INGAA)
Jefferson Island Storage & Hub, L.L.C. (Jefferson Storage)
Natural Gas Supply Association (NGSA)
Southern California Gas Company (SoCal)

[FR Doc. 06–5642 Filed 6–26–06; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Tuesday,
June 27, 2006

# Part III

# Securities and Exchange Commission

**17 CFR Parts 239, 270, and 274**
**Fund of Funds Investments; Final Rule**

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 239, 270, and 274**

**[Release Nos. 33–8713; IC–27399; File No. S7–18–03]**

**RIN 3235–AI30**

## Fund of Funds Investments

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is adopting three new rules under the Investment Company Act of 1940 that address the ability of an investment company (''fund'') to acquire shares of another fund. Section 12(d)(1) of the Act prohibits, subject to certain exceptions, so-called ''fund of funds'' arrangements, in which one fund invests in the shares of another. The rules broaden the ability of a fund to invest in shares of another fund in a manner consistent with the public interest and the protection of investors. The Commission also is adopting amendments to forms used by funds to register under the Investment Company Act and offer their shares under the Securities Act of 1933. The amendments improve the transparency of the expenses of funds of funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the fund of funds.

**DATES:** *Effective Date:* July 31, 2006.

*Compliance Dates:* All new registration statements on Forms N–1A, N–2, N–3, N–4, or N–6, and all post-effective amendments that are annual updates to effective registration statements on Forms N–1A, N–2, N–3, N–4, or N–6 filed on or after January 2, 2007, must include the disclosure required by the amendments.

**FOR FURTHER INFORMATION CONTACT:** Dalia Osman Blass, Attorney, or Penelope W. Saltzman, Branch Chief, Office of Regulatory Policy, (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission today is adopting new rules 12d1–1, 12d1–2 and 12d1–3 under the Investment Company Act of 1940 (the ''Investment Company Act'' or the ''Act'') that address the ability of an investment company (''fund'' or ''acquiring fund'') registered under the Act to invest in shares of another investment company (''fund'' or ''acquired fund'').[1] We also are adopting amendments to Forms N–1A, N–2, N–3, N–4, and N–6 to require that prospectuses of funds of funds disclose the expenses investors in the acquiring fund will bear, including those of any acquired funds.[2] Forms N–1A and N–2 are the registration forms used by open-end management funds and closed-end management funds, respectively, to register under the Act and to offer their shares under the Securities Act of 1933 (''Securities Act'').[3] Forms N–3, N–4 and N–6 are the forms used by insurance company separate accounts to register under the Act and to offer their variable annuity and variable life insurance contracts under the Securities Act.

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## I. Background

The Federal securities laws restrict substantially the ability of a fund to invest in shares of other funds. These restrictions are designed to prevent fund of funds arrangements that have been used in the past to enable investors in an acquiring fund to control the assets of an acquired fund and use those assets to enrich themselves at the expense of acquired fund shareholders.[4] Under section 12(d)(1) of the Act, funds are subject to certain prohibitions relating to fund of funds investments. Section 12(d)(1)(A) prohibits a registered fund (and companies or funds it controls) from—

- Acquiring more than three percent of a fund's outstanding voting securities;
- Investing more than five percent of its total assets in any one acquired fund; or
- Investing more than ten percent of its total assets in all acquired funds.[5]

Section 12(d)(1)(B) prohibits a registered open-end fund from selling securities to any fund (including unregistered funds) if, after the sale, the acquiring fund would—

- Together with companies and funds it controls, own more than three percent of the acquired fund's voting securities; or
- Together with other funds (and companies they control) own more than ten percent of the acquired fund's voting securities.[6]

Although these two provisions of section 12(d)(1) have proven quite effective in putting a stop to the abusive practices that characterized previous fund of funds arrangements, Congress has recognized that they also had the effect of preventing legitimate fund of funds arrangements. To prevent this, Congress created three statutory exceptions.[7] Our rulemaking today relates to two of those exceptions:

*Unaffiliated Fund of Funds Arrangements.* Section 12(d)(1)(F) permits a registered fund to take small positions in an unlimited number of other funds (an ''unaffiliated fund of

[1] The Investment Company Act is codified at 15 U.S.C. 80a. The new rules will be found in the Code of Federal Regulations at 17 CFR 270.12d1–1, 17 CFR 270.12d1–2, and 17 CFR 270.12d1–3, respectively. For convenience, any reference we make in this release to rules 12d1–1, 12d1–2 or 12d1–3, or any paragraph of the rules, will be to those sections of the Code of Federal Regulations.

[2] Rules requiring use of these forms under both the Investment Company Act and the Securities Act of 1933 may be found in the Code of Federal Regulations at: 17 CFR 239.15A, 17 CFR 274.11A (Form N–1A); 17 CFR 239.14, 17 CFR 274.11a–1 (Form N–2); 17 CFR 239.17a, 17 CFR 274.11b (Form N–3); 17 CFR 239.17b, 17 CFR 274.11c (Form N–4); and 17 CFR 239.17c, 17 CFR 274.11d (Form N–6).

[3] The Securities Act is codified at 15 U.S.C. 77a. The terms ''open-end management funds'' and ''closed-end management funds'' are defined in 15 U.S.C. 80a–5(a)(1) and (2), respectively.

[4] For a discussion of these ''pyramiding'' schemes and the additional problems fund of funds arrangements can create for shareholders, *see* Fund of Funds Investments, Investment Company Act Release No. 26198 (Oct. 1, 2003) [68 FR 58226 (Oct. 8, 2003)] (''Proposing Release''). *See also* U.S. Securities and Exchange Commission, Investment Trusts and Investment Companies, H.R. Doc No. 279, 76th Cong., 1st Sess., pt. 3, at 2721–95 (1939).

[5] *See* 15 U.S.C. 80a–12(d)(1)(A). If the acquiring fund is not registered under the Act, the prohibitions apply only with respect to its acquisition of securities in funds that are registered under the Act. Funds (together with companies or funds they control and funds that have the same adviser) also are limited to acquiring no more than 10 percent of the outstanding voting stock of a closed-end fund. 15 U.S.C. 80a–12(d)(1)(C).

[6] *See* 15 U.S.C. 80a–12(d)(1)(B). By limiting the *sale* of registered fund shares to other funds, section 12(d)(1)(B) prevents the creation of a fund of registered funds regardless of the limitations of U.S. law to regulate the activities of foreign funds. For a discussion of the events that led to the adoption of sections 12(d)(1)(A) and 12(d)(1)(B) of the Act, *see* Proposing Release, *supra* note 4, at nn. 7–13 and accompanying text.

[7] *See* sections 15 U.S.C. 80a–12(d)(1)(E), 15 U.S.C. 80a–12(d)(1)(F), and 15 U.S.C. 80a–12(d)(1)(G).

funds''). A fund taking advantage of the exception provided in section 12(d)(1)(F) of the Act (and its affiliated persons) may acquire no more than three percent of another fund's outstanding stock;[8] cannot charge a sales load greater than 1½ percent;[9] and is restricted in its ability to redeem shares of the acquired fund.[10] In addition, the fund's adviser would not be able to influence the outcome of shareholder votes in the acquired fund.[11]

*Affiliated Fund of Funds Arrangements.* Section 12(d)(1)(G) permits a registered open-end fund or unit investment trust (''UIT'')[12] to acquire an unlimited amount of shares of other registered open-end funds and UITs that are part of the same ''group of investment companies,'' (typically known as a fund complex).[13] A fund taking advantage of this exception (an ''affiliated fund of funds'') is restricted in the types of other securities it can hold in addition to shares of registered funds in the same group of investment companies.[14] The acquired funds must have a policy against investing in shares of other funds in reliance on section 12(d)(1)(F) or 12(d)(1)(G) (to prevent multi-tiered structures),[15] and overall distribution expenses are limited (to prevent excessive sales loads).[16] Relying on this provision, several large fund complexes include a fund of funds, which allocates and periodically reallocates its assets among funds in the complex.[17]

## II. Discussion

Since 1940 we have provided limited relief for funds to acquire shares of other funds when the proposed arrangements did not present the risk of abuses that section 12(d)(1) was designed to prevent. We issued those orders under our general exemptive authority in section 6(c) of the Act.[18] In 1996, when Congress added section 12(d)(1)(G), it also gave us specific authority to exempt any person, security or transaction, or any class or classes of transactions, from section 12(d)(1) of the Act if the exemption is consistent with the public interest and the protection of investors.[19]

In October 2003, we proposed three new rules to address the ability of a registered fund to invest in shares of another fund without first having to seek Commission approval.[20] The rules were proposed to codify and expand upon a number of exemptive orders we have issued that permit funds to invest in other funds.[21] We also proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6 to require funds of funds to disclose acquired fund expenses in their prospectuses. We received five comments on the proposal.[22] Commenters supported the proposed rules and amendments, but suggested changes. Today, we are adopting rules 12d1–1, 12d1–2 and 12d1–3, and amendments to Forms N–1A, N–2, N–3, N–4, and N–6 substantially as proposed, with changes that respond to issues raised by commenters.

### *A. Rule 12d1–1: Investments in Money Market Funds*

Rule 12d1–1 allows funds to invest in shares of money market funds in excess of the limits of section 12(d)(1). The rule is designed to permit ''cash sweep'' arrangements in which a fund invests all or a portion of its available cash in a money market fund rather than directly in short-term instruments. Commenters agreed with our assessment that fund investments in money market funds, which did not exist in 1940, do not raise the concerns that underlie section 12(d)(1).[23] Some, however, persuaded us to make some modifications to the rule, which we describe below.[24]

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[8] *See* 15 U.S.C. 80a–12(d)(1)(F)(i).

[9] *See* 15 U.S.C. 80a–12(d)(1)(F)(ii).

[10] A fund whose shares are acquired pursuant to section 12(d)(1)(F) is not obligated to redeem more than 1 percent of its total outstanding securities during any period of less than 30 days. 15 U.S.C. 80a–12(d)(1)(F).

[11] Section 12(d)(1)(F), by reference to section 12(d)(1)(E) of the Act, requires the acquiring fund to vote shares of an acquired fund either by seeking instructions from the acquiring fund's shareholders, or to vote the shares in the same proportion as the vote of all other shareholders of the acquired fund. *See* 15 U.S.C. 80a–12(d)(1)(E)(iii)(aa).

[12] The Act defines ''unit investment trust'' as a fund that: (i) Is organized under a trust indenture, contract of custodianship or agency, or similar instrument; (ii) does not have a board of directors; and (iii) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust. 15 U.S.C. 80a–4(2).

[13] 15 U.S.C. 80a–12(d)(1)(G). For purposes of the exception, the term ''group of investment companies'' means ''any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.'' 15 U.S.C. 80a–12(d)(1)(G)(ii).

[14] In addition to investing in securities of registered funds in the same group of investment companies, the Act permits these funds to invest only in government securities and short-term paper. *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(II).

[15] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(IV).

[16] *See* 15 U.S.C. 80a–12(d)(1)(G)(i)(III). The provision permits a fund to invest in shares of another fund only if either (i) the acquiring fund does not charge a sales load or distribution-related fee or does not pay (and is not assessed) sales loads or distribution-related fees on securities of the acquired fund, or (ii) the aggregate sales loads or distribution-related fees charged by the acquiring fund on its securities and paid by the acquiring fund on acquired fund securities are not excessive under rules adopted under section 22(b) [15 U.S.C. 80a–22(b)] or 22(c) [15 U.S.C. 80a–22(c)] by a securities association registered under section 15A of the Securities Exchange Act of 1934 (the ''Exchange Act'') [15 U.S.C. 78o–3] or the Commission. The NASD has adopted limits on sales loads and distribution-related fees applicable to funds as well as to funds of funds. *See* NASD Rule 2830(d)(3) (''NASD Sales Charge Rule'').

Under the NASD Sales Charge Rule for funds of funds, if neither the acquiring nor acquired fund has an asset-based sales charge (12b–1 fee), the maximum aggregate sales load that can be charged on sales of acquiring fund and acquired fund shares cannot exceed 8.5 percent. See NASD Sales Charge Rule 2830(d)(3)(A). Any acquiring or acquired fund that has an asset-based sales charge must individually comply with the sales charge limitations on funds with an asset-based sales charge, provided, among other conditions, that if both funds have an asset-based sales charge, the maximum aggregate asset-based sales charge cannot exceed .75 of 1 percent per year of the average annual net assets of both funds; and the maximum aggregate sales load may not exceed 7.25 percent of the amount invested, or 6.25 percent if either fund pays a service fee. *See* NASD Sales Charge Rule 2830(d)(3)(B). The rule is designed so that cumulative charges for sales-related expenses, no matter how they are imposed, are subject to equivalent limitations. *See* Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies, Exchange Act Release No. 30897 (July 7, 1992) [57 FR 30985 (July 13, 1992)], at text accompanying n. 9.

[17] *See, e.g.*, T. Rowe Price Retirement Funds, Prospectus 1–10 (Oct. 1, 2005).

[18] 15 U.S.C. 80a–6(c).

[19] National Securities Markets Improvement Act of 1996, Pub. L. 104–290, § 202, 110 Stat. 3416, 3427 (1996) (codified at 15 U.S.C. 80a–12(d)(1)(J)).

[20] Proposing Release, *supra* note 4.

[21] *See id*, at nn. 36, 72 and 87.

[22] *See* Comment Letter of Fidelity Management & Research Company (''FMR'') (Dec. 19, 2003); Comment Letter of the Investment Company Institute (''ICI'') (Dec. 3, 2003); Comment Letter of IMRC Group (Nov. 18, 2003); Comment Letter of Man Investments, Inc. (Dec. 1, 2003); Comment Letter of Joel Torrance (June 17, 2004). The comment letters are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 (File No. S7–18–03). The comment letters are also available on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed/s71803.shtml*).

[23] *See* Comment Letter of IMRC Group (Nov. 18, 2003); Comment Letter of ICI (Dec. 3, 2003). For a more extensive discussion of this analysis, *see* Proposing Release, *supra* note 4, at nn. 38–39 and accompanying text.

[24] One commenter recommended amending rule 17d–1 to permit joint transactions that would allow funds to take advantage of other cash management tools, such as joint repurchase agreements where the fund participates on terms not different from those applicable to its affiliated participant. *See* Comment Letter of ICI (Dec. 3, 2003). The broader relief suggested is outside the scope of our proposals. We are, however, adopting a technical amendment to rule 12d1–1 in response to this commenter's assertion that the proposed defined term ''Administrative Fees'' could create confusion because the term is used elsewhere in our rules. *See, e.g.*, 17 CFR 270.11a–3 and Instruction 3 to Item 3 of Form N–1A. We have eliminated the term and defined the fees subject to the rule in the applicable provision without any substantive changes to the provision. *See* rule 12d1–1(b)(1).

1. Scope of Exemption

(a) Registered Money Market Funds

Rule 12d1–1 permits a fund to invest an unlimited amount of its uninvested cash in a money market fund rather than directly in short-term instruments.[25] Any investment would, of course, have to be consistent with the fund's investment objectives and policies.[26] The acquired fund may be a fund in the same fund complex or in a different fund complex. Thus, a fund in a small complex that does not have a money market fund may invest available cash in an unaffiliated money market fund.

In addition to providing an exemption from section 12(d)(1) of the Act, the rule provides exemptions from section 17(a) and rule 17d–1, which restrict a fund's ability to enter into transactions and joint arrangements with affiliated persons.[27] These provisions would otherwise prohibit an acquiring fund from investing in a money market fund in the same fund complex,[28] or prohibit a fund that acquires five percent or more of the securities of a money market fund in another fund complex from making any additional investments in the money market fund.[29]

Commenters agreed with us that an acquiring fund's purchase and redemption of money market fund shares at net asset value would provide little opportunity for the insider self-dealing or overreaching that section 17 was designed to prevent.[30] They agreed that these exemptions would benefit funds and their shareholders, supporting our conclusion that these provisions are appropriate and in the public interest.[31]

One commenter expressed concern, however, that without additional relief from section 17, acquiring funds might not be able to take full advantage of the proposed exemption.[32] If a fund in one fund complex acquired more than five percent of the assets of a money market fund in another fund complex, any broker-dealer affiliated with that money market fund would become a (second-tier) affiliated person of the acquiring fund.[33] As a result of the affiliation, the broker-dealer's fee for effecting the sale of securities to the acquiring fund would be subject to the conditions set forth in rule 17e–1, including the quarterly board review and recordkeeping requirements with respect to certain securities transactions involving the affiliated broker-dealer.[34] We believe that it is unlikely that a broker-dealer would be in a position to take advantage of a fund merely because that fund owned a position in a money market fund affiliated with the broker-dealer.[35] Accordingly, the final rule permits an acquiring fund to pay commissions, fees, or other remuneration to a (second-tier) affiliated broker-dealer without complying with the quarterly board review and recordkeeping requirements set forth in rules 17e–1(b)(3) and 17e–1(d)(2).[36] This relief is available only if the broker-dealer and the acquiring fund become affiliated solely because of the acquiring fund's investment in the money market fund. We believe this additional relief will enable more funds to take advantage of the exemption provided by the rule.

(b) Unregistered Money Market Funds

Rule 12d1–1 also permits funds to invest in money market funds that are not registered investment companies

[25] Rule 12d1–1(a). Our exemptive orders had limited cash sweep investments to 25 percent of the acquiring fund's total assets. *See, e.g.*, Vanguard Group, Inc., *et al.,* Investment Company Act Release Nos. 26406 (Mar. 29, 2004) [69 FR 17460 (Apr. 2, 2004)] (notice) and 26436 (Apr. 23, 2004) (order); Putnam American Government Income Fund, et al., Investment Company Act Release Nos. 26200 (Oct. 1, 2003) [68 FR 57937 (Oct. 7, 2003)] (notice) and 26414 (Apr. 9, 2004) (order) (''Putnam Order''); Credit Suisse Asset Management, LLC, et al., Investment Company Act Release Nos. 25789 (Oct. 29, 2002) [67 FR 67220 (Nov. 4, 2002)] (notice) and 25832 (Nov. 22, 2002) (order).

[26] *See infra* note 49.

[27] Section 17(a) generally prohibits affiliated persons of a registered fund (''first-tier affiliates'') or affiliated persons of the fund's affiliated persons (''second-tier affiliates'') from selling securities or other property to the fund (or any company the fund controls). 15 U.S.C. 80a–17(a). Section 17(d) of the Act makes it unlawful for first- and second-tier affiliates, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund, or a company it controls, is a joint or a joint and several participant in contravention of Commission rules. 15 U.S.C. 80a–17(d). Rule 17d–1(a) prohibits first- and second-tier affiliates of a registered fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which the fund (or any company it controls) is a participant unless an application regarding the enterprise, arrangement or plan has been filed with the Commission and has been granted. 17 CFR 270.17d–1.

[28] An affiliated person of a fund includes any person directly or indirectly controlling, controlled by, or under common control with such other person. *See* 15 U.S.C. 80a–2(a)(3)(C) (definition of ''affiliated person''). Most funds today are organized by an investment adviser that advises or provides administrative services to other funds in the same complex. Funds in a fund complex are generally under common control of an investment adviser or other person exercising a controlling influence over the management or policies of the funds. *See* 15 U.S.C. 80a–2(a)(9). Not all advisers control funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on all the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)], at n. 11. For purposes of this release, we presume that funds in a fund complex are under common control because funds that are not affiliated persons would not require, and thus not rely on, the exemptions from section 17(a) and rule 17d–1.

[29] An affiliated person of a fund also includes: (i) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of the fund; and (ii) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the fund. *See* 15 U.S.C. 80a–2(a)(3)(A), (B). Thus, a fund that acquires five percent of the securities of another fund would be affiliated with that fund and any transactions with the fund would be subject to the limitations of section 17. *See supra* note 27.

[30] *See* Comment Letter of IMRC Group (Nov. 18, 2003).

[31] *See* Comment Letter of ICI (Dec. 3, 2003); Comment Letter of FMR (Dec. 19, 2003).

[32] *See* Comment Letter of IMRC Group (Nov. 18, 2003). Although the commenter requested additional relief from section 17 of the Act, the commenter did not specify any sections or rules other than section 17(e) and rule 17e–1 thereunder. The additional section 17 relief we are providing is limited to certain provisions of rule 17e–1 under the Act.

[33] *See supra* note 29.

[34] Section 17(e)(2) of the Act prohibits an affiliated person (or second–tier affiliate) of a fund from receiving compensation for acting as a broker, in connection with the sale of securities to or by the fund if the compensation exceeds limits prescribed by the section unless permitted by rule 17e–1 under the Act. 15 U.S.C. 80a–17(e)(2). Rule 17e–1 sets forth the conditions under which a commission, fee or other remuneration shall be deemed as not exceeding the ''usual and customary broker's commission'' for purposes of section 17(e)(2)(A) of the Act. Rule 17e–1(b)(3) requires the fund's board of directors, including a majority of the directors who are not interested persons under section 2(a)(19) of the Act, to determine at least quarterly that all transactions effected in reliance on the rule have complied with procedures which are reasonably designed to provide that the brokerage compensation is consistent with the rule's standards. Rule 17e–1(d)(2) specifies the records that must be maintained by each fund with respect to any transaction effected pursuant to rule 17e–1.

[35] The money market fund's adviser would have no influence over the decisions made by the acquiring fund's adviser. In addition, because the interests of the adviser to the money market fund and the adviser to the acquiring fund are directly aligned with their respective funds, transactions between the acquiring fund and a broker-dealer affiliate of the money market fund are likely to be at arm's length.

[36] Rule 12d1–1(c). This exemption also is available for payments to broker-dealer affiliates of unregistered money market funds. *See infra* notes 37–42 and accompanying text. The relief provided by this exemption is similar to relief provided in a number of exemptive orders issued by the Commission. *See, e.g.*, SunAmerica Series Trust, *et al.*, Investment Company Act Release Nos. 21203 (July 14, 1995) [60 FR 37485 (July 20, 1995)] (notice) and 21276 (Aug. 9. 1995) (order); Prudential Investments LLC, *et al.*, Investment Company Act Release Nos. 25736 (Sept. 18, 2002) [67 FR 59869 (Sept. 24, 2002)] (notice) and 25771 (Oct. 16, 2002) (order). An acquiring fund relying on this exemption is required to comply with all of the provisions of rule 17e–1, except 17e–1(b)(3) and (d)(2). We do not believe that having to comply with the other provisions contained in rule 17e–1 would deter acquiring funds from taking full advantage of the exemption provided by the rule.

(''unregistered money market funds''). Unregistered money market funds are typically organized by a fund adviser for the purpose of managing the cash of other funds in a fund complex and operate in almost all respects as a registered money market fund, except that their securities are privately offered and thus not registered under the Securities Act.[37] Although a fund's investments in unregistered money market funds are not restricted by section 12(d)(1), these investments are subject to the affiliate transaction restrictions in the Act and rules thereunder and thus require exemptions from section 17(a) and rule 17d–1.[38]

Commenters had no specific comments on this provision of the proposal, and we have adopted it substantially as proposed.[39] The exemption is available only for investments in an unregistered money market fund that operates like a money market fund registered under the Act. To be eligible, an unregistered money market fund is required to (i) limit its investments to those in which a money market fund may invest under rule 2a–7 under the Act,[40] and (ii) undertake to comply with all the other provisions of rule 2a–7.[41] In addition, the unregistered money market fund's adviser must be registered as an investment adviser with the Commission.[42] Finally, the acquiring fund is required to reasonably believe that the unregistered money market fund operates like a registered money market fund and that it complies with certain provisions of the Act.[43] A fund would reasonably believe that an acquired fund was in compliance with these provisions if, for example, it received a representation from the acquired fund (or the adviser to the acquired fund) that the fund would comply with the relevant provisions in all material respects and if the acquiring fund had no reason to believe that the acquired fund was not, in fact, complying with the relevant provisions in all material respects. Thus, an acquired fund's failure to comply will not automatically result in the loss of the acquiring fund's exemption.

(c) Closed-End Funds of Funds

The exemptions we are adopting are also available for closed-end funds, including business development companies,[44] which are closed-end funds that are exempted from registration under the Act.[45] In response to comments, the final rule provides an additional exemption from section 57 of the Act, which restricts certain transactions between business development companies and certain of their affiliates.[46] This relief is consistent with the relief we are granting from section 17(a) and rule 17d–1 with respect to affiliated money market funds. We agree with the commenter that the possibility of self-dealing or overreaching in the case of business development companies that invest in money market funds does not appear to be any greater than investments in money market funds by registered closed–end funds.

(d) Unregistered Funds of Funds

Unregistered funds also are subject to the section 12(d)(1) restrictions on the acquisition of shares of registered funds.[47] As proposed, the final rule permits unregistered funds to invest their cash in shares of a registered money market fund. This allows a hedge fund, for example, to sweep its cash into a registered money market fund pending investment or distribution of the cash to investors. In the Proposing Release, we asked whether any special concerns arise with respect to unregistered funds' use of money market funds in cash sweep arrangements, and we received no comment on the question.

2. Conditions

As proposed, we are eliminating most of the conditions that have been included in our exemptive orders.[48] One condition we have retained precludes the acquiring fund from paying a sales load, distribution fee, or service fee on acquired fund shares, or if it does, the acquiring fund's investment adviser must waive a sufficient amount of its advisory fee to offset the cost of the loads or distribution fees.[49] Rarely do institutional investors (such as an acquiring fund) pay sales loads or bear distribution expenses on an investment in a money market fund. Thus, a money market fund that charges a sales load or

[37] *See* 15 U.S.C. 80a–3(c)(1) (excepting from the definition of ''investment company'' an issuer whose securities are owned by no more than 100 persons and which is not making and does not presently propose to make a public offering of its securities); 15 U.S.C. 80a–3(c)(7) (excepting from the definition of ''investment company'' an issuer whose securities are owned exclusively by ''qualified purchasers'' and which is not making and does not presently propose to make a public offering of its securities).

[38] *See supra* notes 27–29 and accompanying text.

[39] We have made a technical change to conform the wording in paragraphs 12d1–1(b)(2)(i)(A) through (E) by adding to paragraph 12d1–1(b)(2)(i) the words ''satisfies the following conditions as if it were a registered open-end investment company.''

[40] *See* 17 CFR 270.2a–7.

[41] Rule 12d1–1(d)(2)(ii).

[42] Rule 12d1–1(b)(2)(ii). In order for a registered fund to invest in reliance on rule 12d1–1 in an unregistered money market fund that does not have a board of directors (because, for example, it is organized as a limited partnership), the unregistered money market fund's investment adviser must perform the duties required of a money market fund's board of directors under rule 2a–7. Rule 12d1–1(d)(2)(ii)(B).

[43] Rule 12d1–1(b)(2)(i). To rely on the rule, an acquiring fund must reasonably believe that the unregistered money market fund complies, as if it were a registered open-end fund, with provisions of the Act that limit affiliate transactions (sections 17(a), (d), and (e)), issuance of senior securities (section 18), and suspension of redemption rights (section 22(e)). Rule 12d1–1(b)(2)(i)(B). The fund also must reasonably believe that the unregistered money market fund (i) has adopted and periodically reviews procedures designed to ensure compliance with these requirements, and maintains books and records describing the procedures, and (ii) maintains and preserves the books and records required under rules 31a–1(b)(1) [17 CFR 270.31a–1(b)(1)], 31a–1(b)(2)(ii) [17 CFR 270.31a–1(b)(2)(ii)], 31a–1(b)(2)(iv) [17 CFR 270.31a–1(b)(2)(iv)], and 31a–1(b)(9) [17 CFR 270.31a–1(b)(9)]. Rule 12d1–1(b)(2)(i)(C), (D).

[44] A business development company is any closed-end fund that: (i) Is organized under the laws of, and has its principal place of business in, any state or states; (ii) is operated for the purpose of investing in securities described in section 55(a)(1)–(3) of the Act [15 U.S.C. 80a–54(a)(1)–(3)] and makes available ''significant managerial assistance'' to the issuers of those securities, subject to certain conditions; and (iii) has elected under section 54(a) of the Act to be subject to the sections addressing activities of business development companies under the Act. *See* 15 U.S.C. 80a–2(a)(48). Section 60 of the Act [15 U.S.C. 80a–59] extends the limits of section 12(d) to a business development company to the same extent as if it were a registered closed-end fund.

[45] Section 6(f) of the Act [15 U.S.C. 80a–6(f)] exempts from registration and other provisions of the Act companies that have elected to be regulated as business development companies under section 54 [15 U.S.C. 80a–53].

[46] 15 U.S.C. 80a–56. *See* Comment Letter of IMRC Group (Nov. 18, 2003).

[47] *See* 15 U.S.C. 80a–12(d)(1)(A); 15 U.S.C. 80a–12(d)(1)(B). In the case of unregistered investment companies (such as most foreign funds) the full restrictions of sections 12(d)(1)(A) and (B) apply. Companies that are unregistered because they are excepted from the definition of investment company by sections 3(c)(1) and 3(c)(7) of the Act are prohibited from acquiring more than three percent of the outstanding voting securities of a registered fund. Both section 3(c)(1) and section 3(c)(7) deem issuers that rely on these sections to be investment companies for the purposes of sections 12(d)(1)(A)(i) and 12(d)(1)(B)(i) with respect to their acquisition of registered funds. *See* 15 U.S.C. 80a–3(c)(1); 15 U.S.C. 80a–3(c)(7)(D).

[48] *See* Proposing Release, *supra* note 4, at n. 36.

[49] *See* Rule 12d1–1(b)(1). As discussed in the Proposing Release, we did not propose to limit the amount an acquiring fund could invest in a money market fund because a fund's own investment restrictions should provide appropriate investment limitations. See Proposing Release, *supra* note 25, at text following n. 64. With respect to cash sweeps into unregistered money market funds, we have also retained the requirement in our prior exemptive orders that the money market funds operate as if they were money market funds registered under the Act. As proposed (unlike our exemptive orders), the final rule requires the acquiring fund to ''reasonably believe,'' rather than ''determine,'' that the unregistered money market funds operate in this manner. See *supra* notes 40–43 and accompanying text; see, *e.g.*, Putnam Order, *supra* note 25.

distribution fees to the acquiring fund may not be an appropriate investment for that fund. Commenters who addressed the issue generally supported this condition.[50]

Unlike our prior exemptive orders, the rule does not limit advisory fees or require directors to make any special findings that investors are not paying multiple advisory fees for the same service.[51] A fund could pay duplicative fees if an adviser invests a fund's cash in a money market fund (which itself pays an advisory fee) without reducing its advisory fee by an amount it was compensated to manage the cash. As we noted in the Proposing Release, fund directors have fiduciary duties,[52] which obligate them to protect funds from being overcharged for services provided to the fund, regardless of any special findings we might require. Moreover, and as we describe in more detail below, we have adopted amendments to the disclosure rules that require a registered fund of funds to disclose to shareholders expenses paid by both the acquiring and acquired funds so that shareholders may better evaluate the costs of investing in a fund with a cash sweep arrangement.[53]

*B. Rule 12d1–2: Affiliated Funds of Funds*

As discussed above, section 12(d)(1)(G) permits a registered open-end fund to acquire an unlimited amount of shares of registered open-end funds and UITs that are part of the same ''group of investment companies'' as the acquiring fund.[54] We proposed to codify, and in some cases expand, three types of relief we have provided for these fund of funds arrangements that we concluded were consistent with the public interest and the protection of investors, but that did not conform to section 12(d)(1)(G) limits. We proposed to permit an affiliated fund of funds to make investments in addition to shares of funds in the same group of investment companies. Commenters supported the proposal, and we are adopting rule 12d1–2 substantially as proposed.[55]

1. Investments in Unaffiliated Funds

Rule 12d1–2 permits an affiliated fund of funds to acquire securities of funds that are not part of the same group of investment companies, subject to the limits in section 12(d)(1)(A) or 12(d)(1)(F).[56] This exemption, in effect, permits funds to combine the relief provided by the statutory exceptions. There do not appear to be any greater risks to an acquired fund or its shareholders if three percent of its shares are acquired by an affiliated fund of funds as opposed to being acquired by other types of funds specifically permitted to purchase shares by section 12(d)(1)(A) or 12(d)(1)(F).[57]

2. Investments in Other Types of Issuers

Rule 12d1–2 also provides an exemption from section 12(d)(1)(G) of the Act to permit an affiliated fund of funds to invest directly in stocks, bonds, and other types of securities (*i.e.*, securities not issued by a fund).[58] Those investments would, of course, have to be consistent with the fund's investment policies.[59] A significant consequence of the rule is that an equity or bond fund can invest any portion of its assets in an affiliated fund if the acquisition is consistent with the investment policies of the fund and the restrictions of the rule.[60] Commenters agreed that these investments would allow an acquiring fund greater flexibility in meeting investment objectives that may not be met as well by investments in other funds in the same fund group, while not presenting any additional concerns that section 12(d)(1)(G) was intended to address.[61]

3. Investments in Money Market Funds

Rule 12d1–2 permits an affiliated fund of funds to invest in affiliated or unaffiliated money market funds in reliance on rule 12d1–1, which, as discussed above, is designed to permit cash sweep arrangements involving money market funds.[62] This provision

[50] *See* Comment Letter of IMRC Group (Nov. 18, 2003). One commenter recommended we impose another condition to allow a money market fund to limit the percentage of fund assets that another fund complex can redeem during a business day as long as the limits are disclosed in the money market fund's registration statement. *Id.* We do not believe this is necessary in the context of money market funds, which are designed to easily accommodate large redemptions. Money market funds with large investors, such as a fund of funds, may need to pay particularly close attention to their obligations under rule 2a–7, however, because a large redemption may result in a growth in any deviation between the fund's net asset value per share, as computed using available market quotations, and the money market fund's amortized cost per share.

[51] *See* Proposing Release, *supra* note 4, at n. 65 and accompanying text.

[52] *See id*, at n. 66 and accompanying text; *see also* 15 U.S.C. 80a–35(a). *See generally* 2 T. Frankel, The Regulation of Money Managers, § 9.05 (2001). Section 15(c) of the Act requires the board of directors to evaluate the terms (which would include fees, or the elimination of fees, for services provided by an acquired fund's adviser) of any advisory contract. *See* 15 U.S.C. 80a–15(c). Section 36(b) of the Act [15 U.S.C. 80a–35(b)] imposes on fund advisers a fiduciary duty with respect to their compensation. We believe that to the extent advisory services are being performed by another person, such as the adviser to an acquired money market fund, this fiduciary duty would require an acquiring fund's adviser to reduce its fee by the amount that represents compensation for the services performed by the other person. *See* Proposing Release, *supra* note 4, at n.66.

[53] Of course, disclosure of the cumulative amount of fees does not absolve the directors of their obligations to evaluate fund expenses. *See supra* note 52; Investment Company Governance, Investment Company Act Release No. 26520 (July 27, 2004) [69 FR 46378 (Aug. 2, 2004)], at text accompanying n.17. Nevertheless, we believe that the disclosure requirements are essential because they provide investors with the relevant information to compare directly the costs of investing in alternative funds of funds, or the costs of investing in a fund of funds to a more traditional fund.

[54] *See supra* notes 12–17 and accompanying text.

[55] *See, e.g.*, Comment Letter of IMRC Group (Nov. 18, 2003); Comment Letter of ICI (Dec. 3, 2003); Comment Letter of Man Investments, Inc. (Dec. 1, 2003). The other limitations in section 12(d)(1)(G) will continue to apply to a fund of funds relying on that provision. One commenter requested expanding relief under rule 12d1–2 to permit funds to obtain shares of an acquired fund using in-kind transfers and exempt such transactions from the ''for cash'' requirement of rule 17a–7 under the Act. *See* Comment Letter of ICI (Dec. 3, 2003). That relief is outside the scope of our proposal.

[56] Rule 12d1–2(a)(1). A fund relying on section 12(d)(1)(A) (together with any companies or funds it controls) could not acquire more than 3 percent of the outstanding voting securities of any other fund in a different fund group. In addition, the acquiring fund would be limited to investing no more than 5 percent of its own assets (together with assets of any companies it controls) in the securities of any one fund in a different fund group, and no more than 10 percent of its assets (together with assets of any companies it controls) in securities of other funds in one or more different fund groups, in the aggregate. *See* 15 U.S.C. 80a–12(d)(1)(A)(i)–(iii). A fund relying on section 12(d)(1)(F) (together with its affiliates) could not acquire more than 3 percent of the outstanding stock of any other fund in a different fund group. The acquiring fund also would be required either to seek instructions from its shareholders as to how to vote shares of those acquired funds, or to vote the shares in the same proportion as the vote of all other shareholders of the acquired fund. *See* 15 U.S.C. 80a–12(d)(1)(F) (referencing 15 U.S.C. 80a–12(d)(1)(E)). In addition, the acquiring fund would be limited to charging a sales load of 1½ percent on its shares and could be prevented from redeeming more than 1 percent of the shares of any acquired fund during any period of less than 30 days. *Id.*

[57] A commenter also suggested that we clarify the scope of rule 12d1–2(a)(1) because it could be read to subject investments in registered funds in the same complex as the acquiring fund to the limits of sections 12(d)(1)(A) or 12(d)(1)(F). *See* Comment Letter of ICI (Dec. 3, 2003). We agree, and the final rule clarifies that the limits apply only to investments in securities of unaffiliated funds rather than registered funds in the same complex. *See* rule 12d1–2(a)(1).

[58] Rule 12d1–2(a)(2). Under this exemption, a fund may invest in any security as that term is defined under the Act. *See* 15 U.S.C. 80a–2(a)(36).

[59] *See* Item 4 of Form N–1A (requiring disclosure of fund's investment objectives and principal investment strategies).

[60] *See* Proposing Release, *supra* note 4, at nn. 81–82 and accompanying text. To the extent that a fund that normally invests directly in securities begins to make investments in affiliated funds in reliance on the rule, we would expect the fund's directors to be aware of the investments, particularly in the context of their consideration of potentially duplicative fees. *See supra* notes 52–53 and accompanying text.

[61] *See* Comment Letter of ICI (Dec. 3, 2003); Comment Letter of IMRC Group (Nov. 18, 2003).

[62] Rule 12d1–2(a)(3). *See supra* notes 23–50 and accompanying text. A collateral effect of our rule is

allows the affiliated fund of funds the same opportunities as any other fund to invest in a cash sweep arrangement that will provide the greatest benefit to the acquiring fund. As proposed, we are conditioning the investment on compliance with rule 12d1–1 in order to ensure that the same limitations on sales loads and distribution expenses apply to any fund's investment in a money market fund. Thus, any fund that invests in a money market fund in reliance on rule 12d1–2 must comply with the conditions in rule 12d1–1.

*C. Rule 12d1–3: Unaffiliated Funds of Funds*

Section 12(d)(1)(F) of the Act provides an exemption from section 12(d)(1) that allows a registered fund to invest all its assets in other registered funds if: (i) The acquiring fund (together with its affiliates) acquires no more than 3 percent of the outstanding stock of any acquired fund; and (ii) the sales load charged on the acquiring fund's shares is no greater than 1½ percent.[63]

Rule 12d1–3 allows funds relying on section 12(d)(1)(F) to charge sales loads greater than 1½ percent provided that the aggregate sales load any investor pays (*i.e.*, the combined distribution expenses of both the acquiring and acquired funds) does not exceed the limits on sales loads established by the NASD for funds of funds.[64] The rule is intended to provide funds greater flexibility in structuring sales loads, consistent with the approach Congress took in section 12(d)(1)(G) to prevent excessive sales loads in affiliated funds of funds, while providing shareholders greater protection by requiring that funds relying on the rule limit overall distribution fees (rather than only sales loads).[65] We are adopting this rule substantially as proposed.[66]

*D. Amendments to Disclosure Forms: Transparency of Fund of Funds Expenses*

We are also adopting amendments to our disclosure requirements to require each fund that invests in shares of other funds to disclose in its prospectus fee table the expenses of funds in which it invests. The amendments are designed to provide investors with a better understanding of the actual costs of investing in a fund that invests in other funds, which have their own expenses that may be as high or higher than the acquiring fund's expenses.[67] Investors may not be aware of these potentially higher expenses. Most commenters supported these amendments, which we are adopting substantially as proposed.[68]

*Open-End Funds.* Form N–1A is used by open-end management funds to register under the Act and to offer their securities under the Securities Act. Form N–1A sets forth the disclosure requirements for fund prospectuses. Our amendments to Form N–1A require any registered open-end fund investing in shares of another fund to include in its prospectus fee table an additional line item titled ''Acquired Fund Fees and Expenses'' under the section that discloses total annual fund operating expenses.[69] The line item will set forth the acquiring fund's pro rata portion of the cumulative expenses charged by funds in which the acquiring fund invests. Those costs will be included in the acquiring funds' total annual fund operating expenses, which will be reflected in the ''Example'' portion of the fee table.[70] One commenter suggested that we add an instruction to permit a fund to omit the new separate line item if the aggregate expenses attributable to acquired funds do not exceed 0.01 percent (one basis point) of average net assets of the acquiring fund. We agree with the commenter that the disclosure of this *de minimis* amount in a separate line item would not be important to investors. Therefore, the instructions to the amended fee table allow these expenses to be included in ''Other Expenses.''[71]

We also are adopting instructions to assist an acquiring fund in determining the amount of acquired funds' fees and expenses that must be reflected in its fee

to permit an affiliated fund of funds to invest in an acquired fund that itself has a cash sweep arrangement. As discussed above, section 12(d)(1)(G) prohibits a fund from acquiring shares of another fund that does not have an investment policy prohibiting it from investing in shares of funds in reliance on section 12(d)(1)(F) or (G). An acquired fund investing in a money market fund under a cash sweep arrangement permitted under rule 12d1–1 would not be relying on either of those sections. The fees and expenses of acquired funds would be aggregated and shown in the fee table in the acquiring fund's prospectus. *See* discussion below at Section II.D of this release.

We are not, as one commenter suggested, providing expanded section 17 relief under rule 12d1–2. *See* Comment Letter of IMRC Group (Nov. 18, 2003). Affiliated funds of funds' investments in money market funds will be made in reliance upon rule 12d1–1, and we are including additional relief from certain provisions of rule 17e–1 in rule 12d1–1. We do not believe it is necessary to provide a duplicative exemption under rule 12d1–2. *See supra* notes 32–35 and accompanying text.

[63] *See* 15 U.S.C. 80a–12(d)(1)(F)(i)–(ii). Section 12(d)(1)(F) also provides that the acquired fund is not obligated to redeem more than 1 percent of its outstanding securities held by the acquiring fund in any period of less than 30 days, and requires the acquiring fund to vote shares of an acquired fund either by seeking instructions from the acquiring fund's shareholders or by voting in the same proportion as the other shareholders of the acquired fund.

[64] *See* NASD Sales Charge Rule 2830(d)(3), *supra* note 16. We note that any fund relying on the exemption provided in rule 12d1–3 must comply with the limitations set forth in NASD Sales Charge Rule 2830(d)(3), regardless of whether sales of the fund's shares by broker-dealers are otherwise subject to the rule according to its terms. *See* NASD Sales Charge Rule 2830(d) (NASD Sales Charge Rule limits apply to sales of open-end funds, any closed–end funds that make periodic repurchase offers under rule 23c–3(b) under the Act and offer their shares on a continuous basis, or single payment plans issued by UITs). Unlike the proposal, the final rule text limits sales charges and service fees charged with respect to the acquiring fund, but the rule does not specifically limit those fees when aggregated with sales charges and service fees charged with respect to acquired funds. The additional language on aggregation is not necessary in the rule because limits in NASD Sales Charge Rule 2830(d)(3) specifically apply to fees imposed by the acquiring fund, the acquired fund and those funds in combination.

[65] *See* Proposing Release, *supra* note 4, at n. 88 and accompanying text. An affiliated fund of funds may rely on rule 12d1–2 to invest in funds in a different fund complex subject to the limits of section 12(d)(1)(A) or 12(d)(1)(F). If the acquiring fund's investment is subject to the limits of section 12(d)(1)(F), the acquiring fund may also rely on the exemption provided under rule 12d1–3 to charge sales loads greater than 1½ percent provided it complies with the conditions of rule 12d1–3.

[66] Commenters generally supported this provision. *See* Comment Letter of ICI (Dec. 3, 2003); Comment Letter of FMR (Dec. 19, 2003).

[67] A fund of funds may have higher fees and expenses than a fund that invests directly in debt and equity securities.

[68] *See* Comment Letter of ICI (Dec. 3, 2003); Comment Letter of FMR (Dec. 19, 2003) (supporting position taken in the ICI comment letter); Comment Letter of IMRC Group (Nov. 18, 2003); Comment Letter of Joel Torrance (June 17, 2004).

[69] The item will appear directly above the line item titled ''Total Annual Fund Operating Expenses.'' The proposed instructions to Form N–1A would have permitted funds to use terms in the fee table other than the term ''Acquired Fund.'' We received no comment in response to our question whether the proposed instructions were consistent with the current fee table. We have decided not to permit funds to use other terms, however, because no variation is permitted for other line items in the fee table (except for the subcaptions that may be used under ''Other Expenses'' in order to identify the largest expenses comprising ''Other Expenses''). Accordingly, the instruction, as adopted, is consistent with the other line items in the expense table, and allows investors to more easily compare disclosure among funds. In the event a fund uses another defined term to describe acquired funds in its prospectus, it may include this term in a parenthetical following the title of the new line item. *See* Instruction 3(f)(i) to Item 3 of Form N–1A. We are adopting conforming amendments to Forms N–2 and N–3. *See* Instruction 10.a to Item 3.1 of Form N–2; Instruction 19(a) to Item 3(a) of Form N–3.

[70] The fee table example requires the fund to disclose the cumulative amount of fund expenses of 1, 3, 5, and 10 years based on a hypothetical investment of $10,000 and an annual 5 percent return. *See* Item 3 of Form N–1A.

[71] *See* Comment Letter of ICI (Dec. 3, 2003). *See* Instruction 3(f)(i) to Item 3 of Form N–1A. Inclusion of the de minimis amount under ''Other Expenses,'' however, ensures that the acquired funds' expenses will be included in the acquiring fund's total annual operating expense ratio. Form N–2 and Form N–3 filers may also rely on this exception and we have amended the relevant instructions accordingly. *See* Instruction 10.a to Item 3.1 of Form N–2; Instruction 19(a) to Item 3(a) of Form N–3.

table. The acquiring fund must aggregate the amount of total annual fund operating expenses of acquired funds (which are indirectly paid by the acquiring fund) and transaction fees (which are directly paid by the acquiring fund over the past year) and express the total amount as a percentage of average net assets of the acquiring fund. Under this approach, the acquiring fund must determine the average invested balance and number of actual days invested in each acquired fund.[72] We also are adopting the proposed instruction that requires the acquiring fund to include in the expense calculation any transaction fee the acquiring fund paid to acquire or dispose of shares of a fund during the past fiscal year (even if it no longer holds shares of that fund).[73]

Our proposed instructions would have required an acquiring fund in the same fund complex as the acquired fund to calculate the acquired fund's actual total annual expense ratio for the period covering the acquiring fund's fiscal year.[74] For funds in a different fund complex, our proposal would have required the acquiring funds to use the gross expense ratio disclosed in an acquired fund's most recent semi-annual report filed with the Commission, or if the fund does not file reports with the Commission or the gross expense ratio is not provided, to use the expense ratio provided in a recent communication from the acquired fund.[75]

One commenter questioned whether funds in the same fund complex should have to calculate this special purpose expense ratio and recommended that an acquiring fund use the acquired fund's annual expense ratio as disclosed in its most recent semi-annual report filed with the Commission.[76] We agree with the commenter that it is unnecessary to calculate a special purpose expense ratio for funds in the same fund complex because expense ratios typically do not fluctuate much from year to year. Therefore, acquired fund expense disclosure based on a special purpose expense ratio would in most cases be identical to or negligibly different from the disclosure based on the expense ratio as disclosed in the most recent shareholder report. Accordingly, the instructions as adopted require an acquiring fund to calculate the acquired funds' expenses using the net expense ratios reported in the acquired funds' most recent shareholder reports.[77] We also believe that allowing acquiring funds to use the net expense ratio disclosed in shareholder reports (which may or may not be filed with the Commission depending on whether the fund is registered with the Commission), instead of reports filed with the Commission, will permit more acquiring funds to rely on a readily available expense ratio and will eliminate the need for any special communication between the funds.[78] If an acquired fund does not provide a net expense ratio in its most recent shareholder report or is a newly formed fund that has not prepared a report, the acquiring fund must use the acquired fund's total annual fund operating expenses over average annual net assets as reported in its most recent communication to the acquiring fund.[79]

The new disclosure requirements we are adopting today also will apply with respect to investments in any unregistered fund that would be an investment company under section 3(a) of the Act but for the exceptions provided in sections 3(c)(1) and 3(c)(7) of the Act.[80] Thus, a fund with a cash sweep arrangement will be required to report the expenses of the unregistered money market fund in which the acquiring fund invests.

*Closed-End Funds.* Form N–2 is used by closed-end management funds to register under the Act and to offer their securities under the Securities Act. Closed-end funds sometimes invest in other funds and unregistered pools of investments, such as hedge funds.[81] The

[72] *See* Instruction 3(f)(ii) to Item 3 of Form N–1A (to calculate the pro rata share of total annual fund operating expenses for each acquired fund, an acquiring fund will divide the acquired fund's expense ratio by the number of days in the relevant calendar year, and multiply the result by the average invested balance and the number of days invested in the acquired fund). We have revised the divisor in the calculation for the daily expense ratio from the proposed 365 days to the number of days in the fiscal year to reflect that some fiscal years will have 366 days. One commenter asserted that our proposed formula in Instruction 3(f)(ii) to Item 3 of Form N–1A would not correspond to the expense ratio (*i.e.*, the Ratio of Expenses to Average Net Assets) currently in Item 8 of Form N–1A, ''Financial Highlights Information.'' The commenter stated that, as a result, the total annual fund operating expenses disclosed in response to Item 3 would be generally higher than those reflected in response to Item 8 because the expense ratio in Item 8 would only reflect expenses paid directly by the acquiring fund. *See* Comment Letter of ICI (Dec. 3, 2003). We agree that this potential discrepancy may be confusing to investors, and have revised the instruction to permit funds to address this discrepancy in a clarifying footnote to the fee table. *See* Instruction 3(f)(vii) to Item 3 of Form N–1A. Because Form N–2 and Form N–3 filers would face the same issue, the adopted instructions permit those funds also to include a clarifying footnote. *See* Instruction 10.i to Item 3.1 of Form N–2; Instruction 19(g) to Item 3(a) of Form N–3. We also have directed the staff to continue monitoring funds of funds' disclosure to determine whether additional disclosure of acquired funds' fees is needed, such as in the financial highlights section or shareholder reports.

We are also revising Instruction 3(f)(v) to Item 3 of Form N–1A. The proposed instructions would have required the acquiring fund to calculate an ''average invested balance'' based on month-end balances. One commenter recommended that funds be permitted to calculate ''average invested balances'' based on the value of investment measured no less frequently than monthly to allow funds the flexibility of using daily balances. *See* Comment Letter of ICI (Dec. 3, 2003). We believe that the recommendation will allow the most accurate disclosure for funds that use the more frequent measure and have revised the instruction to allow the acquiring fund to calculate ''average invested balance'' based on the value of investment measured no less frequently than monthly. *See* Instruction 10.e to Item 3.1 of Form N–2; Instruction 19(e) to Item 3 of Form N–3.

[73] *See* Instruction 3(f)(ii) to Item 3 of Form N–1A (''transaction fees'' included in the calculation for acquired funds' fees and expenses include the total amount of sales loads, redemption fees, or other transaction fees paid by the acquiring fund in connection with acquiring or disposing of shares in acquired funds during the year). We clarified this instruction to indicate that ''transaction fees'' include fees paid in connection with acquiring and disposing of shares. If an acquired fund charges a performance fee, the fee would be included in the disclosure of acquired funds' fees and expenses. The amended instructions to Form N–1A would require an acquiring fund to include a performance fee that is accounted for as an incentive allocation, in conformance with the amended instructions to Form N–2. *See infra* notes 83, 84.

[74] *See* Proposing Release, *supra* note 4.

[75] *Id.*

[76] *See* Comment Letter of ICI (Dec. 3, 2003).

[77] *See* Instruction 3(f)(iv) to Item 3 of Form N–1A. The proposal would have required acquiring funds to use a gross expense ratio, which would have *excluded* the effect of waivers or reimbursements. Amended instruction 3(f)(iv) requires use of the net operating expense ratio, which *includes* the effect of waivers or reimbursements by the acquired fund's investment adviser or sponsor. We believe that permitting funds to use the net operating expense ratio that is disclosed in shareholder reports instead of the gross expense ratio (which may not be available in shareholder reports because it is not required disclosure) will significantly reduce the need for special calculations or communications between the acquiring and acquired fund because the acquiring fund will not have to adjust the net expense ratio disclosed in the shareholder report to exclude the effect of waivers and reimbursements. We have made conforming amendments to Forms N–2 and N–3. *See* Instruction 10.d to Item 3.1 of Form N–2; Instruction 19(d) to Item 3(a) of Form N–3.

[78] Funds may use the most recent shareholder report, whether it is an annual or semi-annual report. If the acquiring fund relies on a semi-annual report, however, it must use an annualized expense ratio. *See* Instruction 3(f)(iv) to Item 3 of Form N–1A; Instruction 10.d to Item 3.1 of Form N–2; Instruction 19(d) to Item 3(a) of Form N–3.

[79] *See* Instruction 3(f)(iv) to Item 3 of Form N–1A. We also are conforming the instruction with respect to the expense ratio used for funds in a different fund complex in order to establish a uniform instruction. We believe that this revision will provide greater consistency among funds of funds' expense disclosures. *Id.* We have made conforming changes to Forms N–2 and N–3. *See* Instruction 10.d to Item 3.1 of Form N–2; Instruction 19(d) to Item 3 of Form N–3.

[80] *See* Instruction 3(f)(i) to Item 3 of Form N–1A, Instruction 10.a to Item 3.1 of Form N–2, Instruction 19(a) to Item 3 of Form N–3. *See also* 15 U.S.C. 80a–3(c)(1), 80a–3(c)(7), and *supra* note 37.

[81] Hedge funds are often ''private funds'' as defined in rule 203(b)(3)-1(d) of the Investment

amendments to Form N–2 require a registered closed-end fund of funds (including a closed-end fund of hedge funds) to include its pro rata portion of the cumulative expenses charged by the acquired funds, including management fees and expenses, transaction fees and performance fees (including incentive allocations), as a line item in its fee table.[82] As adopted, the instructions provide generally that any incentive allocations (fees based on a share of income, capital gains and/or appreciation) must be reflected in the acquired fund's fees and expenses.[83]

Each acquiring closed-end fund must determine expenses attributable to its investments in acquired funds during the most recent fiscal year together with, if applicable, any investments it intends to make with the proceeds of its present offering. The instructions require a fund to reflect the amount of expenses attributed to the intended investments assuming those investments had been held by the acquiring fund during its most recent fiscal year.[84] Given the extensive due diligence that we understand fund of hedge fund managers undertake in order to create an investment strategy for the fund, we believe that each acquiring fund should be able to provide these estimates of expenses based on written fee arrangements with acquired funds in which it invests or intends to invest.[85]

One commenter opposed our proposed disclosure requirement for a fund of hedge funds for several reasons.[86] The commenter questioned whether disclosure based on historical hedge fund expenses may be misleading because future expenses could differ materially due to the impact on performance fees of fund performance and portfolio changes. The commenter also expressed concern that investors may conclude that the acquired funds' expenses are fixed costs and not subject to change over time.[87] The commenter expressed concern that the potential fluctuation in acquired fund fees and expenses might require a fund of hedge funds to continually monitor its disclosure to guard against material misstatements or omissions in its registration statement.[88]

The Commission understands that the presentation of acquired hedge fund fees and expenses poses particular challenges for funds of hedge funds because their fees may be more variable than other types of pooled investment vehicles, such as mutual funds. The commenter's suggestion to disclose the estimated ranges of fees that hedge funds could charge in a footnote or in text somewhere other than in the fee table would not improve transparency of expenses. While the amount of acquired fund expenses may vary, they are expenses that we believe should be included in the total annual fund operating expenses disclosed to investors in order to provide them a more complete presentation of the aggregate direct and indirect costs of investing in a fund of funds.

We believe that we can address the commenter's concerns and still provide investors in funds of hedge funds with a better understanding of the multiple

Advisers Act of 1940. 17 CFR 275.203(b)(3)-1(d) (a ''private fund'' is a fund (i) that would be an investment company under section 3(a) of the Investment Company Act but for the exceptions to that definition in sections 3(c)(1) and 3(c)(7) of the Act, (ii) that permits its owners to redeem any portion of their ownership interests within two years of the purchase of such interests, and (iii) interests in which are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser). *See also* Registration Under the Advisers Act of Certain Hedge Fund Advisers, Investment Advisers Act Release No. 2333 (Dec. 2, 2004) [69 FR 72054 (Dec. 10, 2004)], at Section II.E. Closed-end funds also may invest in private equity funds, venture capital funds, or other funds that generally require capital contributions over the life of the fund and the long-term commitment of capital. *See id.* at nn. 224–225.

[82] *See* Instruction 10 to Item 3.1 of Form N–2. Consistent with the required disclosure of master-feeder funds' expenses under Form N–1A, the instructions to Form N–2 clarify that in the event a closed-end fund of funds is a master-feeder fund, the feeder fund must disclose in its fee table the aggregate expenses of the feeder fund and master fund. The aggregate expenses of the master fund must also include fees and expenses incurred indirectly by the feeder fund as a result of the master fund's investment in shares of one or more acquired funds. *See* Instruction 10.h to Item 3.1 of Form N–2. *See also* Proposing Release, *supra* note 4, at n. 90.

As with a fund of registered funds, investors may not be aware that a fund of hedge funds may have higher fees and expenses than an alternate fund of funds or a fund that invests directly in debt and equity securities. *See* NASD Investor Alert, Funds of Hedge Funds—Higher Costs and Risks for Higher Potential Returns (Aug. 23, 2002) (available at: *http://www.nasd.com/Investor/alerts/alert_hedgefunds.htm*); Stephen J. Brown, William N. Goetzmann, and Bing Liang, Fees on Fees in Funds of Funds, 3 (Yale International Center for Finance Working Paper No. 02–33, June 14, 2004). *See also supra* note 67.

[83] *See* Instruction 10.b to Item 3.1 of Form N–2. The adviser of an acquired fund may charge its shareholders a fee based on a share of income, capital gains and/or appreciation of the assets of the shareholder in the acquired fund. This fee, which is paid to the adviser or an affiliate, is called either a performance fee or an incentive allocation depending on the way the acquired fund accounts for it in its financial statements. Performance fees are reflected in the acquired fund's statement of operations, but incentive allocations are reported in the statement of changes of capital. The effect of this accounting treatment is that performance fees are included in the acquired fund's expense ratio reported in the shareholder report but incentive allocations are not.

Therefore, in order to provide complete disclosure of fees incurred when funds invest in hedge funds, we are requiring acquiring funds to include these incentive allocations in the formula for calculating acquired funds' fees and expenses. We have made conforming amendments to Form N–1A. *See* Instruction 3(f)(ii) to Item 3 of Form N–1A.

[84] *See* Instruction 10.f to Item 3.1 of Form N–2. The instructions to Item 3.1 clarify that an acquiring fund must use the expenses (of assumed investments) for the previous fiscal year rather than predict expenses of the acquired funds in which the acquiring fund assumes it will invest. The instructions further clarify that acquiring funds must include anticipated net proceeds from the offering in the average invested balance in each acquired fund and the average net assets of the acquiring fund. *See* Instructions 10.c and 10.f to Item 3.1 of Form N–2. This treatment is consistent with the treatment for funds offering shares under Form N–1A. *See* Instruction 3(f)(vi) to Item 3 of Form N–1A. The instructions also clarify that a fund that intends to invest in a fund that has no operating history should include fees to be paid to the adviser to that fund (or its affiliate) as disclosed in the registration statement, offering memorandum or similar document without giving effect to any performance component. *See* Instruction 10.d to Item 3.1 of Form N–2. We have made conforming amendments to Form N–1A. *See* Instruction 3(f)(iv) to Item 3 of Form N–1A.

[85] Typically, funds of hedge funds invest in 15 to 25 hedge funds. *See* Rory B. O'Halloran, *An Overview and Analysis of Recent Interest in Increased Hedge Fund Regulation,* 79 Tul. L. Rev. 461, 480 (2004). Most hedge fund investors perform extensive due diligence prior to making initial and subsequent investments. According to a survey of institutional investors, 60 percent of institutional investors take between two to six months to complete due diligence on a single hedge fund. Deutsche Bank, *Equity Prime Services Alternative Investment Survey Results Part 2: Inside the Mind of the Hedge Fund Investor,* Mar. 2003, at 1, 7. One manager of a fund of hedge funds estimates that initial due diligence on a single hedge fund manager takes 3 to 4 weeks. *See* George Van, *The Smartest Way to Invest in Hedge Funds,* available at *http://www.hedgefund.com/smartest/Smartest_Way_professional.pdf.* In light of our understanding that fund of hedge funds managers engage in this time consuming initial diligence, we believe that a fund is likely to have an investment allocation strategy prior to filing its registration statement and, therefore, would be able to make the necessary assumptions in order to provide the required disclosure.

[86] *See* Comment Letter of Man Investments, Inc. (Dec. 1, 2003).

[87] The commenter also asserted that the instructions could inaccurately portray expenses of acquired hedge funds because fees may vary widely among investors in a hedge fund as a result of individual rates negotiated through side letters. *Id.* We share the commenter's concern. Accordingly, the final instructions require the acquiring fund to rely on the expense ratio in the shareholder report or, if applicable, any written fee agreements with acquired hedge funds to determine acquired fund fees and expenses. See Instruction 10.d to Item 3.1 of Form N–2.

[88] *See* Comment Letter of Man Investments, Inc. (Dec. 1, 2003). The commenter also stated its belief that actual returns over time are the most important factor in comparing funds of hedge funds. We do not disagree that actual returns over time are a relevant factor for investors to consider. We believe, however, that the required disclosure will assist a fund of hedge funds investor in making an informed investment decision as to whether the benefit of diversification provided by investing in a fund of hedge funds outweighs any layering of costs. We also continue to believe that the disclosure will provide investors with the relevant information to compare directly the costs of investing in alternative funds of funds, or the costs of investing in a fund of funds to a more traditional fund. *See supra* note 53.

layers of fees that are charged in a fund of hedge funds investment. To accomplish this, first we have revised the instructions to require a fund of hedge funds to include in a footnote to the new line item the typical performance fee charged by acquired hedge funds in which it invests. The footnote also would alert investors that acquired hedge fund fees are based on historical expenses and could be substantially higher or lower due to potential fluctuations in acquired hedge fund performance.[89] Second, we have provided an exception that allows funds to exclude from the expense ratio disclosed in the fee table acquired fund performance fees that are calculated solely on the realization and/or distribution of gains or the sum of the realization and/or distribution of gains and unrealized appreciation of assets distributed in-kind.[90] This type of performance fee is typically paid by a private equity fund upon liquidation of the fund or when a fund has terminated an investment and distributed the proceeds or the appreciated assets to investors.[91] We agree that in these circumstances, the performance fees associated with a particular period may be unrelated to the costs of investing in a fund of funds.[92]

*Insurance Company Separate Accounts.* We received no specific comments on our proposed amendments to Forms N–3, N–4 and N–6, and we are adopting them substantially as proposed.[93] These forms will require separate accounts to include disclosures regarding the expenses of acquired funds in their prospectuses.[94]

## III. Paperwork Reduction Act

Rule 12d1–1 will impose a new ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[95] The title of the new collection is ''Rule 12d1–1.'' Rule 12d1–1 permits a fund to invest in unregistered money market funds notwithstanding the limitations of section 17 and rule 17d–1, if the unregistered money market funds meet certain conditions under rule 2a–7 of the Act and preserve records under rule 31 of the Act. Both rules 2a–7 and 31 contain collection of information requirements. Compliance with the collection of information requirements of rule 12d1–1 is necessary to obtain a benefit for unregistered money market funds that seek investments by registered funds that may be made only in reliance on rule 12d1–1. Responses to the collection of information requirements of rule 12d1–1 will not be kept confidential.

In the Proposing Release, Commission staff estimated that the annual hour burden of the proposed rule's collection of information requirements for unregistered money market fund compliance with rule 2a–7 would be 21,175 hours.[96] The staff also estimated that the requirements under rules 31a–1(b)(1), 31a–1(b)(2)(ii), 31a–1(b)(2)(iv), and 31a–1(b)(9) would not impose any additional burden because the costs of maintaining records would be incurred by unregistered money market funds in any case to keep books and records that are necessary to prepare financial statements for shareholders, to prepare the fund's annual income tax returns, and as a normal business practice.[97] We submitted the collection for rule 12d1–1 to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. No commenters addressed these burden estimates for the collection of information requirements, and we continue to believe that they are appropriate. 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 control number. OMB approved the collection of information under control number 3235–0212 (expiring on May 31, 2007).[98]

In addition, the Commission is adopting amendments to certain forms that currently contain mandatory ''collection of information'' requirements. The titles for the existing collections are: (i) ''Form N–1A under the Securities Act of 1933 and the Investment Company Act of 1940, Registration Statement of Open-End Management Investment Companies;'' (ii) ''Form N–2 under the Securities Act of 1933 and the Investment Company Act of 1940, Registration Statement of Closed-End Management Investment Companies;'' (iii) ''Form N–3 under the Securities Act of 1933 and the Investment Company Act of 1940, Registration Statement of Separate Accounts Organized as Management Investment Companies;'' (iv) ''Form N–4 under the Securities Act of 1933 and the Investment Company Act of 1940, Registration Statement of Separate Accounts Organized as Unit Investment Trusts;'' and (v) ''Form N–6 under the Securities Act of 1933 and the Investment Company Act of 1940, Registration Statement of Separate Accounts Organized as Unit Investment Trusts that Offer Variable Life Insurance Policies.'' The amendments require that investors in a registered fund of funds receive more transparent disclosure of the costs of investing in these arrangements. The disclosure is designed to provide investors with a more complete presentation of the actual costs of investing in a fund that invests in other funds, which have their own expenses that may be as high or higher than the acquiring fund's expenses. Compliance with the disclosure requirements of Forms N–1A, N–2, N–3, N–4 and N–6 is mandatory. Responses to the disclosure requirements will not be kept confidential.

In the Proposing Release, Commission staff estimated that the amendment to

[89] *See* Instruction 10.g to Item 3.1 of Form N–2. The footnote could, for example, state:

[Some/All] Acquired Funds in which the Registrant invests charge a performance fee based on the Acquired Funds' earnings. The ''Acquired Fund Fees and Expenses'' disclosed above are based on historic earnings of the Acquired Funds, which may change substantially over time and, therefore, significantly affect Acquired Fund Fees and Expenses. The typical performance fee charged by Acquired Funds in which the Registrant invests is [INSERT PERCENTAGE].

[90] *See* Instruction 10.d to Item 3.1 of Form N–2. We have made a conforming change to the instructions for Form N–1A. *See* Instruction 3(f)(iv) to Item 3 of Form N–1A.

[91] *See* James M. Schell, Private Equity Funds, Business Structure and Operations §§ 1.03[3][a], 1.04[3][a] (2006).

[92] In contrast, hedge funds generally charge performance fees that are calculated as a percentage of the hedge fund's net investment income, realized capital gains and unrealized capital appreciation. *See* Staff of U.S. Securities and Exchange Commission, Report to the Commission on Implications of the Growth of Hedge Funds (2003) at text preceding n. 212.

[93] As with the instructions to Forms N–1A and N–2, the instructions to Form N–3 require that the line item expense disclosure be titled: ''Acquired Fund Fees and Expenses.'' *See supra* note 69 and accompanying text.

[94] The amended instructions to Form N–3 require the same disclosure and calculation as required in the amended instructions to Forms N–1A and N–2. The amended instructions for Forms N–4 and N–6 are different from the instructions in Forms N–1A, N–2, and N–3, however, because Forms N–4 and N–6 already require registrants (*i.e.*, separate accounts) to disclose expenses of funds (''portfolio companies'') in which the separate account invests. *See* Item 3 of Form N–4; Item 3 of Form N–6. Accordingly, the amended instructions to Forms N–4 and N–6 require that if a portfolio company invests in other (acquired) funds, the separate account must include in the item disclosing the portfolio company's ''other expenses,'' the acquired funds' fees and expenses calculated according to the instructions to Form N–1A. Unlike the proposal, the instructions refer specifically to portfolio companies instead of using the term ''Acquiring Fund'' in describing the disclosure of acquired funds' fees and expenses incurred by the portfolio company.

[95] 44 U.S.C. 3501.

[96] *See* Proposing Release, *supra* note 4, at n. 138 and accompanying text.

[97] *Id.* at text following n. 138.

[98] We are adopting rule 12d1–1 with some modifications, which are described in Section II of this release. None of the modifications affects the PRA analysis or collection of information burden approved by OMB.

the disclosure requirement will add up to 7 hours per portfolio to the existing hour burden associated with completing Forms N–1A, N–2 and N–3, and 0.5 hours to the existing hour burden associated with completing Forms N–4 and N–6.[99] No commenters addressed the burden estimates for the collection of information requirements associated with Forms N–1A, N–3, N–4 and N–6, and we continue to believe that they are appropriate.[100]

One commenter, a fund of hedge funds, disagreed with our Form N–2 estimate. The commenter asserted that calculating the costs would entail vast amounts of time by numerous personnel reviewing a large number of hedge funds that provide information in varying formats. The commenter added that it believes a fund of hedge funds would be required to monitor and recalculate actual performance fees paid on an ongoing basis to guard against a material misstatement in the fee table.[101] The commenter provided cost estimates but did not provide any specific estimates of burden hours. Funds offering their shares on a continuous or delayed basis in reliance on Rule 415 under the Securities Act must update their registration statements under certain circumstances.[102] We have revised the PRA estimate to reflect staff estimates that funds offering their shares on a continuous basis file updated registration statements on at least an annual basis. The revised estimated annual burden per fund of hedge fund is 213 hours.[103]

Based on recent Commission filings, 23 registered funds of hedge funds offer their shares on a continuous basis under rule 415 of the Securities Act. Therefore, the staff estimates the additional annual burden for funds of hedge funds to update the acquired fund expenses in their prospectuses pursuant to the requirements of section 10(a)(3) of the Securities Act is 2450 hours.[104]

Based on recent filings, Commission staff estimates that, on an annual basis, registrants file 234 initial registration statements (of which 11 are funds of hedge funds) and 38 post-effective amendments (including 23 post-effective amendments for funds of hedge funds in continuous registration). The current estimated total annual burden for the preparation and filing of Form N–2 is 120,673 hours.[105] Accordingly, we estimate the total annual burden for all funds for the preparation and filing of initial registrations statements and post-effective amendments to Form N–2 would be 125,389 hours.[106]

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 control number. We submitted the collections of information associated with Forms N–1A, N–2, N–3, N–4 and N–6 to OMB to review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved the collections of information under control numbers 3235–0307 (Form N–1A, expiring on December 31, 2007), 3235–0026 (Form N–2, expiring on January 31, 2008, revised submission currently under review by OMB), 3235–0316 (Form N–3, expiring on July 31, 2007), 3235–0318 (Form N–4, expiring on March 31, 2007), and 3235–0503 (Form N–6, expiring on March 31, 2007).

## IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits imposed by our rules. As discussed above in sections II.A—II.C, the new rules provide relief to funds by providing additional exemptions from

[99] *See* Proposing Release, *supra* note 4, at nn.139–161 and accompanying text.

[100] We have revised the final instructions for calculating acquired funds' expenses as described above. *See supra* notes 77–79 and accompanying text. Although the staff believes that these modifications may provide funds with some time and cost savings, we are not changing our hour burden estimates. We will review the estimates when the collection of information requirements must be resubmitted for review, and at that time we will be able to consider funds' actual experience in complying with them.

[101] *See* Comment Letter of Man Investments, Inc. (Dec. 1, 2003).

[102] *See* 17 CFR 230.415. Section 10(a)(3) of the Securities Act provides that ''when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense.'' 15 U.S.C. 77j(a)(3). In general, funds that are offering their securities on a continuous or delayed basis in reliance on Rule 415 file annual post-effective amendments to update the prospectus in the registration statement pursuant to section 10(a)(3). In addition to the statutory provisions of section 10(a)(3), Rule 415 and Form N–2 require that the registrant undertake to file a post-effective amendment to reflect: (i) any prospectus required by section 10(a)(3) of the Securities Act; (ii) facts or events arising after the effective date that ''represent a fundamental change in the information set forth in the registration statement;'' and (iii) material information with respect to the plan of distribution not disclosed previously in the registration statement or any material change to such information in the registration statement. *See* 17 CFR 230.415(a)(3); Item 34.4.a of Form N–2. In the release adopting Rule 415, the Commission noted that ''the term 'fundamental' is intended to reflect current staff practice under which post-effective amendments are filed when major and substantial changes are made to information contained in the registration statement. Material changes that can be stated accurately and succinctly in a short sticker will continue to be permitted. While many variations in matters such as operating results, properties, business, product development, backlog, management and litigation ordinarily would not be fundamental, major changes in the issuer's operations, such as significant acquisitions or dispositions, would require the filing of a post-effective amendment. Also, any change in the business or operations of the registrant that would necessitate a restatement of the financial statements always would be reflected in a post-effective amendment.'' *See* Adoption of Integrated Disclosure System, Securities Act Release No. 6383 (Mar. 3, 1982) [47 FR 11380 (Mar. 16, 1982)] at text accompanying nn.79–81. *See also* Guide 8 to Form N–2. In addition, purchasers of an issuer's securities in a registered offering have private rights of action for materially deficient disclosure in prospectuses and oral communications under section 12(a)(2) of the Securities Act. *See* 15 U.S.C. 77*l*(a)(2); *see also* Securities Offering Reform, Securities Act Release No. 8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] at Section IV.A (discussing information conveyed by the time of sale for purposes of liability under section 12(a)(2)).

[103] The increase in annual hour burden was estimated using an average of the range of costs the commenter estimated a fund of hedge funds would incur to prepare the disclosure ($16,500) and dividing that cost by the estimated hourly cost to prepare the disclosure: $16,500 ÷ $77.42 = 213.12. Therefore, the estimated total annual burden per fund of hedge funds to prepare the disclosure is 213 hours. The estimated hourly cost is the weighted average of the cost to prepare the disclosure for other closed-end funds ($404 (cost of 6 hours of an accountant's time) + $138 (cost of 1 hour of an attorney's time) ÷ 7 = $77.42). *See infra* note 120. This estimate also includes the costs of including the footnote to the line item that discloses the typical performance fee charged by the hedge funds in which the acquiring fund invests or intends to invest.

[104] Any post-effective amendment to a registration statement filed to update the information in the prospectus for purposes of section 10(a)(3) of the Securities Act or to reflect fundamental changes in the information in the prospectus contained in the registration statement would also revise the information regarding the acquired funds' fees and expenses. Because only a portion of acquired funds' fees and expenses may be updated in the annual post-effective amendment to reflect additional or revised fees and expenses, since the date of the last updating, resulting from existing, newly acquired or to be acquired funds, the Commission estimates that a fund of hedge funds in continuous offering would spend approximately 50% of the time it takes to determine the initial acquired hedge funds disclosure (213 hours) to review and update its calculation of acquired funds' fees and expenses prior to filing a post-effective amendment. Therefore, the annual burden for funds of hedge funds in continuous registration is an additional 2450 hours ((213 hours ÷ 2 = 106.5 hours) (106.5 hours × 23 funds = 2449.5 hours)).

[105] The Commission made this estimate in connection with its submission for approval of recent proposed amendments to Form N–2. *See* Executive Compensation and Related Party Disclosure, Investment Company Act Release No. 27218 (Jan. 27, 2006) [71 FR 6542 (Feb. 8, 2006)].

[106] This estimate is based on the following calculation: 120,673 + 2450 + (11 × 206) = 125,389. The current estimated total annual hour burden already incorporates the time estimated in the proposing release to prepare the disclosure required by the amendments (7 hours for each closed-end fund that invests in other funds). The revised estimate includes the additional 206 hours (213 minus 7 hours included in the approved total annual hour burden) the staff estimates it may take a closed-end fund of hedge funds to complete the required disclosure, based on the commenter's cost estimates.

the limitations on fund of funds arrangements without requiring the funds or their advisers to obtain an exemptive order. As discussed in section II.D, the amendments to Forms N–1A, N–2, N–3, N–4, and N–6 provide additional information to shareholders regarding the costs of acquired funds in a fund of funds arrangement.

*A. Rules 12d1–1, 12d1–2 and 12d1–3*

We have issued a number of exemptive orders that have broadened the ability of funds to invest in other funds and provided certain funds of funds greater flexibility in structuring their sales charges. These orders have provided exemptions from statutory limitations. A fund that has obtained the benefit of an exemption has incurred costs of applying for an exemptive order as well as costs of satisfying any conditions imposed in the order. Application costs are primarily legal and include costs of drafting the application and analyzing the ways in which the conditions fit the fund's business model. The costs of satisfying conditions include ongoing compliance costs of meeting those conditions. We assume that a fund only seeks an exemptive order if the benefits of the additional flexibility provided by the exemption outweigh the costs of obtaining and satisfying the conditions of an order. We solicited but did not receive comments with respect to the cost-benefit analysis for rules 12d1–1, 12d1–2 and 12d1–3.

1. Benefits

Rule 12d1–1 codifies our prior exemptive orders that permit a fund to invest all or a portion of its available cash in money market funds rather than directly in short-term instruments. The rule retains one condition included in our orders that the acquiring fund pays no sales load or distribution or service fee on the acquired money market fund shares unless the acquiring fund's investment adviser waives a sufficient amount of its advisory fee to offset the cost of those fees.[107] We believe that any further restrictions on an acquiring fund's investments in money market funds should be governed by the fund's investment policies and limitations and the fiduciary obligations of its board of directors. Consequently, we believe that the rule will provide greater flexibility for certain funds than exemptive orders we have issued.

Under the rule, funds also may invest in money market funds advised by a different adviser. We believe that this will allow all funds, particularly small funds without a money market fund in their fund group, the opportunity currently available to large funds to engage in cash sweep arrangements. In addition, we have provided additional relief under section 17 of the Act. If a fund in one fund complex acquired more than five percent of the assets of a money market fund in another complex, any broker-dealer affiliated with the money market fund would become a (second-tier) affiliated person of the acquiring fund. As a result of the affiliation, the broker-dealer's fee for effecting the sale of securities to the acquiring fund would be subject to the conditions set forth in rule 17e–1, including the quarterly board review and recordkeeping requirements with respect to certain securities transactions involving the affiliated broker-dealer.[108] The final rule permits an acquiring fund to pay commissions, fees, or other remuneration to an affiliated broker-dealer without complying with the quarterly board review and recordkeeping requirements set forth in rules 17e–1(b)(3) and 17e–1(d)(2).[109] This relief is available only if the broker-dealer and the acquiring fund become affiliated solely because of the acquiring fund's investment in the money market fund. We believe this additional relief will enable more funds to take advantage of the exemption provided by the rule.

Rule 12d1–1 also codifies our orders permitting funds to invest in unregistered money market funds that operate like a money market fund registered under the Act. The acquiring fund is required to ''reasonably believe'' that the unregistered money market fund operates in compliance with rule 2a–7 and complies with certain provisions of the Act, as well as other requirements.[110] This standard is slightly different than the condition in our exemptive orders, which requires the acquiring fund to determine that the acquired fund is in compliance with rule 2a–7 and certain provisions of the Act. A fund would reasonably believe that an acquired fund was in compliance with these provisions if, for example, it received a representation from the acquired fund (or the adviser to the acquired fund) that the fund would comply with the relevant provisions in all material respects and if the acquiring fund had no reason to believe that the acquired fund was not, in fact, complying with the relevant provisions in all material respects. Thus, an acquired fund's failure to comply will not automatically result in the loss of the acquiring fund's exemption. Rule 12d1–1 does not include certain conditions imposed in the exemptive orders that we believe are already adequately addressed by other provisions of the Act or rules thereunder.[111]

Rule 12d1–2 codifies, and in some cases expands upon, three types of relief that we provided to affiliated funds of funds. The rule permits affiliated funds of funds to acquire up to three percent of the securities of funds that are not part of the same group of investment companies, subject to the limits in section 12(d)(1)(A) or 12(d)(1)(F) of the Act. The rule also permits an affiliated fund of funds to acquire securities not issued by a fund. These investments would have to be consistent with the fund's investment policies. Finally, the rule permits affiliated funds of funds to invest in affiliated or unaffiliated money market funds in reliance on rule 12d1–1.

Rule 12d1–3 codifies the exemptive orders we have issued permitting funds relying on section 12(d)(1)(F) to charge a sales load greater than 1½ percent provided that the aggregate sales load any investor pays (*i.e.*, the combined distribution expenses of both the acquiring and acquired funds) does not exceed the limits on sales loads established by the NASD for funds of funds. This exemption also would be available to an affiliated fund of funds relying on rule 12d1–2 to invest in funds in a different fund group.

We anticipate that funds and their shareholders will benefit from the rules. Funds increasingly have sought exemptive orders (which the Commission has granted) to engage in most of the activities the rules permit. The application process involved in obtaining exemptive orders imposes direct costs on funds, including preparation and revision of an application, as well as consultations with the staff. The rules will benefit funds and their shareholders by eliminating the direct costs of applying to the Commission to engage in activities permitted under the rules.[112]

[107] With respect to investments in unregistered money market funds, we also have retained the requirement in our prior exemptive orders that the money market funds operate as if they were money market funds registered under the Act. Unlike our exemptive orders, however, and as we proposed, we are requiring the acquiring fund to reasonably believe, rather than to determine, that the unregistered money market funds operate in this manner. *See supra* notes 40–43 and accompanying text; *see, e.g.*, Putnam Order, *supra* note 25.

[108] *See* supra note 34.

[109] *See supra* notes 32–36 and accompanying text.

[110] *See supra* notes 40–43 and accompanying text.

[111] *See* Proposing Release, *supra* note 4, at n. 49.

[112] For example, in calendar years 2003 and 2004, 11 funds sought exemptive relief to invest uninvested cash and/or cash collateral from

The rules will further benefit funds by eliminating the uncertainty that a particular applicant might not obtain relief to engage in the activities permitted under the rules.

The exemptive application process also involves other indirect costs. Funds that apply for an order to permit additional investments forgo potentially beneficial investments until they receive the order, while other funds forgo the investment entirely rather than seek an exemptive order because they have concluded that the cost of seeking an exemptive order would exceed the anticipated benefit of the investment. Eliminating direct and indirect costs of the proposed activities also eliminates factors that discriminate against smaller funds, for which the cost of an exemptive application can often exceed the potential benefit.

2. Costs

We do not believe that the rules will impose mandatory costs on any fund. As discussed above, the rules are exemptive, and we believe that a fund would not rely on any of them if the anticipated benefits did not justify the costs. We believe the costs of relying on the rules will be the same as or less than the costs to a fund that relies on an existing exemptive order because each of the rules includes the same or fewer conditions than existing orders that provide equivalent exemptive relief.[113]

The rules will affect different types of funds in different ways. A fund that has not sought and would not seek exemptive relief from section 12(d)(1) of the Act will not be affected by the rules. The cost for a fund that currently relies on exemptive relief covered by our rules will be the same as or less than the costs of relying on its exemptive order because the rules contain the same or fewer conditions than existing orders.[114] In addition, a fund that currently relies on an exemptive order can satisfy all the conditions of any of the rules that provide similar exemptive relief without changing its operation. For example, in the case of rule 12d1–1, the fund will simply be satisfying conditions that are no longer required.[115] Finally, a fund that has not relied on an exemptive order and that intends to rely on one of the rules will bear the same continuing costs of complying with conditions that it would have borne had it obtained an exemptive order. In that case, its total costs would have been the same as or greater than the costs associated with the rules.

*B. Amendments to Forms N–1A, N–2, N–3, N–4, and N–6*

Forms N–1A, N–2 and N–3 currently do not require registered funds to disclose information regarding the expenses associated with acquired funds. The amendment to Form N–1A requires a registered open-end fund that invests in other funds to include a line item in its fee table, under the total annual fund operating expenses, that lists the aggregate fees and costs of acquired funds. The amendment to Form N–2 requires registered closed-end funds that invest in other funds to provide the same disclosure.[116] The amendment to Form N–3 requires the same disclosure for separate accounts organized as management investment companies that offer variable annuity contracts. The new disclosure requirements include instructions on calculating the fees and operating costs of acquired funds. The calculation will aggregate the annual fund operating expenses of acquired funds, transaction costs and, as applicable, incentive allocations incurred by the acquiring fund, and express the aggregate fees as a percentage of average net assets of the acquiring fund.

Forms N–4 and N–6 currently require separate accounts organized as UITs that offer variable annuity and variable life contracts, respectively, to disclose the range of minimum and maximum operating expenses of the portfolio companies in which they invest. The amendment to each of these forms requires a separate account organized as a UIT that invests in a portfolio company that itself invests in other funds, to include the portfolio company's costs of investing in other funds in the portfolio company's operating expenses disclosed in the Form N–4 or Form N–6 fee table.

1. Benefits

Under current disclosure requirements, a fund's shareholders may not understand the fees and operating costs of a fund's investment in acquired funds, costs that investors bear indirectly. We believe that the amendments to Forms N–1A, N–2, N–3, N–4, and N–6 will enable shareholders to better understand the expenses that relate to acquired funds, and provide investors the means to compare directly the costs of investing in alternative funds of funds, or the costs of investing in a fund of funds to a more traditional fund. The increased transparency may provide further benefits by allowing investors to choose funds that more closely reflect their preferences for fees and performance.[117]

2. Costs

The amendments to Forms N–1A, N–2, N–3, N–4, and N–6 will result in costs to registered open-end and closed-end funds, and to separate accounts that offer variable annuity and variable life contracts, which may be passed on to those funds' shareholders. The amendments will require a new disclosure to the annual operating expense item in the fee table for funds that invest in other funds. It also will require separate accounts organized as UITs that offer variable annuity and variable life contracts to include an additional expense in their calculations of annual portfolio company operating expenses. The costs of the disclosures will include both internal costs (for attorneys and accountants) to prepare and review the disclosure, and external costs (for printing and typesetting the disclosure).

First, with respect to Forms N–1A, N–2 and N–3, the disclosures will add a single line item to the fee table for funds

securities lending activities in money market funds, and 3 of those funds also sought exemptive relief to invest cash collateral in unregistered money market funds. In the past 5 years, 9 funds investing in other funds in the same fund group in reliance on section 12(d)(1)(G) have sought exemptive relief to invest in securities other than government securities or short-term paper. During that time, 9 funds investing in other funds in reliance on section 12(d)(1)(F) have sought exemptive relief to charge a sales load greater than 1½ percent, subject to the NASD Sales Charge Rule. In the Proposing Release, we estimated that the cost to a fund for submitting one of these applications ranges from $7,000 to $67,000. *See* Proposing Release, *supra* note 4, at n. 125. We did not receive any comments on these estimates and continue to believe that they are appropriate.

[113] Our analysis compares the costs a fund would bear to comply with the rules with the costs a fund would bear under the current system of obtaining equivalent exemptive relief. Because the conditions in the rules are the same or less onerous than the conditions in the exemptive orders, the costs discussed in this section primarily are costs that a fund would bear to obtain an exemptive order and comply with its conditions.

[114] Such a fund may face a one-time ''learning cost'' to determine the difference between the fund's exemptive order and the rule. We do not believe this cost would be significant given the similarity of conditions in our rules and existing exemptive orders.

[115] We note that a fund may choose to rely on an existing exemptive order and comply with the conditions of that order. A fund might conclude that continued reliance on an existing order is appropriate, for example, because the existing order was tailored to circumstances specific to a fund complex and may provide additional exemptive relief that is not covered under the rules we are adopting today.

[116] In addition, closed-end funds of hedge funds must add a footnote to the line item that discloses the typical performance fee charged by acquired hedge funds in which the acquiring fund invests.

[117] We requested comments as well as any quantifying data in the Proposing Release, but did not receive any.

that invest in other funds.[118] In the context of the prospectus for Forms N–1A, N–2 and N–3, we believe that the external costs of including this additional line of disclosure per registered fund will be minimal.[119] With respect to Forms N–4 and N–6, the disclosure will require registrants to include in the item for annual portfolio company operating expenses, any fees and expenses of acquired companies, as disclosed in the portfolio company's most recent prospectus. Accordingly, we believe there will be no additional external costs for Forms N–4 and N–6 as a result of the amendments.

Second, for purposes of the PRA, Commission staff estimated in the proposal that the disclosure requirement for calculating the line item according to the instructions will add up to 7 hours per portfolio to the burden of completing Forms N–1A, N–2 and N–3. Commission staff further estimated that the additional annual cost of including the line item per portfolio would equal $542.[120]

One commenter, a fund of hedge funds, disagreed with our estimates and asserted that the cost to a single fund of hedge funds to make an initial calculation each year would be between $8,000 and $25,000 depending on the number of personnel involved and the need for auditor review.[121] The commenter did not specify the number or functions of the personnel involved. We agree with the commenter that a fund of hedge funds may have additional costs. We estimate that the cost of adding the new line item for a fund of hedge funds is $16,500.[122] Based on recent Commission filings, approximately 11 funds of hedge funds file initial registration statements on Form N–2 each year and their aggregate assets under management are $958.2 million. The estimated aggregate costs for these funds of hedge funds to calculate the new line item is $181,500.[123] We do not believe that the additional cost is significant given the funds of hedge funds' aggregate assets under management.[124]

On the assumption that funds of hedge funds would have to monitor current fees in order to guard against material misrepresentations in the fee table, the commenter estimated that these funds of hedge funds would face an additional monitoring cost of $15,000 or more annually. As discussed in Section III above, staff estimates that the 23 funds of hedge funds registered under Form N–2 and offering their shares on a continuous basis file updated registration statements on at least an annual basis. We estimate the additional cost to review the disclosure will be $8245 per fund of hedge funds and the total annual costs for funds of funds to update the acquired fund expenses in their prospectuses pursuant to the requirements of section 10(a)(3) of the Securities Act will be $189,635.[125]

Despite this additional cost, we continue to believe that the costs of the required disclosure are justified because the disclosure will assist a fund of hedge funds investor in making an informed investment decision as to whether the benefit of diversification provided by investing in a fund of hedge funds outweighs any layering of costs. We do not believe that other alternatives suggested by the commenter, such as simply disclosing a range of fees, would be a meaningful substitute. These alternatives would not meet our objective of improving transparency of expenses. Nor would they meet our objective to include acquired fund expenses in the total annual fund operating expenses disclosed to investors in order to provide them a more complete presentation of the aggregate direct and indirect costs of investing in a fund of funds. We continue to believe that our estimate is appropriate for Form N–2 registrants that are not funds of hedge funds.

In the Proposing Release, we also estimated that including the additional item in the disclosure of portfolio company expenses on Forms N–4 and N–6 would add approximately 0.5 hours per portfolio, which based on the updated wage estimates would be an annual cost per portfolio of $34.[126] We did not receive any comments on this estimate and continue to believe that it is appropriate.

Based on Commission filings, the staff estimates that half the funds registered under Forms N–1A and N–2 (excluding funds of hedge funds) invest in other funds, all funds of hedge funds registered on Form N–2 invest in other funds, and 5 separate accounts (with 7 portfolios) registered under Form N–3 invest in other funds and will be required to make the proposed disclosure on an annual basis. For purposes of the PRA analysis, Commission staff has estimated that on an annual basis, registrants file (i) initial registration statements covering 483 portfolios and post effective amendments covering 6542 portfolios on Form N–1A, (ii) 234 initial

[118] We are permitting acquiring funds to omit a separate line item if the amount of expenses attributable to acquired funds does not exceed 0.01 percent (one basis point) of average net assets, and to include these expenses in ''Other Expenses.'' *See* Instruction 3(f)(i) to Item 3 of Form N–1A; Instruction 10.a to Item 3.1 of Form N–2; Instruction 19(a) to Item 3(a) of Form N–3.

[119] We also believe the costs to the acquiring fund of preparing the footnote to the line item that discloses the typical performance fee charged by hedge funds in which the acquiring fund invests will be minimal.

[120] In the Proposing Release, Commission staff estimated the additional burden would equal 6 hours for an intermediate level accountant and 1 hour for a deputy general counsel to review the calculation per portfolio. *See* Proposing Release, *supra* note 4, at n.127. We did not receive any comments on these hourly estimates and continue to believe that they are appropriate. We have, however, updated our wage estimates based on current wage data for professionals in the financial services industry available at *http://www.careerjournal.com/salaryhiring* (last visited July 28, 2005).

In order to determine who would be an intermediate level accountant in the new source, we looked at years of experience. We believe that accountants with 6 to 15 years of experience would fall within that category. The national average salary for these accountants is $89,749 (($85,483 (6–10 years of experience) + $94,015 (11–15 years of experience)) ÷ 2 = $89,749). Adjusting this salary upwards by 35% to reflect possible overhead costs and employee benefits, the staff estimates that the annual adjusted salary would be $121,161, and the cost for 6 hours of an intermediate level accountant's time would be $404 ($121,161 ÷ 1,800 hours × 6 = $403.87). The staff estimates the national average salary for a deputy general counsel is $183,675. Adjusting this salary upwards by 35% to reflect possible overhead costs and employee benefits, the staff estimates that the annual adjusted salary would be $247,961, and the cost for 1 hour of a deputy general counsel's time would be $138 ($247,961 ÷ 1,800 hours = $137.76). Accordingly, the staff estimates the total cost for each portfolio to calculate the amended disclosure would equal $542 ($404 + $138 = $542). We have revised the final instructions for calculating acquired funds' expenses as described above. *See supra* notes 77–79 and accompanying text. Although the staff believes that these modifications may provide funds with some cost savings, we have not adjusted the hour burden estimates but will review them when the collection of information requirements must be resubmitted for review and funds will have had actual experience in complying with them.

[121] *See* Comment Letter of Man Investments, Inc. (Dec. 1, 2003).

[122] Because the commenter did not explain the underlying calculations for its range of costs, the estimate is based on the average of the $8,000 to $25,000 range provided by the commenter. The cost to each fund of hedge funds may be higher or lower depending on a variety of factors, including the number of hedge funds in which the fund of hedge funds invests.

[123] This calculation is based on the following: (11 × $16,500) = $181,500).

[124] The estimated cost of preparing the line item is 0.0189% of assets under management for funds of hedge funds in the aggregate ($181,500 ÷ $958.2 million).

[125] *See supra* notes 102–104 and accompanying text. These estimates are based on the following calculations: 106.5 (hours per fund) × $77.42 (estimated hourly cost to prepare the disclosure) = $8245; $8245 × 23 (funds) = $189,635.

[126] Commission staff estimates the cost would equal 0.5 hours for an intermediate level accountant to include the expense item in the calculation. The estimated cost is based on the following calculation: 0.5 × $67.3 = $33.7. The estimated hourly cost for an intermediate level accountant is $67 ($121,161.15 (annual cost) ÷ 1,800 hours = $67.31/hour). *See supra* note 120.

registration statements (of which 11 are funds of hedge funds) and 38 post-effective amendments on Form N–2, and (iii) initial registration statements covering 3 portfolios and post-effective amendments covering 35 portfolios on Form N–3. In addition, Commission staff also estimates that each year, 157 separate accounts file initial registrations and 1242 separate accounts file post-effective amendments on Form N–4, and 50 separate accounts file initial registrations and 500 separate accounts file post-effective amendments on Form N–6.[127] Of the filings on Forms N–4 and N–6, Commission staff estimates that half the separate accounts invest in portfolio companies that themselves invest in other funds. Thus, Commission staff estimates that the cost of the amendments to Forms N–1A, N–2, N–3, N–4, and N–6 to funds registering under these forms will be $2.4 million.[128]

## V. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[129] We sought, but did not receive any comment with respect to this section.

### *A. Rules 12d1–1, 12d1–2 and 12d1–3*

Rules 12d1–1, 12d1–2 and 12d1–3 will expand the circumstances in which funds can invest in other funds without first obtaining an exemptive order from the Commission, which can be costly and time-consuming. We anticipate that the rules will promote efficiency and competition. Rule 12d1–1 permits funds to acquire shares of money market funds in the same or in a different fund group in excess of the limitations in section 12(d)(1) of the Act. This exemption allows funds, particularly small funds without a money market fund in their complex, to allocate their uninvested cash more efficiently and thereby increase competition among funds. In addition, the final rule provides additional section 17 relief for funds that execute transactions with broker-dealers affiliated with money market funds in which the acquiring funds invest. This additional relief, we believe, will allow more funds to take full advantage of the exemption provided by the rule.[130] Rule 12d1–2 permits an affiliated fund of funds to acquire limited amounts of securities issued by funds outside the same fund group and securities not issued by a fund. The rule also permits a traditional equity or bond fund to invest in funds within the same fund complex. We believe that this expansion of investment opportunities will permit funds to allocate their investments more efficiently. Rule 12d1–3 allows funds relying on section 12(d)(1)(F) of the Act to charge sales loads greater than 1½ percent provided that the aggregate sales load any investor pays does not exceed the limits established by the NASD for funds of funds. We believe this will increase competition among funds as it will provide funds with greater flexibility in structuring their sales charges. We do not believe that these exemptive rules, which provide funds with greater flexibility in their investments and provide certain funds of funds greater flexibility in structuring their sales charges, will have an adverse impact on capital formation.

### *B. Amendments to Forms N–1A, N–2, N–3, N–4, and N–6*

The form amendments are designed to provide better transparency for fund shareholders with respect to the costs of investing in funds of funds. The enhanced disclosure requirements will provide shareholders with greater access to information regarding the indirect costs they bear when a fund in which they invest purchases shares of other funds. This information should promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds because investors may compare and choose funds based on their preferences for cost more easily. The amendments may also improve competition, as enhanced disclosure may prompt funds to provide improved products and services that may have a greater appeal to investors. Enhanced disclosure also may prompt acquiring funds to invest in acquired funds with lower costs. Finally, we do not believe that the amendments will have an adverse impact on capital formation. As discussed above, we believe that the amendments will benefit investors.

## VI. Final Regulatory Flexibility Analysis

We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604. It relates to new rules 12d1–1, 12d1–2 and 12d1–3 under the Investment Company Act, and amendments to Forms N–1A, N–2, N–3, N–4, and N–6. The Commission prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603, a summary of which was published in the Proposing Release.[131]

### *A. Need for the New Rules and Form Amendments*

As described more fully in Section II of this release, we are adopting rules 12d1–1, 12d1–2 and 12d1–3 to address the ability of a registered fund to invest in shares of another fund without first having to seek Commission approval. The rules codify and expand upon a number of exemptive orders we have issued that permit funds to invest in other funds. The form amendments are a critical element of the relief we are adopting today and are designed to improve the transparency of the expenses of funds of funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the fund of funds.

### *B. Significant Issues Raised by Public Comment*

In the IRFA for the proposed rules and form amendments, we requested comment on any aspect of the IRFA, including the number of small entities that are likely to rely on the proposed rules and amendments and the likely impact of the proposal on small entities. We received no comments on the IRFA.

### *C. Small Entities Subject to the New Rules and Form Amendments*

For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[132] The staff estimates, based upon recent Commission filings, that there are

[127] Changes in estimates from the Proposing Release are due to updated PRA analyses for the relevant forms. Of the Form N–6 post-effective amendments, 150 are annual updates and 350 are additional post-effective amendments. As we said in the Proposing Release, we assume that registered funds would include the disclosure only in a post-effective amendment to the annual update. *See* Proposing Release, *supra* note 4, at n.132.

[128] The estimate is based on the following calculation: (((483 + 6542)) ÷ 2) × $542) + (((223 + 38) ÷ 2) × $542 + (11 × $16,500) + (23 × $8,245) + (7 separate account portfolios × $542) + (((157 + 1,242) ÷ 2) × $34) + (((50 + 150) ÷ 2) × $34) = $2,376,618. The increase in costs from the Proposing Release is due to adjustments for salary and overhead costs during the intervening period and the additional cost for funds of hedge funds to comply with the disclosure requirement.

[129] 15 U.S.C. 80a–2(c).

[130] *See supra* notes 32–36 and accompanying text.

[131] *See* Proposing Release, *supra* note 4, at Section VII.

[132] 17 CFR 270.0–10.

approximately 4083 active registered funds and 88 business development companies, of which approximately 175 and 65 are small entities, respectively.[133] The staff estimates that no separate account is a small entity. A fund that is a small entity, like other funds, may rely on any of the exemptive rules if the fund satisfies the rule's conditions.

The Commission expects the new rules to have little impact on small entities. Like other funds, small entities will be affected by new rules 12d1–1, 12d1–2 and 12d1–3 only if they determine to use any of the exemptions provided by the rules. Few small entities have applied for relief to engage in the activities that will be permitted under the rules. The staff anticipates that the number of funds, including small funds, that will engage in the activities permitted under the rules, will increase. Nevertheless, the staff believes that the proportion of small entities compared to the total number of funds that engage in these activities will remain small.

The Commission expects that the amendments to Forms N–1A and N–2 will have a greater impact on small entities. The amendments require each registered fund, including each fund that is a small entity, that invests in any other fund to disclose the aggregate costs of investing in acquired funds. The staff estimates, based upon Commission filings, that 140 funds that file on Form N–1A, and 32 funds (of which 4 are funds of hedge funds)[134] that file on Form N–2 are small entities.[135] Commission staff also estimates that half of the funds registered under Forms N–1A and N–2 (excluding funds of hedge funds) invest in other funds, and all funds of hedge funds would be required to make the new disclosure.[136] Accordingly, we estimate that 70 funds that are small entities file on Form N–1A and 18 funds (including the 4 funds of hedge funds) that are small entities file on Form N–2 and would be required to make the new disclosure.

*D. Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The new rules will not impose any mandatory reporting or recordkeeping requirements on any person and will not materially increase other compliance requirements. Rule 12d1–1 allows funds to invest in money market funds in excess of section 12(d)(1)(A) limits. The rule requires that either (i) the acquiring fund does not pay any sales charge, distribution fee or service fee (as defined by NASD Sales Charge Rule 2830(d)) on the purchase of money market fund shares, or (ii) the fund's adviser waives its fee in an amount necessary to offset any administrative fees of the money market fund.[137] This condition may reduce the cost of cash management (by reducing advisory or custodial fees relating to money market instruments) for large and small funds. In addition, under the rule, a fund that invests in an unregistered money market fund will have to ''reasonably believe'' that the unregistered fund (i) operates in compliance with rule 2a–7, and (ii) complies with certain provisions of the Act. With respect to these conditions, we believe that if the cost of investing in a money market fund (registered or unregistered) exceeds the costs of other forms of cash management, acquiring funds, including funds that are small entities, will not take advantage of the exemption. Finally, we believe the additional section 17 relief for acquiring funds that execute transactions with broker-dealers that are affiliated solely as a result of the acquiring fund's investment in a money market fund, will allow more funds to take full advantage of the exemption provided by the rule. We believe this additional relief will be important if a small fund without a money market fund in its complex invests, in reliance upon rule 12d1–1, in a money market fund in another complex and thereby becomes affiliated with a broker-dealer affiliated with the money market fund. Without the relief from certain recordkeeping and monitoring requirements, small funds may find it potentially costly or onerous to monitor transactions with affiliated broker-dealers.[138]

Rule 12d1–2 also has no mandatory reporting, recordkeeping or other compliance requirements.[139] Rule 12d1–3 requires an unaffiliated fund of funds relying on the rule to limit aggregate distribution-related costs under the NASD Sales Charge Rule.[140] The rule provides funds greater flexibility in structuring sales loads, consistent with the approach Congress took in section 12(d)(1)(G) to prevent excessive sales loads in affiliated funds of funds, while providing shareholders greater protection by requiring that funds relying on the rule limit overall distribution fees (rather than only sales loads).

Funds that intend to rely on the rules will no longer incur the expense associated with filing applications for comparable exemptive relief from sections 12(d)(1)(A), (B), (F), and (G), 17(a), 17(e)(2)(A), and 57, and rules 17d–1, 17e–1(b)(3) and 17e–1(d)(2) in connection with the fund of funds arrangement permitted by the rules. The exemptive rules may be of greater benefit to small funds for which the benefits of obtaining an order for the relief described above may not sufficiently offset the costs of filing an exemptive application.

The amendments to Forms N–1A and N–2 require registered funds to include a line item in the fee table disclosing the acquiring fund's pro rata portion of the cumulative expenses charged by funds in which the acquiring fund invests. The amendments include instructions for calculating the line item''Acquired Fund Fees and Expenses.'' For purposes of the PRA, Commission staff estimated that the disclosure requirement for calculating the line item according to the instructions will add up to 7 hours per portfolio to the burden of completing Forms N–1A and N–2.[141] Commission staff also estimated that the additional cost of including the line item per portfolio would equal $542 for Forms N–1A and Form N–2 (excluding funds of hedge funds).[142] The Commission staff has further estimated, based on comments received, that a fund of hedge funds would incur $16,500 to calculate the new line item.[143] Assuming that half of all small funds and all small funds of hedge funds invest in other funds and will be required to include the additional disclosure, the Commission staff estimates that the maximum total annual cost for small entities to comply with the form amendments will be $176,026.[144]

[133] Some or all of the funds may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities. The estimated number of small entities in the IRFA was based on filings with the Commission current at that time.

[134] The 4 funds of hedge funds that are small entities do not offer their shares continuously in reliance on rule 415 of the Securities Act.

[135] Amendments to Forms N–3, N–4, and N–6 are not expected to impact small entities because the staff estimates that no registered separate account is a small entity.

[136] This estimate is based on information in the Commission's database of Form N–SAR filings.

[137] Rule 12d1–1(b)(1).

[138] *See supra* notes 32–36 and accompanying text.

[139] Funds that invest in a money market fund in reliance on rule 12d1–2, however, must comply with the conditions of rule 12d1–1. *See supra* note 62 and accompanying text.

[140] *See* rule 12d1–3(a); *See also supra* note 64 and accompanying text.

[141] *See supra* notes 99–100 and accompanying text.

[142] *See supra* note 120 and accompanying text.

[143] *See supra* note 103 and accompanying text.

[144] Based on recent Commission filings, the staff estimates that 140 funds that are small entities are registered under Form N–1A, with an average of 2.7 portfolios per registrant. Commission staff further

*E. Commission Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the new rules, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

The new rules are exemptive, and compliance with them is voluntary. We therefore do not believe that special compliance, timetable, or reporting requirements or an exemption from coverage of the rules for small entities would be appropriate.

The rules do not require any reporting requirements that could be further clarified, consolidated, or simplified. Rule 12d1–1 uses performance rather than design standards to the extent it requires that acquiring funds ''reasonably believe'' that underlying funds are operating in compliance with rule 2a–7 and certain provisions of the Act. This standard is designed to ensure that a violation on the part of the acquired fund would not cause the acquiring fund to lose its exemption under the rule if it can demonstrate that it reasonably believed that the acquired fund was in compliance. In addition, rule 12d1–3 does not specify the sales load and distribution-related charges an acquiring or acquired fund must impose, but permits funds to determine the combined charges within the overall limit set by the NASD Sales Charge Rule.

With respect to the form amendments, we believe that any further clarification, consolidation, or simplification of the requirements to report expenses of acquired funds for small funds would not be consistent with the protection of investors. A different requirement, including differing compliance or reporting requirements or timetables, could compromise the intent to provide investors with cost information that will allow them to make direct comparisons to the costs of alternative fund of funds arrangements and to the costs of a more traditional fund. Performance standards also would not provide this important benefit to investors. An exemption for small entities would defeat the purposes of the amendments for the same reasons.

estimates that 28 funds registered with an average of 1.0 portfolio per registrant and 4 funds of hedge funds registered under Form N–2 are small entities. The staff's estimate assumes that all funds of hedge funds and half of all other portfolios would include the proposed disclosure. The maximum cost estimate is based on the following calculation: ((140 x 2.7) + (28 x 1.00)) 2 portfolios x $542 = $110,026) + (4 x $16,500 = $66,000) = $176,026. The increase from the Proposing Release is due to adjustments for salary and overhead costs during the intervening period and the additional cost for funds of hedge funds to comply with the disclosure requirement. Amendments to Forms N–3, N–4 and N–6 are not expected to impact small entities because the staff estimates that no registered separate account is a small entity.

## VII. Statutory Authority

The Commission is adopting rules 12d1–1, 12d1–2 and 12d1–3 under the authority set forth in sections 6(c), 12(d)(1)(J), and 38(a) of the Act (15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), 80a–37(a)). The Commission is also adopting amendments to Forms N–1A, N–2, N–3, N–4, and N–6 under the authority set forth in sections 6, 7(a), 10 and 19(a) of the Securities Act (15 U.S.C. 77f, 77g(a), 77j, 77s(a)), and sections 8(b), 24(a), 30, and 38(a) of the Act (15 U.S.C. 80a–8(b), 80a–24(a), 80a–29, and 80a–37(a)).

## List of Subjects

*17 CFR Part 239*

Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 270 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

## Text of Rules and Form Amendments

■ For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 1. The authority citation for part 239 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77x–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–9, 80a–10, 10a–13, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

## PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 2. The authority citation for part 270 is amended by revising the subauthority for § 270.12d1–1 to read as follows:

**Authority:** 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted;

* * * * *

Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are also issued under 15 U.S.C. 80a–6(c), 80a–12(d)(1)(J), and 80a–37(a).

* * * * *

■ 3. Sections 270.12d1–1, 270.12d1–2, and 270.12d1–3 are added to read as follows:

### § 270.12d1–1 Exemptions for investments in money market funds.

(a) *Exemptions for acquisition of money market fund shares.* If the conditions of paragraph (b) of this section are satisfied, notwithstanding sections 12(d)(1)(A), 12(d)(1)(B), 17(a), and 57 of the Act (15 U.S.C. 80a–12(d)(1)(A), 80a–12(d)(1)(B), 80a–17(a), and 80a–56), and § 270.17d–1:

(1) An investment company (''acquiring fund'') may purchase and redeem shares issued by a money market fund; and

(2) A money market fund, any principal underwriter thereof, and a broker or a dealer may sell or otherwise dispose of shares issued by the money market fund to an acquiring fund.

(b) Conditions—(1) *Fees.* The acquiring fund pays no sales charge, as defined in rule 2830(b)(8) of the Conduct Rules of the NASD (''sales charge''), or service fee, as defined in rule 2830(b)(9) of the Conduct Rules of the NASD, charged in connection with the purchase, sale, or redemption of securities issued by a money market fund (''service fee''); or the acquiring fund's investment adviser waives its advisory fee in an amount necessary to offset any sales charge or service fee.

(2) *Unregistered money market funds.* If the money market fund is not an investment company registered under the Act:

(i) The acquiring fund reasonably believes that the money market fund satisfies the following conditions as if it were a registered open-end investment company:

(A) Operates in compliance with § 270.2a–7;

(B) Complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e));

(C) Has adopted procedures designed to ensure that it complies with sections 17(a), (d), (e), 18, and 22(e) of the Act (15 U.S.C. 80a–17(a), (d), (e), 80a–18, and 80a–22(e)), periodically reviews and updates those procedures, and maintains books and records describing those procedures;

(D) Maintains the records required by §§ 270.31a–1(b)(1), 270.31a–1(b)(2)(ii),

270.31a–1(b)(2)(iv), and 270.31a–1(b)(9); and

(E) Preserves permanently, the first two years in an easily accessible place, all books and records required to be made under paragraphs (b)(2)(i)(C) and (D) of this section, and makes those records available for examination on request by the Commission or its staff; and

(ii) The adviser to the money market fund is registered with the Commission as an investment adviser under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3).

(c) *Exemption from certain monitoring and recordkeeping requirements under § 270.17e–1.* Notwithstanding the requirements of §§ 270.17e–1(b)(3) and 270.17e–1(d)(2), the payment of a commission, fee, or other remuneration to a broker shall be deemed as not exceeding the usual and customary broker's commission for purposes of section 17(e)(2)(A) of the Act if:

(1) The commission, fee, or other remuneration is paid in connection with the sale of securities to or by an acquiring fund;

(2) The broker and the acquiring fund are affiliated persons because each is an affiliated person of the same money market fund; and

(3) The acquiring fund is an affiliated person of the money market fund solely because the acquiring fund owns, controls, or holds with power to vote five percent or more of the outstanding securities of the money market fund.

(d) *Definitions.* (1) *Investment company* includes a company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

(2) *Money market fund* means:

(i) An open-end management investment company registered under the Act that is regulated as a money market fund under § 270.2a–7; or

(ii) A company that would be an investment company under section 3(a) of the Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)) and that:

(A) Is limited to investing in the types of securities and other investments in which a money market fund may invest under § 270.2a–7; and

(B) Undertakes to comply with all the other requirements of § 270.2a–7, except that, if the company has no board of directors, the company's investment adviser performs the duties of the board of directors.

**§ 270.12d1–2 Exemptions for investment companies relying on section 12(d)(1)(G) of the Act.**

(a) *Exemption to acquire other securities.* Notwithstanding section 12(d)(1)(G)(i)(II) of the Act (15 U.S.C. 80a–12(d)(1)(G)(i)(II)), a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act (15 U.S.C. 80a–12(d)(1)(G)) to acquire securities issued by another registered investment company that is in the same group of investment companies may acquire, in addition to Government securities and short-term paper:

(1) Securities issued by an investment company, other than securities issued by another registered investment company that is in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(A) or 80a–12(d)(1)(F));

(2) Securities (other than securities issued by an investment company); and

(3) Securities issued by a money market fund, when the acquisition is in reliance on § 270.12d1–1.

(b) *Definitions.* For purposes of this section, money market fund has the same meaning as in § 270.12d1–1(d)(2).

**§ 270.12d1–3 Exemptions for investment companies relying on section 12(d)(1)(F) of the Act.**

(a) *Exemption from sales charge limits.* A registered investment company (''acquiring fund'') that relies on section 12(d)(1)(F) of the Act (15 U.S.C. 80a–12(d)(1)(F)) to acquire securities issued by an investment company (''acquired fund'') may offer or sell any security it issues through a principal underwriter or otherwise at a public offering price that includes a sales load of more than 1½ percent if any sales charges and service fees charged with respect to the acquiring fund's securities do not exceed the limits set forth in rule 2830 of the Conduct Rules of the NASD applicable to a fund of funds.

(b) *Definitions.* For purposes of this section, the terms *fund of funds,* sales charge, and *service fee* have the same meanings as in rule 2830(b) of the Conduct Rules of the NASD.

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 4. The authority citation for part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

5. Form N–1A (referenced in §§ 239.15A and 274.11A), Item 3, is amended by adding paragraph (f) to Instruction 3 to read as follows:

**Note:** The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–1A**

* * * * *

Item 3. Risk/Return Summary: Fee Table

* * * * *

*Instructions*

* * * * *

*3. Annual Fund Operating Expenses.*

* * * * *

(f)(i) If the Fund (unless it is a Feeder Fund) invests in shares of one or more Acquired Funds, add a subcaption to the ''Annual Fund Operating Expenses'' portion of the table directly above the subcaption titled ''Total Annual Fund Operating Expenses.'' Title the additional subcaption: ''Acquired Fund Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds. For purposes of this item, an ''Acquired Fund'' means any company in which the Fund invests or has invested during the relevant fiscal period that (A) is an investment company or (B) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)). If a Fund uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Fund as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Fund, the Fund may include these fees and expenses under the subcaption ''Other Expenses'' in lieu of this disclosure requirement.

(ii) Determine the ''Acquired Fund Fees and Expenses'' according to the following formula:

$$\text{AFFE} = \frac{\left[(F_1/FY)*AI_1*D_1\right]+\left[(F_2/FY)*AI_2*D_2\right]+\left[(F_3/FY)*AI_3*D_3\right]+\text{Transaction Fees}+\text{Incentive Allocations}}{\text{Average Net Assets of the Fund}}$$

Where:

AFFE = Acquired Fund fees and expenses;

$F_1$, $F_2$, $F_3$, . . . = Total annual operating expense ratio for each Acquired Fund;

FY = Number of days in the relevant fiscal year.

$AI_1$, $AI_2$, $AI_3$, . . = Average invested balance in each Acquired Fund;

$D_1$, $D_2$, $D_3$, . . . = Number of days invested in each Acquired Fund; and

''Transaction Fees'' = The total amount of sales loads, redemption fees, or other transaction fees paid by the Fund in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year.

''Incentive Allocations'' = Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate) based on a percentage of the Acquiring Fund's income, capital gains and/or appreciation in the Acquired Fund.

(iii) Calculate the average net assets of the Fund for the most recent fiscal year, as provided in Item 8(a) (*see* Instruction 4 to Item 8(a)).

(iv) The total annual operating expense ratio used for purposes of this calculation ($F_1$) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Fund. For purposes of this instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors; and (ii) Acquired Fund expenses do not include expenses (*i.e.*, performance fees) that are incurred solely upon the realization and/or distribution of a gain. If an Acquired Fund has no operating history, include in the Acquired Funds' expenses any fees payable to the Acquired Fund's investment adviser or its affiliates stated in the Acquired Fund's registration statement, offering memorandum or other similar communication without giving effect to any performance.

(v) To determine the average invested balance ($AI_1$), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Fund (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(vi) A New Fund should base the Acquired Fund fees and expenses on assumptions as to the specific Acquired Funds in which the New Fund expects to invest. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

(vii) The Fund may clarify in a footnote to the fee table that the total annual fund operating expenses under Item 3 do not correlate to the ratio of expenses to average net assets given in response to Item 8, which reflects the operating expenses of the Fund and does not include Acquired Fund fees and expenses.

* * * * *

6. Form N–2 (referenced in §§ 239.14 and 274.11a–1), Item 3, paragraph 1, is amended by:

a. Redesignating Instruction 10 titled ''Example'' as Instruction 11; and

b. Adding new Instruction 10. The addition reads as follows:

**Note:** The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM N–2**

* * * * *

Item 3. Fee Table and Synopsis

1. * * *

*Instructions:*

* * * * *

10. a. If the Registrant invests, or intends to invest based upon the anticipated net proceeds of the present offering, in shares of one or more ''Acquired Funds,'' add a subcaption to the ''Annual Expenses'' portion of the table directly above the subcaption titled ''Total Annual Expenses.'' Title the additional subcaption: ''Acquired Fund Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds. For purposes of this item, an ''Acquired Fund'' means any company in which the Registrant invests or intends to invest (A) that is an investment company or (B) that would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)). If a Registrant uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Registrant, the Registrant may include these fees and expenses under the subcaption ''Other Expenses'' in lieu of this disclosure requirement.

b. Determine the ''Acquired Fund Fees and Expenses'' according to the following formula:

$$\text{AFFE} = \frac{\left[(F_1/FY)*AI_1*D_1\right]+\left[(F_2/FY)*AI_2*D_2\right]+\left[(F_3/FY)*AI_3*D_3\right]+\text{Transaction Fees}+\text{Incentive Allocations}}{\text{Average Net Assets of the Registrant}}$$

Where:

AFFE = Acquired Fund fees and expenses;

F1, F2, F3, . . . = Total annual operating expense ratio for each Acquired Fund;

FY = Number of days in the relevant fiscal year.

$AI_1$, $AI_2$, $AI_3$, . . . =Average invested balance in each Acquired Fund;

D1, D2, D3, . . . = Number of days invested in each Acquired Fund;

''Transaction Fees''= The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year; and

''Incentive Allocations''= Any allocation of capital from the Acquiring Fund to the adviser of the Acquired Fund (or its affiliate) based on a percentage of the Acquiring Fund's income, capital gains and/or appreciation in the Acquired Fund.

c. Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4.1 (*see* Instruction 15 to Item 4.1) and include the anticipated net proceeds of the present offering.

d. The total annual operating expense ratio used for purposes of this calculation ($F_1$) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Registrant. If the Registrant has a written fee agreement with the Acquired Fund that would affect the ratio of expenses to average net assets as disclosed in the Acquired Fund's most recent shareholder report, the Registrant should determine the ratio of expenses to average net assets for the Acquired Fund's most recent fiscal period using the written fee agreement. For purposes of this instruction: (i) Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors; and (ii) Acquired Fund expenses do not include any expenses (*i.e.*, performance fees) that are calculated solely upon the realization and/or distribution of gains, or the sum of the realization and/or distribution of gains and unrealized appreciation of assets distributed in-kind. If an Acquired Fund has no operating history, include in the Acquired Funds' expenses any fees payable to the Acquired Fund's investment adviser or its affiliates stated in the Acquired Fund's registration statement, offering memorandum or other similar communication without giving effect to any performance.

e. If a Registrant has made investments in the most recent fiscal year, to determine the average invested balance ($AI_1$), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.*, if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

f. For investments based upon the anticipated net proceeds from the present offering, base the ''Acquired Fund Fees and Expenses'' on: (i) Assumptions about specific funds in which the Registrant expects to invest, (ii) estimates of the amount of assets the Registrant expects to invest in each of those Acquired Funds, and (iii) an assumption that the investment was held for all of the Registrant's most recent fiscal year and was subject to the Acquired Funds' fees and expenses for that year. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

g. If an Acquired Fund charges an Incentive Allocation or any other fee based on income, capital gains and/or appreciation (*i.e.*, performance fee), the Registrant must include a footnote to the ''Acquired Fund Fees and Expenses'' subcaption that: (i) Discloses the typical Incentive Allocation or such other fee (expressed as a percentage) to be paid to the investment advisers of the Acquired Funds (or an affiliate); (ii) discloses that Acquired Funds' fees and expenses are based on historic fees and expenses; and (iii) states that future Acquired Funds' fees and expenses may be substantially higher or lower because certain fees are based on the performance of the Acquired Funds, which may fluctuate over time.

h. If the Registrant is a Feeder Fund, reflect the aggregate expenses of the Feeder Fund and the Master Fund in the ''Acquired Fund Fees and Expenses.'' The aggregate expenses of the Master-Feeder Fund must include the fees and expenses incurred indirectly by the Feeder Fund as a result of the Master Fund's investment in shares of one or more companies (A) that are investment companies or (B) that would be investment companies under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)). For purposes of this instruction, a ''Master-Feeder Fund'' means a two-tiered arrangement in which one or more investment companies registered under the 1940 Act (each a ''Feeder Fund'') holds shares of a single management investment company registered under the 1940 Act (the ''Master Fund'') in accordance with section 12(d)(1)(E) of the 1940 Act [15 U.S.C. 80a–12(d)(1)(E)].

i. The Registrant may clarify in a footnote to the fee table that the total annual expenses item under Item 3.1 is different from the ratio of expenses to average net assets given in response to Item 4.1, which reflects the operating expenses of the Registrant and does not include Acquired Fund fees and expenses.

* * * * *

7. Form N–3 (referenced in §§ 239.17a and 274.11b), Item 3(a), is amended by:

a. In Instruction 16(a), revising the phrase in the third sentence ''Instructions 18(b), 19(e) and 19(f)'' to read ''Instructions 18(b), 19(f), 20(e), and 20(f)''';

b. Redesignating Instruction 19 titled ''Example'' as Instruction 20; and

c. Adding new Instruction 19.

The addition reads as follows:

**Note:** The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM N–3**

* * * * *

Item 3. Synopsis or Highlights

(a) * * *

*Instructions:*

* * * * *

19. (a) If the Registrant invests in shares of one or more Acquired Funds,

add a subcaption to the ''Annual Expenses'' portion of the table directly above the subcaption titled ''Total Annual Expenses.'' Title the additional subcaption: ''Acquired Fund Fees and Expenses.'' Disclose in the subcaption fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds. For purposes of this Item, an ''Acquired Fund'' means any company in which the Fund invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)). If a Registrant uses another term in response to other requirements of this Form to refer to Acquired Funds, it may include that term in parentheses following the subcaption title. In the event the fees and expenses incurred indirectly by the Registrant as a result of investment in shares of one or more Acquired Funds do not exceed 0.01 percent (one basis point) of average net assets of the Registrant, the Registrant may include these fees and expenses under the subcaption ''Other Expenses'' in lieu of this disclosure requirement.

(b) Determine the ''Acquired Fund Fees and Expenses'' according to the following formula:

$$\text{AFFE} = \frac{\left[(F_1/FY)*AI_1*D_1\right]+\left[(F_2/FY)*AI_2*D_2\right]+\left[(F_3/FY)*AI_3*D_3\right]+\text{Transaction Fees}}{\text{Average Net Assets of the Fund}}$$

Where:

AFFE = Acquired Fund fees and expenses;

$F_1$, $F_2$, $F_3$, ... = Total annual operating expense ratio for each Acquired Fund;

FY = Number of days in the relevant fiscal year.

$AI_1$, $AI_2$, $AI_3$, ... = Average invested balance in each Acquired Fund;

$D_1$, $D_2$, $D_3$, ... = Number of days invested in each Acquired Fund; and

''Transaction Fees'' = The total amount of sales loads, redemption fees, or other transaction fees paid by the Registrant in connection with acquiring or disposing of shares in any Acquired Funds during the most recent fiscal year.

(c) Calculate the average net assets of the Registrant for the most recent fiscal year, as provided in Item 4(a) (*see* Instruction 10 to Item 4(a)).

(d) The total annual operating expense ratio used for purposes of this calculation ($F_1$) is the annualized ratio of operating expenses to average net assets for the Acquired Fund's most recent fiscal period as disclosed in the Acquired Fund's most recent shareholder report. If the ratio of expenses to average net assets is not included in the most recent shareholder report or the Acquired Fund is a newly formed fund that has not provided a shareholder report, then the ratio of expenses to average net assets of the Acquired Fund is the ratio of total annual operating expenses to average annual net assets of the Acquired Fund for its most recent fiscal period as disclosed in the most recent communication from the Acquired Fund to the Registrant. For purposes of this instruction, Acquired Fund expenses include increases resulting from brokerage service and expense offset arrangements and reductions resulting from fee waivers or reimbursements by the Acquired Funds' investment advisers or sponsors.

(e) To determine the average invested balance ($AI_1$), the numerator is the sum of the amount initially invested in an Acquired Fund during the most recent fiscal year (if the investment was held at the end of the previous fiscal year, use the amount invested as of the end of the previous fiscal year) and the amounts invested in the Acquired Fund no less frequently than monthly during the period the investment is held by the Registrant (if the investment was held through the end of the fiscal year, use each month-end through and including the fiscal year-end). Divide the numerator by the number of measurement points included in the calculation of the numerator (*i.e.,* if an investment is made during the fiscal year and held for 3 succeeding months, the denominator would be 4).

(f) A New Registrant should base the ''Acquired Fund Fees and Expenses'' on assumptions as to the specific Acquired Funds in which the New Registrant expects to invest. Disclose in a footnote to the table that Acquired Fund fees and expenses are based on estimated amounts for the current fiscal year.

(g) The Registrant may clarify in a footnote to the fee table that the total annual expenses under Item 3 are different from the ratio of expenses to average net assets given in response to Item 4, which reflects the operating expenses of the Registrant and does not include Acquired Fund fees and expenses.

* * * * *

8. Form N–4 (referenced in §§ 239.17b and 274.11c), Item 3, is amended by adding a sentence at the end of Instruction 17(a) to read as follows:

**Note:** The text of Form N–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–4**

* * * * *

Item 3. Synopsis

* * * * *

*Instructions:*

* * * * *

17. (a) * * * If any Portfolio Company invests in shares of one or more Acquired Funds, ''Total Annual [Portfolio Company] Operating Expenses'' for the Portfolio Company must also include fees and expenses incurred indirectly by the Portfolio Company as a result of investment in shares of one or more Acquired Funds, calculated in accordance with Instruction 3(f) to Item 3 of Form N–1A (17 CFR 239.15A; 17 CFR 274.11A). For purposes of this paragraph, an Acquired Fund means any company in which the Portfolio Company invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the 1940 Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the 1940 Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

* * * * *

9. Form N–6 (referenced in §§ 239.17c and 274.11d), Item 3, is amended by adding a sentence at the end of Instruction 4(b) to read as follows:

**Note:** The text of Form N–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

**Form N–6**

* * * * *

Item 3. Risk/Benefit Summary: Fee Table

* * * * *

*Instructions:*

* * * * *

*4. Total Annual [Portfolio Company] Operating Expenses.*

* * * * *

(b) * * * If any Portfolio Company invests in shares of one or more Acquired Funds, ''Total Annual [Portfolio Company] Operating Expenses'' for the Portfolio Company must also include fees and expenses incurred indirectly by the Portfolio Company as a result of investment in shares of one or more Acquired Funds, calculated in accordance with Instruction 3(f) to Item 3 of Form N–1A (17 CFR 239.15A; 17 CFR 274.11A). For purposes of this paragraph, an Acquired Fund means any company in which the Portfolio Company invests that (i) is an investment company or (ii) would be an investment company under section 3(a) of the Investment Company Act (15 U.S.C. 80a–3(a)) but for the exceptions to that definition provided for in sections 3(c)(1) and 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)).

* * * * *

By the Commission.

Dated: June 20, 2006.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 06–5650 Filed 6–26–06; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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  - Deep-water grouper; published 6-19-06

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- Interstate transport of fine particulate matter and ozone reduction; response to Section 126 petitions; Acid Rain Program revisions; published 4-28-06

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- Ambient air quality standards, national—
  - Fine particulate matter and ozone; interstate transport control measures; reconsideration; published 4-28-06

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- Preparation, adoption, and submittal—
  - Delaware and New Jersey; published 4-28-06

Air quality implementation plans; approval and promulgation; various States:
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**Food and Drug Administration**

Animal drugs, feeds, and related products:
- Oxytetracycline; published 6-27-06

**LABOR DEPARTMENT**

**Mine Safety and Health Administration**

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- Underground mines—
  - Diesel particulate matter exposure of miners; correction; published 6-27-06

**LIBRARY OF CONGRESS**

**Copyright Office, Library of Congress**

Copyright office and procedures:
- Transfers and licenses termination notices; technical amendment; published 6-27-06

**NUCLEAR REGULATORY COMMISSION**

Nuclear equipment and material; export and import:
- NRC Form 7 application for export/import license, amendment, or renewal; revision; published 4-13-06

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:
- Airbus; published 5-23-06
- Eurocopter France; published 6-12-06
- Rolls-Royce plc; published 5-23-06
- Viking Air Limited; published 5-23-06

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**Commodity Credit Corporation**

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- Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]

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**Food Safety and Inspection Service**

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- Hazard analysis and critical control point (HACCP) system—
  - Ingredients of potential public health concern; proper use; comments due by 7-7-06; published 5-8-06 [FR E6-06743]

**COMMERCE DEPARTMENT**

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**COMMERCE DEPARTMENT**

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  - North American green sturgeon; southern distinct population; comments due by 7-5-06; published 4-7-06 [FR 06-03326]

Fishery conservation and management:
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**Patent and Trademark Office**

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- Fee revisions (2007 FY); comments due by 7-5-06; published 6-5-06 [FR E6-08682]

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  - Downstream oxygenate blending and pipeline interface; refiner and importer quality assurance requirements; comments due by 7-3-06; published 6-2-06 [FR 06-05051]

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- Missouri; comments due by 7-5-06; published 6-5-06 [FR E6-08661]
- Ohio; comments due by 7-3-06; published 6-1-06 [FR 06-05013]

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Pesticides; emergency exemptions, etc.:
- Dimethenamid-p; comments due by 7-3-06; published 5-3-06 [FR 06-04161]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Azoxystrobin; comments due by 7-3-06; published 5-3-06 [FR 06-04157]
- Boscalid; comments due by 7-3-06; published 5-3-06 [FR 06-04158]
- Ethylene glycol monomethyl ether and methylene blue; comments due by 7-3-06; published 5-3-06 [FR E6-06671]
- Flumioxazin; comments due by 7-3-06; published 5-3-06 [FR 06-04159]
- Fomesafen; comments due by 7-3-06; published 5-3-06 [FR 06-04160]
- Glufosinate ammonium; comments due by 7-3-06; published 5-3-06 [FR 06-04162]
- Inert ingredient with insufficient data for reassessment; tolerance exemption revocation; comments due by 7-7-06; published 6-7-06 [FR E6-08826]

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  - Telecommunications relay services and speech-to-speech services; misuse of internet protocol and video relay services; comments due by 7-3-06; published 6-1-06 [FR E6-08489]

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- New York; comments due by 7-3-06; published 5-31-06 [FR E6-08378]

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**National Highway Traffic Safety Administration**

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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**S. 1445/P.L. 109–237**

To designate the facility of the United States Postal Service located at 520 Colorado Avenue in Arriba, Colorado, as the "William H. Emery Post Office". (June 23, 2006; 120 Stat. 506)

**Last List June 19, 2006**

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