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Rules and Regulations

Federal Register
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Thursday, July 6, 2006

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–089–3]

Add Denmark to the List of Regions Free of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to add Denmark to the list of regions considered free of exotic Newcastle disease. This final rule follows an interim rule that removed Denmark from that list due to an outbreak of exotic Newcastle disease in that region. A recent risk analysis indicated that Denmark now meets our requirements for recognition as a region free of exotic Newcastle disease. This rule relieves certain restrictions on the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds from Denmark into the United States.

DATES: Effective Date: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services—Import, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases. The regulations in § 94.6 govern, among other things, the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions where exotic Newcastle disease (END) is considered to exist. END is considered to exist in all regions not listed in § 94.6(a)(2).

In an interim rule effective July 16, 2002, and published in the **Federal Register** on September 20, 2002 (67 FR 59136–59137, Docket No. 02–089–1), we amended the regulations by removing Denmark from the list of regions considered to be free of END. The interim rule was necessary because END had been confirmed in Denmark. The effect of the interim rule was to restrict the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds into the United States from Denmark.

Although we removed Denmark from the list of regions considered free of END, we recognized that Denmark immediately responded to the outbreak of END by imposing restrictions on the movement of poultry and poultry products within its borders and initiating measures to eradicate the disease. We stated that we intended to reassess the situation in the region at a future date, and that as part of that reassessment process, we would consider all comments received regarding the interim rule. We received no comments on the interim rule.

Additionally, we stated that our future assessment would enable us to determine whether it would be necessary to continue to restrict the importation of poultry and poultry products from Denmark, whether we could restore Denmark to the list of regions in which END is not known to exist, or whether we could restore portions of Denmark as free of END.

On May 5, 2005, we published in the **Federal Register** (70 FR 23809–23810, Docket No. 02–089–2) a notice announcing the availability of a risk analysis we had prepared concerning the END status of Denmark and the related disease risks associated with importing carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds from Denmark into the United States.

We solicited public comments concerning the evaluation for 60 days ending July 5, 2005. We received two comments in that time; one from the European Commission (EC) and the other from a group of private individuals. Both commenters raised concerns regarding APHIS procedures for recognizing the disease status of other countries. These concerns are discussed below.

Issue: Both the EC and the private citizens expressed concern about the procedures used by APHIS in first removing and then reinstating Denmark from the list of END free regions. The private citizens expressed concern that there was a 2-month difference between the detection of the outbreak and the publication of the interim rule in 2002. The EC stated that the United States has been unacceptably slow in returning Denmark to the list of END free regions, as the EC considered Denmark to be END free as of March 1, 2003. Furthermore, the EC stated that the present APHIS rulemaking process is not in compliance with the OIE Terrestrial Animal Health Code Article 2.7.13.2 or with agreements between the United States and the EC regarding regionalization of the European Union (EU).

Response: We are required to adhere to certain procedures in establishing or amending regulations, including actions regarding the animal health status of a region. Our policy in situations in which a region experiences a disease outbreak is to issue an immediate administrative ban on imports from an affected region and then follow with the rulemaking process required by the Administrative Procedure Act; the interim rule may be given an effective date earlier than the date of the rule's signature or publication to affirm our authority for issuing previous administrative orders. In this case, a port alert instructing APHIS port offices to refuse any shipment of poultry or poultry products from Denmark that did not meet the requirements for poultry or poultry products from regions affected with END was issued on July 31, 2002. This action applied retroactively to shipments received on or after July 16, 2002, the day suspicion of the outbreak was initially reported. The interim rule removing Denmark from the list of END-free regions was also made effective retroactively to July 16, 2002.

We received the request to return Denmark to the list of END-free regions

in April 2004. Once the request was received, we responded by initiating the risk analysis. Some aspects of the information submitted required clarification, and during the review period (after receipt of the original submission) Denmark made a significant change to its END control policy with the implementation of a mandatory vaccination policy. We considered it necessary to acquire additional information to evaluate the effect of this change. We exchanged correspondence on several occasions with the EC and received the requested information on November 26, 2004. On May 5, 2005, we published the notice of availability cited above and invited public review and comment of the risk analysis cited above until July 5, 2005. While we were considering the public comments received, Denmark experienced a single new END outbreak, which was reported on October 21, 2005. We have considered the impact of this situation on the previously published risk analysis, and this final rule reflects that consideration.

Issue: The group of private citizens stated that the focus on live poultry in the risk analysis was misplaced, and the focus should have been on the risk of introducing END through poultry products.

Response: As we explained in the exposure assessment portion of the risk analysis, it was necessary for us to focus on exposure pathways involving live poultry because historically END introductions into the United States have been associated with the importation of live birds. Live birds were, therefore, considered a higher risk pathway than the importation of poultry products. Since the risk from live birds was low, the risk from poultry products should also be low.

Issue: The group of private citizens asked for clarification of the process APHIS uses in adding and removing countries on the list in § 94.6(a)(2) of the regulations. They also asked for more information on the procedures that APHIS uses to rank risk.

Response: The regulatory process we use to recognize the animal health status of a region or to reestablish a region's disease-free status after an outbreak is detailed in 9 CFR part 92. General information on determining animal disease status and risk assessment can be found online at the Veterinary Services Regionalization Evaluation Services Staff Web site, *http://www.aphis.usda.gov/vs/ncie/reg-request.html*. The informational document ''Process for Foreign Animal Disease Status Evaluations, Regionalization, Risk Analysis, and Rulemaking,'' which describes the process APHIS follows when conducting foreign animal disease status evaluation, regionalization, risk analysis, and related rulemaking, is available to the public through that Web site by clicking on the document title at the bottom of the page.

Issue: The private citizens stated that APHIS should have made a site visit to Denmark to evaluate the END status of the region.

Response: We disagree. As we explained in the risk analysis, prior to the outbreaks in 2002, the United States had a long history of trade of poultry and poultry products with Denmark. Denmark, as a country and as a Member State of the EU, has previously been evaluated for END and other animal diseases. We have maintained contact with Danish veterinary authorities who keep us advised of animal disease conditions in their country. Furthermore, the EU system for animal disease control for classical swine fever has been extensively evaluated by APHIS and provides additional confidence in the EU veterinary infrastructure. The document referenced above, ''Process for Foreign Animal Disease Status Evaluations, Regionalization, Risk Analysis, and Rulemaking,'' describes circumstances when a site visit may not be deemed necessary for an evaluation. Accordingly, we concluded that a document review was sufficient for the needs of the risk analysis.

As noted previously, while we were reviewing these comments and preparing its response, Denmark experienced a new outbreak of END in a single flock. We monitored the situation and evaluated the information provided by Danish veterinary authorities and have concluded that the outbreak was limited to a single flock, which was depopulated, and that the outbreak has successfully been contained and eradicated. Denmark has lifted all protective measures as of December 4, 2005. We consider this isolated outbreak to be consistent with the conclusions stated in the previously released risk analysis.

Therefore, for the reasons given in this document and based on our risk analysis, we are amending § 94.6 in this final rule to add Denmark to the list of regions considered free of END.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the regulations by adding Denmark to the list of regions considered free of END. We are taking this action because Denmark has met our requirements for recognition as a region free of END. This action relieves restrictions on the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Denmark which are no longer warranted.

Denmark produced 412 million pounds (equivalent to about 1.2 percent of U.S. production) and exported 250 million pounds (equivalent to about 0.7 percent of U.S. production) of poultry meat in 2005. The United States is the world's largest producer and exporter of poultry meat. In 2005, U.S. poultry meat production totaled 35.3 billion pounds, of which 84.3 percent was broiler meat, 12.4 percent was turkey meat, and 3.3 percent was other chicken meat. During the same period, the United States exported 6 billion pounds of poultry meat valued at $2.5 billion.

In theory, if poultry available for consumption in U.S. markets increases, poultry prices would decrease, U.S. consumers of poultry would benefit, and U.S. producers would be harmed. U.S. freight forwarding, trucking, and transport firms that transport poultry from U.S. ports could benefit from increased economic activity. However these impacts are expected to be negligible because the amounts of poultry products produced in Denmark are a small fraction of U.S. production. Denmark has a well established world-wide market and is unlikely to divert its exports from these markets to the more distant U.S. market.

The Small Business Administration (SBA) has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. This rule would mainly affect poultry farms (North American Industry Classification System [NAICS] code 112320). According to the 2002 Census of Agriculture, there are 83,381 poultry farms that produce broilers and other meat type chickens. These facilities are considered to be small if their annual receipts are not more than $750,000. Over 93 percent of these operations are considered to be small. Any effects of the rule for U.S. producers will be negligible. Other entities that could theoretically be affected include U.S. trucking firms (NAICS code 4842302), U.S. freight forwarders (NAICS code 4885101), and deep sea freight transport companies (NAICS code 483111). The SBA classifies trucking firms as small if their annual receipts are less than $21.5

million; freight forwarding firms are small if their annual receipts are less than $6 million, and deep sea freight transport firms are small if they have not more than 500 workers. According to the 2002 Economic Census, there were 9,177 trucking firms, 5,840 freight forwarders, and 383 deep sea freight transport companies. Over 99 percent of trucking firms, 90 percent freight forwarders, and 70 percent of deep sea freight transport firms are considered to be small. Although the majority of these establishments are small entities, the effect of this rule will be negligible.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

■ 2. In § 94.6, paragraph (a)(2) is amended by adding the word ''Denmark,'' before the word ''Fiji.''

Done in Washington, DC, this 29th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–10555 Filed 7–5–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Betamethasone Valerate, Clotrimazole Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Altana Inc. The ANADA provides for veterinary prescription use of gentamicin sulfate, betamethasone valerate, clotrimazole ointment for the treatment of canine otitis externa.

DATES: This rule is effective July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, e-mail: *daniel.benz@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Altana Inc., 60 Baylis Rd., Melville, NY 11747, filed ANADA 200–283 that provides for veterinary prescription use of VETRO–MAX (gentamicin sulfate, USP; betamethasone valerate, USP; and clotrimazole, USP, ointment) for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin. Altana Inc.'s VETRO–MAX Otic Ointment is approved as a generic copy of Schering-Plough Animal Health Corp.'s OTOMAX Ointment approved under NADA 140–896. The ANADA is approved as of June 1, 2006, and the regulations are amended in 21 CFR 524.1044g to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 524

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 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

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

■ 2. In § 524.1044g, add paragraph (b)(4) to read as follows:

§ 524.1044g Gentamicin sulfate, betamethasone valerate, clotrimazole ointment.

* * * * *

(b) * * *

(4) No. 025463 for use of 7.5- or 15-g tubes, or 215-g bottles.

* * * * *

Dated: June 22, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–10496 Filed 7–5–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Corporate Distributions and Adjustments

CFR Correction

In Title 26 of the Code of Federal Regulations, part 1 (§§ 1.301 to 1.400),

revised as of April 1, 2006, on page 10, § 1.301–1 is corrected by adding paragraph (g) to read as follows:

§ 1.301–1 Rules applicable with respect to distributions of money and other property.

* * * * *

(g) *Reduction for liabilities*—(1) *General rule.* For the purpose of section 301, no reduction shall be made for the amount of any liability, unless the liability is assumed by the shareholder within the meaning of section 357(d).

(2) *No reduction below zero.* Any reduction pursuant to paragraph (g)(1) of this section shall not cause the amount of the distribution to be reduced below zero.

(3) *Effective dates*—(i) *In general.* This paragraph (g) applies to distributions occurring after January 4, 2001.

(ii) *Retroactive application.* This paragraph (g) also applies to distributions made on or before January 4, 2001, if the distribution is made as part of a transaction described in, or substantially similar to, the transaction in Notice 99-59 (1999-2 C.B. 761), including transactions designed to reduce gain (see § 601.601(d)(2) of this chapter). For rules for distributions on or before January 4, 2001 (other than distributions on or before that date to which this paragraph (g) applies), see rules in effect on January 4, 2001 (see § 1.301-1(g) as contained in 26 CFR part 1 revised April 1, 2001).

[FR Doc. 06–55522 Filed 7–5–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9262]

RIN 1545–BF57

Computer Software Under Section 199(c)(5)(B); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to temporary regulations (TD 9262) that were published in the **Federal Register** on Thursday, June 1, 2006 (71 FR 31074) concerning the application of section 199 of the Internal Revenue Code, which provides a deduction for income attributable to domestic production activities, to certain transactions involving computer software.

DATES: These corrections are effective June 1, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Handleman or Lauren RossTaylor, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 199 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (TD 9262) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.199–3T [Corrected]

■ **Par. 2.** Section 1.199–3T is amended by revising paragraphs (i)(6)(iii) introductory text and *Example 5* to read as follows:

§ 1.199–3T Domestic production gross receipts (temporary).

* * * * *

(i) * * *

(6) * * *

(iii) *Exceptions.* Notwithstanding paragraph (i)(6)(ii) of this section, if a taxpayer derives gross receipts from providing to customers computer software MPGE in whole or in significant part by the taxpayer within the United States for the customers' direct use while connected to the Internet (online software), then such gross receipts will be treated as being derived from the lease, rental, license, sale, exchange, or other disposition of computer software only if—

* * * * *

Example 5. The facts are the same as in *Example 4,* except that O does not sell the tax preparation computer software to customers affixed to a compact disc or by download and O's only method of providing the tax preparation computer software to customers is over the Internet. P, an unrelated person, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of P's substantially identical tax preparation computer software that has been affixed to a compact disc as well as from the sale to customers of P's substantially identical tax preparation computer software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, O's gross receipts derived from providing its tax preparation computer software to customers over the Internet will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of § 1.199–3 are met).

* * * * *

§ 1.199–8T [Corrected]

■ **Par. 3.** Section 1.199–8T is amended by revising paragraph (i)(4) to read as follows:

§ 1.199–8T Other rules (temporary).

(i) * * *

(4) *Computer software.* Section 1.199–3T(i)(6)(ii) through (v) are applicable for taxable years beginning on or after June 1, 2006. Taxpayers may apply these temporary regulations to taxable years beginning after December 31, 2004, and before June 1, 2006. The applicability of § 1.199–3T(i)(6)(ii) through (v) expires on or before May 22, 2009.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–10245 Filed 7–5–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9267]

RIN 1545–BE02

Disclosure of Return Information to the Bureau of Economic Analysis

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations regarding additional items of return information disclosable to the Bureau of Economic Analysis (Bureau) of the Department of Commerce. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective July 6, 2006. Applicability Date: For dates of applicability, see § 301.6103(j)(1)–1T(f).

FOR FURTHER INFORMATION CONTACT: Joel D. McMahan, (202) 622–4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1)(B) of the Internal Revenue Code (Code), upon written request from the Secretary of Commerce, the Secretary of the Treasury shall furnish to the Bureau return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring of national economic accounts and conducting related statistical activities authorized by law. This document adopts temporary regulations that authorize the IRS to disclose the additional items of return information that have been requested by the Department of Commerce for purposes related to measuring economic change in the U.S. national economic accounts.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) under Code section 6103(j)(1)(B). The temporary regulations contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring national economic accounts and conducting related statistical activities authorized by law.

Explanation of Provisions

By letter dated December 18, 2003, the Department of Commerce requested that additional items of return information be disclosed to the Bureau for purposes related to measuring economic change in the U.S. national economic accounts. Specifically, the Department of Commerce requested access to return information, obtained from all corporate returns, not just those processed by the IRS's Statistics of Income Division for its corporate sample file. Under this temporary regulation, the IRS will disclose to the Bureau's officers and employees designated items of return information from returns filed by all corporations.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Draft Information

The principal author of these temporary regulations is Joel D. McMahan, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(j)(1)–1T also issued under 26 U.S.C. 6103(j)(1), * * *

■ **Par. 2.** Section 301.6103(j)(1)–1 is amended by revising paragraphs (c) introductory text to read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(c) * * * (1) [Reserved]. For further guidance, see § 301.6103(j)(1)–1T(c).

* * * * *

■ **Par. 3.** Section 301.6103(j)(1)–1T is revised to read as follows:

§ 301.6103(j)(1)–1T Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).

(a) and (b) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(a) and (b).

(c) *Disclosure of return information reflected on returns of corporations to officers and employees of the Bureau of Economic Analysis.*

(1) The Internal Revenue Service will disclose to officers and employees of the Bureau of Economic Analysis for purposes of, but only to the extent necessary in, conducting and preparing statistical analyses, as authorized by law, all return information from the Statistics of Income sample, including edited information and regardless of format or medium, of designated classes or categories of corporations with respect to the tax imposed by chapter 1 of the Internal Revenue Code.

(2) [Removed and Reserved]

(3) The Internal Revenue Service will disclose the following return information reflected on returns filed by corporations to officers and employees of the Bureau of Economic Analysis:

(i) From the business master files of the Internal Revenue Service—

(A) Taxpayer identity information (as defined in section 6103(b)(6) of the Internal Revenue Code) with respect to corporate taxpayers;

(B) Business or industry activity codes;

(C) Filing requirement code; and

(D) Physical location.

(ii) From Form SS–4 filed by an entity identifying itself on the form as a corporation or a private services corporation—

(A) Taxpayer identity information (as defined in section 6103(b)(6), including legal, trade, and business name);

(B) Physical location;

(C) State or Country of incorporation;

(D) Entity Type (Corporate only);

(E) Estimated highest number of employees expected in the next 12 months;

(F) Principal activity of the business;

(G) Principal line of merchandise;

(H) Posting cycle date relative to filing; and

(I) Document code.

(iii) From an employment tax return filed by a corporation—

(A) Taxpayer identity information (as defined in section 6103(b)(6));

(B) Total compensation reported;

(C) Taxable wages paid for purposes of Chapter 21 to each employee;

(D) Master file tax account code (MFT);

(E) Total number of individuals employed in the taxable period covered by the return;

(F) Posting cycle date relative to filing;

(G) Accounting period covered; and

(H) Document code.

(iv) From returns of corporate taxpayer, including Forms 1120, 851, and other business returns, schedules and forms that the Internal Revenue Service may issue—

(A) Taxpayer identity information (as defined in section 6103(b)(6)), including that of parent corporation, affiliate or subsidiary, and shareholder;

(B) Gross sales and receipts;
(C) Returns and allowances;
(D) Cost of labor, salaries, and wages;
(E) Total assets;
(F) Posting cycle date relative to filing;
(G) Accounting period covered;
(H) Master file tax account code (MFT);
(I) Document code; and
(J) Principal industrial activity code.
(d) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(d).
(e) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(e).
(f) Effective date. This section is applicable to disclosures to the Bureau of Economic Analysis on or after July 6, 2006.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.
Approved: June 5, 2006.
Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury (Tax Policy).
[FR Doc. E6–9556 Filed 7–5–06; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1531–F]

RIN 0938–AO35

Medicare Program; Revision of the Deadline for Submission of Emergency Graduate Medical Education Affiliation Agreements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments on and revises the deadline for submission of the 2006 emergency Medicare graduate medical education (GME) affiliation agreements. The deadlines to submit the emergency Medicare GME affiliation agreements for the 2005 through 2006 and 2006 through 2007 academic years are changed from on or before June 30, 2006 and July 1, 2006, respectively, to on or before October 9, 2006.

DATES: These regulations are effective on June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Elizabeth Truong, (410) 786–6005.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory History

The stated purpose of section 1135 of the Social Security Act (the Act) is to enable the Secretary to ensure, to the maximum extent feasible, in any emergency area and during an emergency period, that sufficient health care items and services are available to meet the needs of enrollees in Medicare, Medicaid, and the State Children's Health Insurance Program (SCHIP). Section 1135 of the Act authorizes the Secretary, to the extent necessary to accomplish the statutory purpose, to temporarily waive or modify the application of certain types of statutory and regulatory provisions (such as conditions of participation or other certification requirements, program participation or similar requirements, or pre-approval requirements) with respect to health care items and services furnished by health care provider(s) in an emergency area during an emergency period.

The Secretary's authority under section 1135 of the Act arises in the event there is an ''emergency area'' and continues during an ''emergency period'' as those terms are defined in the statute. Under section 1135(g) of the Act, an emergency area is a geographic area in which there exists an emergency or disaster that is declared by the President according to the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and a public health emergency declared by the Secretary according to section 319 of the Public Health Service Act. (Section 319 of the Public Health Service Act authorizes the Secretary to declare a public health emergency and take the appropriate action to respond to the emergency, consistent with existing authorities.) Throughout the remainder of this discussion, we will refer to such emergency areas and emergency periods as ''section 1135'' emergency areas and emergency periods.

When Hurricane Katrina occurred on August 29, 2005, disrupting health care operations and medical residency training programs at teaching hospitals in New Orleans and the surrounding area, the conditions were met for an emergency area and emergency period under section 1135(g) of the Act. Under section 1135 of the Act, the Secretary was then authorized to waive a number of provisions to ensure that sufficient services would be available in the section 1135 emergency area to meet the needs of Medicare, Medicaid, and SCHIP patients. Shortly after Hurricane Katrina occurred, we were informed by hospitals in New Orleans that the training programs at many teaching hospitals in the city were closed or partially closed as a result of the disaster and that the displaced residents were being transferred to training programs at host hospitals in other parts of the country. For purposes of discussion in this rule, a host hospital is a hospital that trains residents displaced from a training program in a section 1135 emergency area. A home hospital is a hospital that meets all of the following: (1) Is located in a section 1135 emergency area, (2) had its inpatient bed occupancy decreased by 20 percent or more due to the disaster so that it is unable to train the number of residents it originally intended to train in that academic year, and (3) needs to send the displaced residents to train at a host hospital.

In the April 12, 2006 **Federal Register** (71 FR 18654), we published an interim final rule with comment period to modify the Graduate Medical Education (GME) regulations as they apply to Medicare GME affiliations to provide for greater flexibility during times of disaster. Specifically, the interim final rule implemented the emergency Medicare GME affiliated group provisions to address issues that may be faced by certain teaching hospitals in the event that residents who would otherwise have trained at a hospital in an emergency area (as that term is defined in section 1135(g) of the Social Security Act (the Act)) are relocated to alternate training sites. To provide home hospitals with more flexibility to train displaced residents at various sites, and to allow host hospitals to count displaced residents for IME and direct GME, home hospitals may enter into emergency Medicare GME affiliation agreements effective retroactive to the date of the first day of the section 1135 emergency period.

B. Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a)(3) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final

regulation except under exceptional circumstances.

This final rule finalizes one provision set forth in the April 12, 2006 interim final rule with comment period. In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that the final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

II. Provisions of the Final Rule

In this final rule we are responding to comments regarding the deadline for submission of emergency Medicare GME affiliation agreements and finalizing the provision from the April 12, 2006 interim final rule with comment period, specified at § 413.79(f)(6)(ii), regarding this deadline. We will issue a separate **Federal Register** document to respond to comments received and finalize the other provisions of the April 12, 2006 interim final rule with comment period.

In the April 12 interim final rule with comment period, we specified that for the year during which the section 1135 emergency was declared, each hospital participating in the emergency affiliation must submit a copy of the emergency Medicare GME affiliation agreement, as specified under § 413.79(f)(6), to CMS and the CMS FI servicing each hospital by the later of 180 days after the section 1135 emergency period begins or by June 30 of the relevant training year. The interim final rule also specified that emergency Medicare GME affiliation agreements for the subsequent 2 academic years must be submitted by the later of 180 days after the section 1135 emergency period begins or by July 1 of each of the years. Furthermore, amendments to the emergency Medicare GME affiliation agreement to adjust the distribution of the number of full-time equivalent (FTE) residents in the original emergency Medicare GME affiliation among the hospitals that are part of the emergency Medicare GME affiliated group can be made through June 30 of the academic year for which they are effective.

We received a number of written comments to the interim final rule provision regarding the timely submission of the emergency Medicare GME affiliation agreements. A summary of the comments received on this provision and our responses are as follows:

Comment: Commenters expressed concern that the year 2006 deadlines for submission of the emergency Medicare GME affiliation agreements (that is, June 30, 2006 and July 1, 2006 for the first and second effective years, respectively) are too restrictive and impose a hardship on hospitals that are coping with the destructive effects of Hurricanes Katrina and Rita, which have made even basic daily operations difficult. A commenter noted that the interim final rule with comment period was posted for public display on April 7, 2006, thereby giving hospitals only 84 days to negotiate and finalize agreements that often involve multiple parties and complex calculations to sort out the various cap transfers before the June 30, 2006 deadline.

Response: The June 30 and July 1 dates were selected at the time the interim final rule with comment period was published based on—(1) the current requirements for signing Medicare GME affiliation agreements; (2) the beginning of the academic year for residency programs, and (3) the belief that hospitals training residents were likely to want signed affiliation agreements in effect prior to the beginning of the residency training year. We had drafted the interim final rule with comment period to apply, not only to hospitals affected by the 2005 hurricanes, but to any similarly catastrophic event affecting hospitals in the future. Accordingly, the provision was drafted to allow hospitals until the later of 180 days after the section 1135 emergency period begins or June 30 to submit the emergency affiliation agreement for the academic year during the which the emergency occurs, and until the later of 180 days after the section 1135 emergency period begins or July 1 of the relevant training year to submit the emergency agreement for the subsequent 2 academic years. We now recognize that the hospitals affected by Hurricanes Katrina and Rita had only 79 days from April 12, 2006, the date that the interim final rule with comment period appeared in the **Federal Register**, to finalize their written agreements. This is a far shorter period than 180 days after the section 1135 emergency period began, which is the period allowed by our regulations in the event of future emergencies. We recognize and appreciate that it may not be administratively possible for all home and host hospitals to submit to the appropriate FIs and CMS all emergency Medicare GME affiliation agreements resulting from Hurricanes Katrina and Rita, due on or before June 30, 2006 (for the 2005 through 2006 academic year) and July 1, 2006 (for the 2006 through 2007 academic year) because of the limited timeframe in which the affected hospitals had to negotiate and finalize these agreements.

Therefore, in response to the many requests for an extension on the year 2006 deadlines, in this final rule we are revising § 413.79(f)(6)(ii) to extend the deadline for emergency Medicare GME affiliation agreements that would otherwise by required to be submitted by June 30, 2006 or July 1, 2006 to October 9, 2006, which is 180 days after the April 12, 2006 interim final rule with comment period.

III. Waiver of the Delay in the Effective Date

The Administrative Procedure Act (APA) normally requires a 30-day delay in the effective date of a final rule. This delay may be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons for it in the rule issued. The Secretary is subject to a similar requirement pursuant to section 1871(e)(1)(B) of the Act.

We find that good cause exists to waive the 30-day delay in effective date because it would be contrary to the public interest to delay the effective date of this final rule. We believe that there is an urgent need for the regulation changes provided in this final rule to ensure that hospitals affected by Hurricanes Katrina and Rita do not face dramatic disruptions in their Medicare GME funding, with possible dire effects on their GME programs and financial stability. The existing regulations do not provide adequate time for hospitals to submit their emergency Medicare GME affiliation agreements for the 2005 through 2006 and the 2006 through 2007 academic years.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule does not reach the economic threshold and thus is not considered a major rule. In addition, we expect that there will not be an additional cost to the Medicare program due to our extension of the deadline to submit 2006 emergency Medicare GME affiliation agreements to October 9, 2006.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney disease, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV part 413 as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR ENDSTAGE RENAL DISEASE SERVICES: PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861 (v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww) Sec. 124 of Pub. L. 106–113, 113 Stat. 1515.

Subpart F—Specific Categories of Costs

■ 2. Section 413.79 is amended by revising paragraph (f)(6)(ii) to read as follows:

§ 413.79 Direct GME payments: Determination of the weighted number of FTE residents.

* * * * *

(f) * * *

(6) * * *

(ii) *Deadline for submission of the emergency Medicare GME affiliation agreement.* (A) Except for emergency Medicare GME affiliation agreements that meet the requirements of paragraph (f)(6)(ii)(B) of this section, each participating hospital must submit an emergency Medicare GME affiliation agreement to CMS and submit a copy to its CMS fiscal intermediary by—

(1) *First year.* The later of 180 days after the section 1135 emergency period begins or by June 30 of the academic year in which the section 1135 emergency was declared; or

(2) *Two subsequent academic years.* The later of 180 days after the section 1135 emergency period begins, or by July 1 of each academic year for the 2 subsequent academic years.

(B) For emergency Medicare GME affiliation agreements that would otherwise be required to be submitted by June 30, 2006 or July 1, 2006, each participating hospital must submit an emergency Medicare GME affiliation agreement to CMS and submit a copy to its CMS fiscal intermediary on or before October 9, 2006.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 30, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 30, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–6029 Filed 6–30–06; 4:00 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[FCC 06–89]

Amend the Commission's Rules To Align Oversight of the Universal Service Fund (USF)

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we amend our rules to align oversight of the Universal Service Fund (USF) with the responsibilities of the Office of the Inspector General (OIG) and the Office of the Managing Director (OMD). Specifically, we assign certain audit activities formerly assigned to the Wireline Competition Bureau (WCB), including oversight of the annual part 54 audit of the Universal Service Administrative Corporation (USAC), to the OIG and assign calculation of the quarterly USF contribution factor to OMD. The Commission has in place a number of mechanisms to oversee the USF and its current Administrator, USAC. In this document, we shift responsibility for two of these mechanisms, the annual audit of USAC and calculation of the USF contribution factor, to the OIG and OMD, respectively. These changes better align these USF oversight functions with the divisions within the Commission that can execute them most effectively.

DATES: Effective August 7, 2006.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Office of the Managing Director at (202) 418–0384.

SUPPLEMENTARY INFORMATION:

Adopted: June 20, 2006; Released: June 23, 2006

By the Commission:

1. By this Order, we amend our rules to align oversight of the Universal Service Fund (''USF'') with the responsibilities of the Office of the Inspector General (''OIG'') and the Office of the Managing Director (''OMD''). Specifically, we assign certain audit activities formerly assigned to the Wireline Competition Bureau (''WCB''), including oversight of the annual part 54 audit of the Universal Service Administrative Corporation (''USAC''), to the OIG and assign calculation of the quarterly USF contribution factor to OMD.

2. The Commission has in place a number of mechanisms to oversee the USF and its current Administrator, USAC. In this Order, we shift responsibility for two of these mechanisms, the annual audit of USAC and calculation of the USF contribution factor, to the OIG and OMD, respectively. These changes better align these USF oversight functions with the divisions within the Commission that can execute them most effectively.

3. First, we amend § 54.717 of our rules to give the OIG oversight of the annual USAC audit. Section 54.717 of the Commission's rules requires USAC ''to obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether [USAC] is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse.'' [1] Under the Commission's part 54 rules, the Wireline Competition Bureau (''WCB'') has been the staff unit responsible for overseeing the conduct of the audit. The purpose of this annual audit has been to oversee the operations of the USF Administrator and to safeguard the USF from potential waste, fraud, and abuse. Because a principle purpose of this audit is to deter waste, fraud, and abuse, we amend the Commission's rules to delegate oversight authority to the OIG. This amendment is consistent with the OIG's responsibility to conduct audits of Commission programs [2] and detect and prevent fraud and abuse.[3] As an essential part of this responsibility, we also amend the audit requirements applicable to the part 54 audit of USAC to allow the OIG to determine the type of audit to examine USAC's administration. The Commission's decision adopting the part 54 independent audit requirement specified an agreed upon procedures (''AUP'') form of audit.[4] Although the codified Commission rules do not specify the type of audit, the order establishing the annual independent audit requires the use of an ''agreed-upon procedures'' engagement.[5] We recognize that the OIG may conclude that other types of audits would better assist in carrying out its mission to detect potential waste, fraud, and abuse in the USF. We therefore clarify that, going-forward, the OIG may use whatever type of audit it concludes would be better suited to evaluating USAC and its operations. We also clarify that the OIG may require the use of government auditing standards for these audits.[6]

4. Finally, we revise section 54.709 of our rules to require USAC to submit to the OMD projections of demand for USF support mechanisms, projections of revenue, projections of administrative expenses, and the contribution base. Contributions to the universal service support mechanisms are determined using a quarterly contribution factor calculated by the Commission.[7] We now revise our internal processes to require the OMD, instead of the Wireline Competition Bureau, to calculate the contribution factor and release the public notices pertaining to the contribution factor, consistent with the OMD's general responsibility over the Commission's financial matters.[8] We are therefore revising § 54.709(a)(3) to require USAC to submit the above information to the OMD.

5. The rule amendments adopted in this Order involve rules of agency organization, procedure, or practice. The notice and comment and effective date provisions of the Administrative Procedure Act are therefore inapplicable.[9]

6. Accordingly, *it is ordered,* that pursuant to sections 4(i), 4(j), 5(c), 303(r), 47 U.S.C. 154(i), 154(j), 155(c), 303(r) of the Communications Act of 1934, as amended, 47 CFR part 54 is amended, as set forth below, effective August 7, 2006.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.709 [Amended]

■ 2. In 47 CFR 54.709 (a)(3) remove the words ''Wireline Competition Bureau'' and add in their place, the words ''Office of the Managing Director'' each place it appears.

§ 54.717 [Amended]

■ 3. In 47 CFR 54.717 (a), (b), (c), (d), (e)(1), (e)(2), (f), (g), (h) and (i) remove the words ''Wireline Competition Bureau'' and add in their place, the words ''Office of Inspector General'' each place it appears and in paragraph (k) remove the words ''Chief of the Wireline Competition Bureau'' and add in their place, the words ''Inspector General''.

[FR Doc. E6–10481 Filed 7–5–06; 8:45 am]

BILLING CODE 6712–01–P

[1] 47 CFR 54.717.

[2] 47 CFR 0.13(a).

[3] 47 CFR 0.13(c).

[4] *USAC Order,* 12 FCC Rcd at 18440, paragraph 76. In an agreed-upon procedures attestation engagement, the auditors perform testing to issue a report of findings based on specific procedures performed on subject matter. *See ''Government Auditing Standards,''* section 6.02(c), GAO–03–673G, June 2003.

[5] *See* 47 CFR 54.717(a)–(k).

[6] *See* Application of Generally Accepted Accounting Principles for Federal Agencies and Generally Accepted Government Auditing Standards to the Universal Service Fund, *Order*, 18 FCC Rcd 19911, paragraph 5 (*GovGAAP Order*) (requiring the use of government auditing standards for audits of USF beneficiaries and contributors); *see also* General Accounting Office, Government Auditing Standards: 2003 Revision, GAO–03–673G (June 2003) (''GAGAS Handbook'') (specifying government auditing standards). We note that government auditing standards incorporate the auditing standards of the American Institute of Certified Public Accountants (AICPA). *Id.* at 6.01, 6.05.

[7] 47 CFR 54.709(a). We release a public notice quarterly, *see,* e.g., ''*Proposed First Quarter 2006 Universal Service Contribution Factor,*'' CC Docket No. 96–45, Public Notice, 20 FCC Rcd 19933 (2005).

[8] 47 CFR 0.11(a)(8).

[9] 5 U.S.C. 553(b)(3)(A).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; DA 06–1100]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission, on its own motion, reconsiders a petition for declaratory ruling (*Petition*) filed by Telco Group, Inc. (Telco Group) requesting that the Commission either exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate Telecommunications Relay Service (TRS) Fund (Fund), or in the alternative, waive the portion of Telco Group's contribution based on its international end-user revenues. This action is necessary because the May 2006 Declaratory Ruling addressing Telco Group's *Petition* did not contain an analysis of the complete record.

DATES: Effective May 25, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document does not contain new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). This is a summary of the Commission's document DA 06–1100, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling on Reconsideration, CG Docket No. 03–123, DA 06–1100, adopted May 25, 2006, released May 25, 2006, reconsidering issues raised in Telco Group's Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver (*Petition*), filed July 26, 2004.

The full text of document DA 06–1100 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 06–1100 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 06–1043 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro*.

Synopsis

Background

In its *Petition*, Telco Group requests that the Commission exclude international revenues from the revenue base used to calculate payments due to the Interstate TRS Fund, ''at least for those carriers whose international revenues comprise a significant portion of their total interstate and international revenues,'' or in the alternative, find good cause to waive Telco Group's obligations to the Fund that are based on its international revenues. *Petition* at 1.

Telco Group maintains that such relief is warranted because, in what Telco Group argues is an analogous case involving the Universal Service Fund (USF), the United States Court of Appeals for the Fifth Circuit required the Commission to revisit the USF assessment on the international services revenue of a provider of primarily international services and *de minimis* interstate services. *Petition* at 3 (citing *Texas Office of the Public Utility Counsel* v. *FCC*, 183 F.3d 393 (5th Cir. 1999) (*TOPUC*)). The Court found that requiring a carrier to pay an assessment on its international services revenue that exceeded the carrier's total interstate revenue violated the equitable and nondiscriminatory contribution requirement of the Universal Service statute, Section 254 of the Communications Act, as amended. *TOPUC*, 183 F.3d at 434–435; *see* 47 U.S.C. 254(b)(4). Although the Interstate TRS Fund is governed by Section 225 of the Communications Act, rather than Section 254 of the Communications Act, Telco Group argues that the Interstate TRS Fund contribution rules also are ''designed to be equitable and nondiscriminatory'' and, therefore, the relief afforded in *TOPUC* should be extended to TRS. *Petition* at 4. Telco Group argues that its circumstance is comparable to the *TOPUC* plaintiff because the ''vast majority'' of Telco Group's revenues '' approximately 96 percent '' are derived from international services. *Petition* at 3. Moreover, Telco Group argues the public interest will be served by granting the requested relief because it will ensure Telco Group ''remains as a viable competitor in the market for interstate services.'' *Petition* at 9. Telco Group adds that the ''high payment obligations also hinder Telco Group's ability to compete outside the United States, and so contradict the Commission's efforts to promote and encourage competition in the international and interstate markets.'' *Petition* at 9–10 (citing *2000 Biennial Regulatory Review—Policies and Procedures Concerning the International, Interexchange Marketplace*, IB Docket No. 02–202, Report and Order, 16 FCC Rcd 10647 (March 20, 2001)), published at 66 FR 16874, March 28, 2001.

On October 25, 2004, the Telco Group Petition was place on Public Notice. *Telco Group, Inc. Files Petition for Declaratory Ruling or Waiver to Exclude International Revenues from the Revenue Base Used to Calculate Payment to the Interstate TRS Fund*, CC Docket No. 98–67, Public Notice, 19 FCC Rcd 20965 (October 25, 2004); published at 69 FR 64573, November 5, 2004. Two oppositions were filed, one from a carrier and one from an organization representing the deaf community. Comments were filed by MCI (MCI) (November 26, 2004) and Telecommunications for the Deaf, Inc. (TDI) (November 24, 2004). Late filed comments were filed by Globecomm Systems, Inc. (''GSI'') on February 14, 2006. On that same date, GSI also filed a petition for declaratory ruling that there is no obligation to pay into the Interstate TRS Fund based on revenues arising from traffic that does not originate or terminate in the United States. Globecomm Systems, Inc., Petition for Declaratory Ruling (filed February 14, 2006). Because the issue in the GSI petition—whether certain calls should be considered international calls—is distinct from the issue raised in Telco Group's *Petition*, the

Commission will address GSI's petition in a separate order. Telco Group filed reply comments. Reply of Telco Group, Inc. to Oppositions to Telco Group's Petition for Declaratory Ruling, or in the Alternative, Petition for Waiver (filed December 10, 2004, in CC Docket No. 98–67).

Discussion

Telco Group's *Petition* is premised on the congruence between Section 254 of the Communications Act, which establishes Universal Service requirements, and Section 225 of the Communications Act, which establishes requirements for the provision of TRS. Sections 254 and 225 of the Communications Act, however, differ in fundamental and, in this case, dispositive ways. Unlike USF assessments, contributions to the Interstate TRS Fund are used, in part, to reimburse international relay calls.

Therefore, in this case, the public interest lies in ensuring adequate funding for interstate TRS—including international TRS—by assessing contributions on as broad a revenue base as can be justified. Accordingly, Telco Group's request that the Commission exclude international revenues from the end-user revenue base used to calculate payments due to the Interstate TRS Fund is denied. Because Telco Group has not demonstrated why individualized relief is appropriate, the company's request for waiver of the interstate TRS assessment on international services revenue is also denied.

Unlike the Universal Service Fund, which does not directly support international services but only may be used only to support domestic services, the Interstate TRS Fund is used to support *international* TRS. *See Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, CC Docket No. 90–571, Report and Order and Request for Comments, (*TRS I Order*), 6 FCC Rcd at 4660–4661, paragraph 18, published at 56 FR 36729, August 1, 1991 (discussing comments that relay services should relay international calls that originate or terminate in the United States provided that equipment of the foreign country is compatible with U.S. equipment); *See Telecommunications Relay Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990*, Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, (*TRS III Order*), 8 FCC Rcd at 5301, paragraph 9, note14, published at 58 FR 12204, March 3, 1993 and 58 FR 12175, March 3, 1993 (in adopting rule requiring contributions to the Fund to be based on, *inter alia*, international services, Commission notes Sprint's argument ''that international services should be included because TRS providers will be compensated by the administrator for international TRS minutes of use''). IP Relay service is an exception to this rule. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 19 FCC Rcd 12224, 12242, at paragraph 48, note 121 (June 30, 2004) (noting that the Fund ''does not currently reimburse providers for the costs of providing international calls via IP Relay''); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, Order, 18 FCC Rcd 12823, 12837, at paragraph 42 (June 30, 2003) (noting that in March 2003 NECA was directed to suspend payment to TRS providers for international IP Relay service minutes); *see also 2004 TRS Report and Order*, 19 FCC Rcd at 12525, paragraph 129, published at 69 FR 53346, September 1, 2004 and 69 FR 53382, September 1, 2004 (noting that although Fund does not pay for international IP Relay service calls, it does pay for international Video Relay Service calls).

Therefore, unlike the USF assessments at issue in *TOPUC*, excluding international revenues from the revenue base used for calculating TRS contributions would not serve the public interest. With the TRS Fund, it is not the case—as in *TOPUC*—that a provider of only *de minimis* interstate service may be required to bear a disproportionately heavy burden in subsidizing the provision of such services by other carriers. Contributions to the Interstate TRS Fund based on Telco Group's international services revenue can, in turn, be used to subsidize international TRS. Moreover, Telco Group is required to contribute the same percentage of its interstate and international revenues to the Interstate TRS Fund as other carriers that provide both interstate and international services. Therefore, this approach is both equitable and nondiscriminatory, even as applied to an entity like Telco Group that may largely have international revenues. As MCI notes, ''it would be discriminatory if Telco Group, and other internationally-oriented carriers, were allowed to exclude international revenues from the TRS contribution base. Companies such as MCI, who also earn international revenues by providing international prepaid calling services, as well as other international services, would be required to compete against companies who would have been granted a discriminatory cost advantage were the Commission to grant Telco Group's request.'' Opposition of MCI at 3. *See also* Telco Reply Comments at 2–3 (arguing that the TRS funding mechanism is not equitable and nondiscriminatory *as applied* to Telco Group because it must pay a high proportion of its ''U.S. interstate revenues into the TRS Fund'').

In any event, *TOPUC* is specifically based on the equitable and nondiscriminatory contribution requirement of Section 254 of the Communications Act. Section 254 of the Communications Act states that ''[a]ll providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.'' 47 U.S.C. 254(b)(4). The Court found that requiring COMSAT, a satellite provider of primarily international services along with *de minimis* interstate service offerings, to contribute to the Universal Service Fund based on its international services revenues was inequitable and discriminatory given that COMSAT's contribution based on international services revenue would exceed the company's total interstate revenues. The Court stated that ''the agency's interpretation of 'equitable and nondiscriminatory,' allowing it to impose prohibitive costs on carriers such as COMSAT, is 'arbitrary and capricious' * * * [because] COMSAT and carriers like it will contribute more in universal service payments than they will generate from interstate service.'' *TOPUC*, 183 F.3d at 434–435. Section 225 of the Communications Act, however, contains no such express requirement. In the absence of such language, and particularly because international services are supported by the Interstate TRS Fund, the Commission is not bound by the *TOPUC* decision to reduce or eliminate Interstate TRS Fund assessments on international services for Telco Group or similarly situated providers. With respect to contributions, the only limiting language of Section 225 is jurisdictional in nature. *See* 47 U.S.C. 225(d)(3) (addressing jurisdictional separation of costs). Telco Group also suggests that even if *TOPUC* does not apply in the TRS context, the Commission has the discretion to apply a similar rule for TRS. Telco Reply Comments at 4. The issue presented is

not, however, whether the Commission *could* apply the *TOPUC* principle to TRS, but whether the rule the Commission did adopt for TRS (requiring payments into the Fund based on international revenues) is reasonable and in the public interest. Accordingly, Telco Group's request for a declaratory ruling excluding international services revenue from the interstate contribution base is denied. Telco Group also asserts that because it does not *receive* any TRS funds, and does minimal business in the United States, it should not have to pay into the Fund based on international revenues ''in return for 'benefits' largely and primarily enjoyed by other carriers.'' Telco Reply Comments at 3–4. The obligation to pay into the Fund, however, is not tied to particular benefits contributors may receive from the Fund. Under the rules, a broad range of interstate telecommunications carriers are required to pay into the Fund, regardless of whether they also provide relay services paid for by the Fund or otherwise ''benefit'' directly from the provision of relay service. *See* 47 CFR 64.604(c)(5)(iii)(A) of the Commission's rules.

Telco Group's request for waiver of the interstate TRS assessment on its international services revenue is also denied. Although the Commission may waive a provision of its rules for ''good cause shown,'' 47 CFR 1.3 of the Commission's rules; *see generally 2004 TRS Report and Order*, 19 FCC Rcd at 12520, paragraph 110 (discussing standard for waiving Commission rules), Telco Group's argument rests on the fact that a high percent of its revenues derive from international services and therefore its TRS payment is substantially higher that it would be if international revenues were not included and burdensome. *See also Petition* at 9–10. As noted above, however, because the Fund supports both international and interstate TRS, TRS assessments are based on both international and interstate revenues, and the fact that some contributors have relatively more international revenues, or more interstate revenues, is not relevant to ensuring adequate funding for these services.

Congressional Review Act

The Commission will not send a copy of the *Declaratory Ruling on Reconsideration* pursuant to the Congressional Review Act because the adopted rules are rules of particular applicability. *See* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

Pursuant to the authority contained in Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, and §§ 0.141, 0.361, and 1.108 of the Commission's rules, 47 CFR 0.141, 0.361, and 1.108, the *Declaratory Ruling on Reconsideration* is hereby denied.

Federal Communications Commission.

Monica S. Desai,

Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 06–6012 Filed 6–30–06; 12:30 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. No. 060204C]

Endangered and Threatened Species: Final Listing Determinations for Elkhorn Coral and Staghorn Coral; Correction

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

ACTION: Final rule; correction.

SUMMARY: We, the National Marine Fisheries Service, are correcting a previously published **Federal Register** rule that contained incorrect data. On June 2, 2006, a correction was published in the **Federal Register** to add citations for elkhorn and staghorn corals to the published table of threatened species. The effective date for this correction was inadvertently set for a date prior to the effective date of the final rule to list these corals as threatened under the Endangered Species Act. In addition, the citation for the North American green sturgeon was inadvertently omitted from the table. This rule therefore serves to correct the effective date of the June 2, 2006 rule and to add the citation for green sturgeon to the table of threatened species.

DATES: This correction is effective on July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Marta Nammack or Lisa Manning, (301)713–1401.

SUPPLEMENTARY INFORMATION: In the May 9, 2006, issue of the **Federal Register**, we published a final rule to implement our determination to list elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals as threatened species under the Endangered Species Act (ESA) of 1973. The table printed in this rule contained inadequate data and was subsequently corrected in a June 2, 2006 **Federal Register** Notice. The effective date of this correction, however, was June 2, 2006, which was prior to the effective date for the final rule to list elkhorn and staghorn corals. In addition, the June 2, 2006, correction omitted the citation for the Southern distinct population segment (DPS) of the North American green sturgeon from the table. Therefore in this rule, we seek to correct the effective date of the June 2, 2006 correction and revise the table of threatened species.

In rule document 06–4988 beginning on page 31965 in the issue of Friday, June 2, 2006, make the following corrections:

■ 1. On page 31965, in the third column, under the **DATES** heading, ''June 2, 2006'' should read ''July 7, 2006''.

§ 223.102 [Corrected]

■ 2. On pages 31966 through 31977, correct the table in § 223.102 to read as follows:

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(a) *Marine Mammals*				
(1) Guadalupe fur seal	*Arctocephalus townsendi*	Wherever found U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo)	50 FR 51252; Dec 16, 1985	NA
(2) Steller sea lion	*Eumetopias jubatus*	Eastern population, which consists of all Steller sea lions from breeding colonies located east of 144° W. longitude	55 FR 13488; Apr 10, 1990 55 FR 50006; Dec 4, 1990 62 FR 30772; Jun 5, 1997	58 FR 45278; Aug 27, 1993 64 FR 14067; Mar 23, 1999

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(b) *Sea Turtles*				
(1) Green turtle[2]	*Chelonia mydas*	Wherever found, except where listed as endangered under § 224.101(c); circumglobal in tropical and temperate seas and oceans	43 FR 32808; Jul 28, 1978	63 FR 46701; Sep 2, 1998 64 FR 14067; Mar 23, 1999
(2) Loggerhead turtle[2]	*Caretta caretta*	Wherever found; circumglobal in tropical and temperate seas and oceans	43 FR 32808; Jul 28, 1978	NA
(3) Olive ridley turtle[2]	*Lepidochelys olivacea*	Wherever found, except where listed as endangered under § 224.101(c); circumglobal in tropical and temperate seas.	43 FR 32808; Jul 28, 1978	NA
(c) *Fishes*				
(1) Green sturgeon - southern DPS	*Acipenser medirostris*	U.S.A., CA. The southern DPS includes all spawning populations of green sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.	71 FR 17757; April 7, 2006; 71 FR 19241; April 13, 2006	
(2) Gulf sturgeon	*Acipenser oxyrinchus desotoi*	Wherever found.	56 FR 49653; Sep 30, 1991	68 FR 13370; Mar 19, 2003
(3) Ozette Lake sockeye	*Oncorhynchus nerka*	U.S.A.- WA, including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: the Umbrella Creek and Big River sockeye hatchery programs.	64 FR 14528; Mar 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(4) Central Valley spring-run Chinook	*Oncorhynchus tshawytscha*	U.S.A.- CA, including all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River, as well as the Feather River Hatchery spring-run Chinook program.	64 FR 50394; Sep 16, 1999 70 FR 37160; Jun 28, 2005	70 FR 52488; Sep 2, 2005
(5) California Coastal Chinook	*Oncorhynchus tshawytscha*	U.S.A.-CA, including all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs.	64 FR 50394; Sep 16, 1999 70 FR 37160; Jun 28, 2005	70 FR 52488; Sep 2, 2005

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(6) Upper Willamette River Chinook	*Oncorhynchus tshawytscha*	U.S.A.- OR, including all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: the McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock #24), Marion Forks/ North Fork Santiam River (ODFW stock #21), South Santiam Hatchery (ODFW stock #23) in the South Fork Santiam River, South Santiam Hatchery in the Calapooia River, South Santiam Hatchery in the Mollala River, Willamette Hatchery (ODFW stock # 22), and Clackamas hatchery (ODFW stock #19) spring-run Chinook hatchery programs.	64 FR 14308; Mar. 24 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(7) Lower Columbia River Chinook	*Oncorhynchus tshawytscha*	U.S.A.- OR, WA, including all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River, as well as seventeen artificial propagation programs: the Sea Resources Tule Chinook Program, Big Creek Tule Chinook Program, Astoria High School (STEP) Tule Chinook Program, Warrenton High School (STEP) Tule Chinook Program, Elochoman River Tule Chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule Chinook Program, Kalama Tule Chinook Program, Washougal River Tule Chinook Program, Spring Creek NFH Tule Chinook Program, Cowlitz spring Chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring Chinook Program, Kalama River spring Chinook Program, Lewis River spring Chinook Program, Fish First spring Chinook Program, and the Sandy River Hatchery (ODFW stock #11) Chinook hatchery programs.	64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(8) Puget Sound Chinook	*Oncorhynchus tshawytscha*	U.S.A.- WA, including all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as twenty-six artificial propagation programs: the Kendal Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Issaquah Hatchery, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Diru Creek, Clear Creek, Kalama Creek, George Adams Hatchery, Rick's Pond Hatchery, Hamma Hamma Hatchery, Dungeness/Hurd Creek Hatchery, Elwha Channel Hatchery Chinook hatchery programs.	64 FR 14308; Mar. 24, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(9) Snake River fall-run Chinook	*Oncorhynchus tshawytscha*	U.S.A.- OR, WA, ID, including all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run Chinook hatchery programs.	57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992 70 FR 37160; Jun 28, 2005	58 FR 68543; Dec 28, 1993
(10) Snake River spring/summer-run Chinook	*Oncorhynchus tshawytscha*	U.S.A.- OR, WA, ID, including all naturally spawned populations of spring/summer-run Chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins, as well as fifteen artificial propagation programs: the Tucannon River conventional Hatchery, Tucannon River Captive Broodstock Program, Lostine River, Catherine Creek, Lookingglass Hatchery, Upper Grande Ronde, Imnaha River, Big Sheep Creek, McCall Hatchery, Johnson Creek Artificial Propagation Enhancement, Lemhi River Captive Rearing Experiment, Pahsimeroi Hatchery, East Fork Captive Rearing Experiment, West Fork Yankee Fork Captive Rearing Experiment, and the Sawtooth Hatchery spring/summer-run Chinook hatchery programs.	57 FR 14653; Apr 22, 1992 57 FR 23458; Jun 3, 1992 70 FR 37160; Jun 28, 2005	58 FR 68543; Dec 28, 1993 64 FR 57399; Oct 25, 1999

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(11) Southern Oregon/ Northern California Coast coho	*Oncorhynchus kisutch*	U.S.A.- CA, OR, including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock # 52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs.	62 FR 24588; May 6, 1997 70 FR 37160; Jun 28, 2005	64 FR 24049; May 5, 1999
(12) Lower Columbia River coho	*Oncorhynchus kisutch*	U.S.A.- OR, WA, including all naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon, as well as twenty-five artificial propagation programs: the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Kalama River Type-N Coho Program, Kalama River Type-S Coho Program, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Eagle Creek National Fish Hatchery, Sandy Hatchery, and the Bonneville/Cascade/ Oxbow complex coho hatchery programs.	70 FR 37160; Jun 28, 2005	NA
(13) Columbia River chum	*Oncorhynchus keta*	U.S.A.- OR, WA, including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/ Duncan Creek chum hatchery programs.	64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(14) Hood Canal summer-run chum	*Oncorhynchus keta*	U.S.A.- WA, including all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: the Quilcene NFH, Hamma Hamma Fish Hatchery, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs.	64 FR 14508; Mar. 25, 1999 70 FR 37160; Jun 28, 2005	70 FR 52630; Sep 2, 2005
(15) South-Central California Coast Steelhead	*Oncorhynchus mykiss*	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River.	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005
(16) Central California Coast Steelhead	*Oncorhynchus mykiss*	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, Californian (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento-San Joaquin River Basin of the Central Valley of California.	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005
(17) California Central Valley Steelhead	*Oncorhynchus mykiss*	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries.	63 FR 13347; Mar. 19, 1998 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005
(18) Northern California Steelhead	*Oncorhynchus mykiss*	U.S.A.- CA, including all naturally spawned populations of steelhead (and their progeny) in California coastal river basins from Redwood Creek in Humboldt County, California, to the Gualala River, inclusive, in Mendocino County, California.	65 FR 36074; June 7, 2000 71 FR 834; January 5, 2006	70 FR 52488; Sep 2, 2005
(19) Upper Willamette River Steelhead	*Oncorhynchus mykiss*	U.S.A.- OR, including all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive.	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005

Species[1]		Where Listed	Citation(s) for Listing Determination(s)	Citation for Critical Habitat Designation
Common name	Scientific name			
(20) Lower Columbia River Steelhead	*Oncorhynchus mykiss*	U.S.A.- OR, WA, including all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, Oregon, and from the Little and Big White Salmon Rivers, Washington.	63 FR 13347; Mar 19, 1998 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005
(21) Middle Columbia River Steelhead	*Oncorhynchus mykiss*	U.S.A.- OR, WA, including all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin.	57 FR 14517; Mar 25, 1999 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005
(22) Snake River Basin Steelhead	*Oncorhynchus mykiss*	U.S.A.- OR, WA, ID, including all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.	62 FR 43937; Aug 18, 1997 71 FR 834; January 5, 2006	70 FR 52630; Sep 2, 2005
(d) *Marine Invertebrates*				
(1) Elkhorn coral	*Acropora palmata*	Wherever found. Includes United States Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.	71 FR 26852, May 9, 2006	NA
(2) Staghorn coral	*Acropora cervicornis*	Wherever found. Includes United States Florida, Puerto Rico, U.S. Virgin Islands, Navassa; and wider Caribbean Belize, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, Venezuela and all the islands of the West Indies.	71 FR 26852, May 9, 2006	NA
(e) *Marine Plants*				
(1) Johnson's seagrass	*Halophila johnsonii*	Wherever found. U.S.A. - Southeastern FL between Sebastian Inlet and north Biscayne Bay.	63 FR 49035; Sep 14, 1998	65 FR 17786; Apr 5, 2000

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[2] Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

Dated: June 27, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 06–6017 Filed 7–5–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 051018271–6157–02; I.D. 101405C]

RIN 0648–AT84

Endangered and Threatened Species; Revision of Critical Habitat for the Northern Right Whale in the Pacific Ocean

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue a final rule to revise the current critical habitat for the northern right whale (*Eubalaena glacialis*) by designating additional areas within the North Pacific Ocean. Two specific areas are designated, one in the Gulf of Alaska and another in the Bering Sea, comprising a total of approximately 95,200 square kilometers (36,750 square miles) of marine habitat. As described in the impacts analysis prepared for this action, we considered the economic impacts, impacts to national security, and other relevant impacts and concluded that the benefits of exclusion of any area from the critical habitat designation do not outweigh the benefits of inclusion. As a result, we did not exclude any areas from the designation. We solicited information and comments from the public in a proposed rule. This final rule is being issued to meet the deadline established in a remand order of the United States District Court for the Northern District of California.

DATES: This rule becomes effective August 7, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection by appointment during normal business hours at the National Marine Fisheries Service, Protected Resources Division, Alaska Region,709 W. 9th Street, Juneau, AK. The final rule, maps, and other materials relating to this proposal can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907) 271–3023, or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended [16 U.S.C. 1531, *et seq.*] (ESA), grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants, and habitats of such species that have been designated as critical. The U.S. Fish and Wildlife Service (FWS) and the NMFS share responsibility for administering the ESA. Endangered and threatened species under the jurisdiction of NMFS are found in 50 CFR 224.101 and 223.102, and include the endangered northern right whale.

Background and Previous Federal Actions

The northern right whale is a member of the family Balaenidae and is closely related to the right whales that inhabit the Southern Hemisphere. Right whales are large baleen whales that grow to lengths and weights exceeding 18 meters and 100 tons, respectively. They are filter feeders whose prey consists exclusively of zooplankton. Right whales attain sexual maturity at an average age of 8–10 years, and females produce a single calf at intervals of 3–5 years (Kraus *et al.*, 2001). Their life expectancy is unclear, but is known to reach 70 years in some cases (Hamilton *et al.*, 1998; Kenney, 2002).

Right whales are generally migratory, with at least a portion of the population moving between summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters (Kraus *et al.*, 1986; Clapham *et al.*, 2004). In the North Pacific, individuals have been observed feeding in the Gulf of Alaska, the Bering Sea and the Sea of Okhotsk. Although a general northward movement is evident in spring and summer, it is unclear whether the entire population undertakes a predictable seasonal migration, and the location of calving grounds remains completely unknown (Scarff, 1986; Scarff, 1991; Brownell *et al.*, 2001; Clapham *et al.*, 2004; Shelden *et al.*, 2005). Further details of occurrence and distribution are provided below.

In the North Pacific, whaling for right whales began in the Gulf of Alaska (known to whalers as the ''Northwest Ground'') in 1835 (Webb, 1988). Right whales were extensively hunted in the western North Pacific in the latter half of the 19th century, and by 1900 were scarce throughout their range. Right whales were protected worldwide in 1935 through a League of Nations agreement. However, because neither Japan nor the USSR signed this agreement, both nations asserted authority to continue hunting right whales until 1949 when the newly-created International Whaling Commission (IWC) endorsed this ban. Despite this ban, a total of 23 North Pacific right whales were legally killed by Japan and the USSR under Article VIII of the International Convention for the Regulation of Whaling (1946), which permits the taking of whales for scientific research purposes. However, it is now known that the USSR illegally caught many right whales in the North Pacific (Doroshenko, 2000; Brownell *et al.*, 2001). In the eastern North Pacific, 372 right whales were killed by the Soviets between 1963 and 1967; of these, 251 were taken in the Gulf of Alaska south of Kodiak, and 121 in the southeastern Bering Sea (SEBS). These takes devastated a population that, while undoubtedly small, may have been undergoing a slow recovery (Brownell *et al.*, 2001).

As a result of this historic and recent hunting, right whales today are among the most endangered of all whales worldwide. Right whales were listed in 1970 following passage of the Endangered Species Conservation Act (ESCA) of 1969, and automatically granted endangered status when the ESCA was repealed and replaced by the ESA. Right whales are also protected under the Marine Mammal Protection Act of 1972. We issued a Recovery Plan for the northern right whale in 1991, which covered both the North Atlantic and North Pacific (NMFS, 1991). Some researchers consider the North Pacific right whale to exist in discrete eastern and western populations. Brownell *et al.* (2001) noted that there was no evidence for exchange between the western and eastern Pacific, and that the two populations had different recovery histories; consequently, they argued that these stocks should be treated as separate for the purpose of management, a division which we have acknowledged in Stock Assessment Reports (Angliss and Lodge, 2004).

In the western North Pacific (the Sea of Okhotsk and adjacent areas), current abundance is unknown but is probably in the low to mid-hundreds (Brownell *et*

al., 2001). There is no estimate of abundance for the eastern North Pacific (Bering Sea, Aleutian Islands and Gulf of Alaska), but sightings are rare. Most biologists believe the current population is unlikely to exceed a hundred individuals, and is probably much smaller. Prior to the illegal Soviet catches of the 1960s, on average, 25 whales were observed each year in the eastern North Pacific (Brownell *et al.*, 2001); in contrast, the total number of records in the 35 years from 1965 to 1999 was only 82, or an average of 2.3 whales per annum.

Since 1996, NMFS and other surveys (directed specifically at right whales or otherwise) have detected small numbers of right whales in the SEBS, including an aggregation estimated at 24 animals in the summer of 2004. Photo-identification and genetic data have identified 17 individuals from the Bering Sea, and the high inter-annual resighting rate further reinforces the idea that this population is small. Right whales have also been sighted in the northern Gulf of Alaska, including a sighting in August 2005. However, the overall number of northern right whales using habitats in the North Pacific other than the Bering Sea is not known.

The taxonomic status of right whales worldwide has recently been revised in light of genetic analysis (see Rosenbaum *et al.*, 2000; Gaines *et al.*, 2005). Applying a phylogenetic species concept to molecular data separates right whales into three distinct species: *Eubalaena glacialis* (North Atlantic), *E. japonica* (North Pacific), and *E. australis* (Southern Hemisphere). We recognized this distinction for the purpose of management in a final rule published on April 10, 2003 (68 FR 17560), but subsequently determined that the issuance of this rule did not comply with the requirements of the ESA, and thus rescinded it (70 FR 1830; January 11, 2005). At this time, right whales in the North Atlantic and North Pacific are both officially considered to be ''northern right whales'' (*Eubalaena glacialis*) under the ESA; however, right whales in the North Pacific often are referred to as *E. japonica*, given the wide acceptance of this taxon in both the scientific literature and elsewhere (e.g., by the IWC).

Critical Habitat Designation History

Three areas in the North Atlantic Ocean were designated as critical habitat for northern right whales in 1994: the Great South Channel, Cape Cod Bay, and waters of the Southeastern United States off Florida and Georgia. In rejecting a petition to revise designated critical habitat, we outlined steps we would take to propose any revisions to that designated critical habitat that might be supported by new information and analysis (68 FR 51758; August 28, 2003).

We issued a proposed rule on November 2, 2005 (70 FR 66332), to revise current critical habitat for the northern right whale in the North Pacific Ocean.

Previous Federal Action and Related Litigation

In October 2000, we were petitioned by the Center for Biological Diversity to revise the critical habitat for the northern right whale by designating an additional area in the North Pacific Ocean. In February 2002, we announced our decision that we could not designate critical habitat at that time because the essential biological and habitat requirements of the population were not sufficiently understood. However, in June 2005, a Federal court found this reasoning invalid and remanded the matter to us for further action (*Center for Biological Diversity* v. *Evans*, Civ. No. 04–4496, N.D. Cal. June 14, 2005). In compliance with that order, we are revising the current critical habitat for this species by designating areas within the Gulf of Alaska and Bering Sea as critical habitat under the ESA.

Summary of Comments and Responses

We requested comments on the proposed rule to revise critical habitat for the northern right whale (70 FR 66332; November 2, 2005). To facilitate public participation, the proposed rule was also made available on our regional website. Comments were accepted via standard mail, e-mail, and fax. Additionally, a public hearing on this action was held March 2, 2006, in Anchorage, Alaska. The public comment period for the proposed rule was reopened between February 10 and March 9, 2006, so that additional comments submitted at or in response to the hearing were considered in the promulgation of the final rule.

We have considered all public comments, and we address them in the following summary. For readers' convenience we have assigned comments to major issue categories, and, where possible, have combined similar comments into single comments and responses.

Size of Proposed Critical Habitat is Too Large

Comment 1: The southern and western boundaries of the proposed critical habitat in the Bering Sea are based on very few right whale sightings. Eliminating these areas would reduce the extent of the critical habitat from 27,700 to 24,000 square miles but retain approximately 99 percent of all sightings.

Response: The proposed boundaries reasonably represent the area in which sightings of feeding right whales have occurred and which are most likely to describe current concentrations of zooplankton prey (i.e., primary constituent elements, or PCEs). We have closely followed the provisions of the ESA and Federal regulations by premising this designation on the current existence of the PCEs within the geographic area occupied by the species at the time of listing. The area described by the proposed critical habitat boundary encompasses a high percentage of all sightings since the right whale was listed as endangered under the ESA in 1973 (182 of 184). As discussed in more detail below in response to Comment 9, we consider these more recent records to be reliable indicators of current feeding distribution, and, therefore, of the presence of the PCEs. Given the very limited survey effort, we believe that the sightings used to delineate the critical habitat are significant, and that there is no reasonable basis upon which to revise the proposed boundary to exclude sightings near the southern and western boundaries.

Comment 2: The area designated as critical habitat is arbitrary because there is no obvious correlation between zooplankton abundance and the distribution of the northern right whale.

Response: For the reasons described in the section on Critical Habitat Identification and Designation below, we have concluded that consistent sightings of right whales - even of single individuals and pairs - in a specific area during spring and summer over a long period of time is sufficient information that the area is a feeding area containing suitable concentrations of zooplankton.

Proposed Critical Habitat is Too Small

Comment 3: The proposed designations fail to address unoccupied right whale habitat. Additional areas outside of the known range of the northern right whale at the time of ESA listing should be included in this designation.

Response: Section 3(5)(A)(i) of the ESA requires us to identify specific areas within the geographical area occupied by the species that contain physical or biological features that may require special management considerations or protection. Section 3(5)(A)(ii) requires that specific areas outside the geographical area occupied by the species only fall within the

definition of critical habitat if the Secretary determines that the area is essential for conservation. Our regulations further provide that we will designate unoccupied areas ''only when a designation limited to [the species'] present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)).'' The ESA requires the Secretary to designate critical habitat at the time of listing. If critical habitat is not then determinable, the Secretary may extend the period by 1 year, ''but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.''

We found no information that would support designation of critical habitat in unoccupied areas. While historic data include sightings and other records of northern right whales outside of the geographic area occupied by the species at the time it was listed, we do not have information allowing us to determine that the specific areas within the geographical area occupied by the species are inadequate for conservation, such that unoccupied areas are essential for conservation.

Comment 4: The extent of the areas proposed for designation as critical habitat in the North Pacific Ocean would not be sufficient to provide for the recovery of the northern right whale.

Response: Our ability to identify critical habitat as defined in the ESA is limited by the level of information available to describe the biology and ecology of the northern right whale in the North Pacific Ocean. We have identified two specific feeding areas within which are found biological features essential to the conservation of the species and which may require special management considerations or protection. We may revise this designation in the future as additional information regarding the habitat and biological and ecological needs of the right whale becomes available. For example, the designation may be revised to encompass additional areas in which zooplankton concentrations are found to occur or the physical or biological features that comprise suitable calving grounds when the locations of those grounds become known.

Comment 5: The proposed designation is negatively biased in that it is based on sighting effort, which is not consistent over the range of the northern right whale. Therefore, the designation should be expanded to compensate for this bias. Both right whales and the PCEs are likely to occur elsewhere in densities equivalent to those occurring in the designated critical habitats.

Response: The ESA defines critical habitat, in part, as those areas occupied by the species at the time of listing on which the identified PCEs are found. Although the current sighting data may be biased by effort, they are the best available data that can be used as a proxy for PCEs to determine whether PCEs are found on the designated areas. We have insufficient basis to conclude that the PCEs are found in other areas for which we do not have sighting data that can be used as a proxy for the presence of PCEs.

Comment 6: The precautionary principle requires NMFS to designate other areas with similar habitat conditions as critical habitat.

Response: As explained above in response to Comment 2, we have used recent sighting records of feeding right whales as a proxy for the location of PCEs necessary to describe critical habitat. The ESA does not permit designation of ''similar'' areas unless the PCEs are found in these areas. We do not have information indicating that the PCEs are found on areas other than those designated.

Comment 7: The designation should include State of Alaska waters because these waters and the proposed critical habitat areas have nearly identical ecological characteristics.

Response: We have used recent sighting records of feeding right whales as a proxy for the location of PCEs necessary to describe critical habitat. All relevant sightings occurred outside of the territorial sea of the State of Alaska, and we were, therefore, unable to conclude that the PCEs are found in State of Alaska waters. Therefore, these waters do not meet the definition of critical habitat and cannot be designated as such even though they may have physical features similar to the features found in the designated areas.

Comment 8: Our data demonstrate right whales are found through Unimak Pass and eastward to Kodiak Island. These waters also contain important features or serve important biological needs and should be added to the areas proposed for designation.

Response: We have few data describing the migratory movements of northern right whales in the North Pacific Ocean. While it is likely right whales move through major ocean passes, we cannot determine at this time which passes right whales use. We will continue to collect information on the right whale's habitat use to identify migration corridors and determine whether PCEs are found within these areas.

Comment 9: NMFS should review data from the past century and designate critical habitat for areas where right whale concentrations overlay known areas of prey abundance.

Response: We considered the utility of historic data in identifying and designating critical habitat. Many records of the commercial whalers are general in nature, and do not provide specific locations, information on the numbers of whales present at the time of the sighting or harvest, nor descriptions of their behavior (e.g., whether the sightings indicated feeding behavior). Therefore, we concluded that the more recent sightings data from the time of listing represented the best evidence of the current presence of the PCEs in specific feeding areas.

Comment 10: Critical habitat should be designated to include those physical features which promote fronts, upwelling, and dynamic advection of nutrient-rich waters that promote prey productivity.

Response: Research on northern right whales has found these animals are able to locate prey in certain densities needed to meet their metabolic needs. Recent research indicates that right whales are feeding specialists that require exceptionally high densities of prey (Baumgartner and Mate, 2003; Baumgartner, *et al.*, 2003). The physical and biological parameters necessary to produce these ''lenses'' of highly concentrated zooplankton in the North Pacific are not understood. While the commenter identifies features that provide for the production of zooplankton and may act as forcing mechanisms for the concentration of these zooplankton, we currently lack information on whether those features actually concentrate the prey into aggregations sufficiently dense to encourage and sustain feeding by right whales. Lacking such information, we rely on the presence of zooplankton, as evidenced by feeding right whales, to identify critical habitat as required by the ESA.

Primary Constituent Elements

Comment 11: Feeding areas should be identified as a PCE for the northern right whale.

Response: NMFS regulations at 50 CFR 424.12(b) state that, ''[i]n determining what areas are critical habitat, the Secretary shall consider those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection. Such requirements include, but are not limited to the following: food, water, air, light, minerals, or other

physiological or ecological requirements.'' The regulations also state that, ''[p]rimary constituent elements may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quantity or quality, host species or plant pollinator, geologic formation, vegetation type, tide, and specific soil types.'' We relied on the presence of feeding right whales to identify indirectly the specific areas within which the PCEs are currently found. We believe that this approach identifies feeding areas to the best of our ability within the constraints imposed by available data.

Comment 12: PCEs are defined too narrowly in the proposed rule. By defining PCEs as only the zooplankton, NMFS has created a situation in which oil and gas exploration activity, fishing or fishery related activities, and processing waste discharge activities would not result in the adverse modification of the critical habitat.

Response: We have reviewed the available science and life requisites of the northern right whale, and have identified the PCEs described in this rule. Adverse modification of the critical habitat would result from Federal agency actions that impair the function of the PCEs to the extent the PCEs would not provide for the conservation needs of the right whales. For example, our analysis concludes that Outer Continental Shelf (OCS) oil and gas exploration and production has the potential to adversely affect the PCEs through impaired water quality, to the extent that the PCEs would not serve their conservation function, resulting in adverse modification of the critical habitat.

As more research is completed and we learn more of the biological and ecological requirements of right whales in the North Pacific, we may identify additional PCEs and propose additional revisions of the critical habitat.

Comment 13: NMFS should follow the example of the Steller's eider and spectacled eider by identifying PCEs to include all marine waters of appropriate depths, along with the underlying marine benthic community.

Response: PCEs will vary depending on the biology, life history, and behavior of the species. Right whales frequent a variety of marine habitats and do not appear constrained by water depth, temperature or salinity. We believe that in identifying the PCEs for right whales as species of zooplankton in areas where they concentrate in sufficient densities to encourage and sustain feeding, we have adhered to the ESA definition and have developed a critical habitat designation that will protect the habitat features essential to right whale conservation.

Research

Comment 14: More research is needed to describe PCEs for the northern right whale.

Response: Our Alaska Region, the National Marine Mammal Laboratory, and other NOAA components are now involved in research on the northern right whale in the North Pacific Ocean. We understand that there is a need to better identify and describe the habitat for these whales along with their basic biology, and we will continue to conduct and advocate research in this area.

Comment 15: NMFS should increase efforts to place radio tags on right whales.

Response: Our scientists, in collaboration with scientists from the Greenland Institute of Natural Resources, have recently published the results from the first successful tagging of a North Pacific right whale in the Bering Sea (Wade *et al.*, 2006 in Biology Letters). A satellite-monitored radio tag attached to one of two whales tagged in the Bering Sea functioned for 40 days and helped lead to the discovery of at least two calves and the largest group of right whales observed in this region since the 1960s. Although we have no immediate plans to tag additional right whales in 2006, we agree that such work is a high priority and should continue.

Comment 16: NMFS should dedicate more effort to study vessel interaction and collision avoidance by right whales.

Response: A photographic record is being gathered as new right whale sightings are recorded from dedicated research efforts in the Bering Sea and Gulf of Alaska. A review of these photographs is planned to look for evidence of entanglement and ship strikes. We have no reports of fishing gear interaction with right whales within U.S. waters in the North Pacific, although there is one record suggestive of a fishing gear interaction with a right whale in the eastern North Pacific within waters outside U.S. jurisdiction. Collisions with ships have been a major source of mortality of right whales in the North Atlantic Ocean. However, we have found no record of any collisions in the North Pacific Ocean. Nevertheless, the fishing industry, through the Marine Conservation Alliance, has recently taken action to increase awareness of this issue among commercial fishing vessels operating in Alaska, and has distributed literature and informational posters. The commercial fishing industry is extending this outreach to the shipping industry and to Russian fisheries.

Prohibitions and Activities in Critical Habitat

Comment 17: Critical habitat must be protected from more than just activities that may affect zooplankton. Protection is also needed from the effects of ship strikes, fishing gear interaction, changes in sea temperatures and environmental conditions caused by humans.

Response: The commenter suggests that we may designate critical habitat solely to prevent ships strikes and fishing gear interactions (i.e., ''take'') of individual right whales. We conclude that, at the current time, vessel and gear interactions do not affect the whales' habitat, but rather are take issues which are prohibited by section 9 of the ESA and are properly addressed in jeopardy analyses in section 7 consultations on Federal actions or in incidental take permit applications evaluated pursuant to section 10 of the ESA. As noted above in the response to comment 16, we have no record of a ship striking a right whale in the North Pacific Ocean and no record of fishing gear interaction in waters of the North Pacific Ocean under U.S. jurisdiction, despite the presence of NMFS-certified fishery observers aboard crab and groundfish fishing vessels operating in these waters. The likelihood of such interactions must be evaluated by Federal agencies in section 7 consultations. Moreover, section 9 of the ESA already prohibits such take.

We have designated this critical habitat based upon the presence of zooplankton aggregated in sufficient concentrations to encourage and sustain right whale feeding. At this time we do not have sufficient knowledge of the biology and habitat requirements of right whales in the North Pacific Ocean to identify PCEs related to water temperatures or other environmental conditions.

Comment 18: Oil and gas development is incompatible with the ecology and economy of Bristol Bay and the Northeast Pacific Region. Major oil spills, related discharges, seismic activity, and ship strikes are all oil and gas-related actions which constitute adverse modification of critical habitat.

Response: Federal agencies authorizing, funding or carrying out actions that may affect designated critical habitat must consult with us pursuant to section 7 of the ESA. Federal agencies must insure that the actions they authorize, fund or carry out are not likely to destroy or adversely modify critical habitat or jeopardize the

continued existence of the northern right whale.

Comment 19: Specific, focused reference to the oil and gas industry as representing a threat to the proposed right whale critical habitat should be removed from the rule.

Response: Oil and gas activities are discussed in this final rule because of the potential for impacts to critical habitat from these activities. However, although we recognize there is a potential for impacts, the amount of future anticipated OCS oil and gas related activities in the proposed right whale critical habitat and the regulatory requirements imposed by Minerals Management Service (MMS) on OCS operators to minimize the potential for adverse impacts suggest that right whale critical habitat would not be adversely modified. Further, any potential risks of adverse modification from specific oil and gas activities will be analyzed and addressed in the context of a section 7 consultation where Federal agencies are required to ensure that the actions they authorize, fund or carry out are not likely to destroy or adversely modify critical habitat or jeopardize the continued existence of the northern right whale. We have had extensive ESA Section 7 consultations with the MMS regarding oil and gas leasing action on the Alaska OCS, none of which has resulted in a determination that OCS oil and gas activities were likely to jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat. In addition, we found in the impacts analysis prepared for the proposed rule that oil and gas exploration, development, and commercial production represent a relatively low risk to critical habitat for the right whale.

Comment 20: Designation of critical habitat will open the citizen suit provisions of the ESA and result in litigation and delays in projects. Economic activities that are not impacting right whale recovery will be negatively impacted.

Response: The ESA requires the Secretary to designate critical habitat to the maximum extent prudent and determinable. As a result of the designation, section 7 of the ESA requires each Federal agency to insure that any action it authorizes, funds or carries out is not likely to destroy or adversely modify the critical habitat. The citizen suit provision of the ESA authorizes any person to commence a civil suit to enjoin any other person, including a Federal agency, from violating any provision of the ESA, including section 7. We have no control over litigation commenced by other persons pursuant to the citizen suit provision and cannot evaluate the commenter's assertions because they are speculative. However, we note that economic activities that do not impact the conservation value of the critical habitat for the right whale are unlikely to be affected significantly by the citizen suit provision.

Comment 21: Designation of critical habitat will lead to regulatory creep and increased costs through added consultations and mitigation measures imposed by the Federal Government.

Response: As noted in the response to comment 20, the designation requires each Federal agency to insure that any action it authorizes, funds or carries out is not likely to destroy of adversely modify critical habitat. Each Federal agency proposing an action that may affect critical habitat must consult with us. The designation of critical habitat is likely to result in additional consultation costs, although these additional costs are difficult to quantify. The designation of critical habitat may, in some circumstances, result in additional mitigation for Federal actions that affect the critical habitat. All of these additional costs are identified to the extent practicable in the impacts analyses prepared for the proposed and final rule and would be borne largely by the Federal agencies involved in or affected by the consultations.

Economic Considerations

Comment 22: NMFS has correctly characterized both the economic significance of commercial fishing to the region, States, and the nation, and the effective absence of the possibility that commercial fishing can destroy or adversely modify the proposed critical habitat for northern right whales in the Eastern Bering Sea (EBS) and Gulf of Alaska (GOA).

Response: Comment noted.

Comment 23: While no adverse economic or operational impacts on commercial fisheries are associated with the proposed designation, a modification of the southern and western boundaries (reduction) of critical habitat in the EBS makes sense and would reduce the possibility of any even hypothetical future impacts on fishing activity.

Response: We find no compelling reason to alter the boundaries of the critical habitat on the basis of, and as described in, this comment. The boundaries are based upon the best available information regarding the location of zooplankton in sufficient concentrations to encourage and sustain feeding by northern right whales. Concerns about ''the possibility of any even hypothetical future impacts on fishing activity'' are purely speculative. Thus, we see no reason to change our conclusion that the benefits of excluding this area from the designation do not outweigh the benefits of including the area.

Comment 24: In addition to the recommended exclusions of areas in the south and west of the proposed critical habitat for northern right whales in the EBS to accommodate commercial fishing, the northern boundary should be moved south (reduced) from the proposed 58°00′ N. to 57°30′ N., owing to the presence of economically significant commercial fishing activity (bottom trawling) traditionally conducted there.

Response: For the same reasons cited in the response to comment 23 immediately above, we find no basis for changing our conclusion that the benefits of excluding the area do not outweigh the benefits of including it in the designation.

Comment 25: A substantial portion (especially the southern and eastern sections) of the critical habitat proposed to be designated in the EBS coincides with OCS Leasing Areas projected to have high to moderate natural gas production potential, and moderate oil production potential. The economic and development benefits of these areas (in particular, the Aleutian Basin Area) justify their exclusion under provisions of the ESA.

Response: This comment presumably refers to the ''Aleutian Basin Area,'' which is a different area far to the west (south of Navarin Basin and north of Bowers Basin) and is not associated with the proposed critical habitat area. The comment should instead refer to the North Aleutian Basin, which overlaps part of the proposed right whale critical habitat.

However, the supporting materials accompanying this and other comments pertaining to petroleum development in the EBS suggest that the risks and uncertainty associated with oil and gas development in OCS areas that overlap the critical habitat do not justify exclusion of the area under section 4(b)(2) of the ESA. Based upon the best available information, it appears that the probability of oil or gas production within (or immediately adjacent to) the right whale critical habitat is uncertain within the 10-year timeframe of our assessment. MMS reports that there are no commercial production facilities in operation, currently under development, or 'permitted' for future development within these critical habitat areas. Neither has oil and gas

exploration taken place in most of the EBS OCS region.

MMS has revealed that, while the industry desires to include the North Aleutian Basin OCS Planning Area in the 2007–2012 Lease Sale program, this is only possible through the rescission of a Presidential withdrawal of this (and adjacent) area(s) that is in effect until July 2012. Even if the withdrawal were rescinded in time to include the North Aleutian Basin in the upcoming lease sale offering, MMS projects that this specific area would likely not be ut up for lease sales until 2010 and again in 2012, and then only if the area were to be included in MMS lease sale planning. Even in the most optimistic scenario envisioned by MMS analysts, substantial development (and certainly commercial production) would involve many years, perhaps even decades, of planning, design, review, consultation, and approval. Consequently, the prospects for oil and gas exploration and development in this area are uncertain at this time. Therefore, we cannot conclude that the benefits of excluding this area for oil and gas purposes exceed the benefits of inclusion.

Comment 26: The communities located in remote western Alaska adjacent to the proposed designation chronically suffer from inadequate economic development and opportunity. The entire region would benefit from economic diversification, such as that which would accompany oil and gas exploration and development. The proposed designation of critical habitat in the EBS could increase the cost of, significantly delay, or even prevent such economic development, while contributing nothing to the conservation and recovery of the right whale population.

Response: As we have noted elsewhere in this final rule, the designation requires each Federal agency to insure that any action it authorizes, funds or carries out is not likely to destroy of adversely modify the critical habitat. In furtherance of that requirement, each Federal agency proposing action that may affect the critical habitat must consult with us on the effects of the action on the critical habitat. The ESA imposes these requirements to avoid the likelihood of destruction or adverse modification of the habitat that is critical to the conservation of the species. Federal agency actions that do not affect the conservation value of the critical habitat for right whales are unlikely to be appreciably affected by this designation. The impact analysis accompanying this rule analyzes the economic impacts of the designation and discusses the numerous uncertainties associated with oil and gas development in the critical habitat area. As a result of that analysis, we concluded that the economic impacts do not outweigh the benefits of designating critical habitat and that exclusion of any areas from the critical habitat designation pursuant to section 4(b)(2) of the ESA was not justified.

Comment 27: Inferences about the risk of fishing gear entanglements and/or vessel strikes of right whales in the North Pacific, based upon such experiences in the North Atlantic, are inappropriate and unsupported by evidence or data. The nature and magnitude of fishing and other economic activity within the two marine environments are fundamentally different and not comparable.

Response: As noted above in the response to comment 16, we have no record of a ship striking a right whale in the North Pacific Ocean and no record of fishing gear interaction in waters of the North Pacific Ocean under U.S. jurisdiction. Collisions with ships and entanglements in fishing gear have resulted in right whale mortalities in the North Atlantic Ocean. The likelihood of such interactions in the critical habitat areas designated in the North Pacific will be evaluated by Federal agencies in section 7 consultations. Moreover, section 9 of the ESA already prohibits take resulting from ship strike and fishing gear entanglements.

Comment 28: The area of the EBS encompassed by the proposed critical habitat boundaries contains the vast majority of groundfish, crab, and halibut resources harvested by commercial fisheries in this region. They have a combined direct economic gross value of well over $1 billion dollars annually, and are vital to fishermen, processors, and fishery-dependent communities in Alaska. NMFS should explain how, or if, designation of critical habitat for the right whale would affect fishery management actions that would be pursued if the incidental take of a right whale were to occur in commercial fisheries.

Response: The impacts analyses prepared for this designation evaluate the likely impacts of critical habitat designation on commercial fisheries. These analyses conclude that designation will impose minimal increased consultation costs on us, and that we do not expect any fishing or fishing related activity (e.g., at sea processing, transiting) would be restricted or otherwise altered as a result of the designation. If an injurious or lethal incidental take of a right whale were to occur in the commercial fisheries, right whale avoidance measures may be required in commercial fisheries to avoid future interactions. These measures would be required to prevent take of the endangered right whale and would not be attributable to the designation of critical habitat.

Comment 29: The Executive OCS Deferral through 2012 requires that the North Aleutian Basin be excluded from the 5-year OCS leasing program. This remains a sound decision, and any analysis of the proposed designation must recognize that restrictions on petroleum development in the proposed areas impose no new economic costs to society.

Response: Comment noted.

Comment 30: MMS estimates reserves of 7 trillion cubic feet of natural gas and 230 million barrels of oil in the North Aleutian Basin. Approximately 20 percent of the high prospective geologic basin lies within the southeast corner of the proposed critical habitat area (approximately 8 percent of the proposed designation of critical habitat in the EBS). At risk, therefore, is about 20 percent of the estimated $19 billion in Federal revenues, an estimated 5,000 construction jobs, and sufficient supplies of natural gas necessary to justify construction and operation of an liquefied natural gas facility in the area.

Response: The above resource estimates are based on outdated information and should instead state that, ''MMS estimates resources of 8.6 trillion cubic feet of natural gas and 750 million barrels of oil in the North Aleutian Basin (mean estimates).''

As reported in MMS documents submitted as public comment on the proposed critical habitat designation, leases issued in the 1998 North Aleutian Basin lease sale (Sale 92) were subsequently bought back, and, therefore, a systematic drilling program has not been conducted in the area. Therefore, the size of the estimated reserves remains unconfirmed. Given the uncertainty surrounding the existence of commercial quantities of gas and oil in this area, it is impossible to fully quantify the value of petroleum reserves in the area. The subsequent extrapolation that 5,000 jobs will be lost and a liquified natural gas pipeline and plant will be at risk is based only on this uncertainty regarding the amount of exploitable natural gas and oil and speculation regarding exploration and development. MMS data suggest that even the most optimistic scenario envisioned for this area's development would involve many years, perhaps decades, before these potentialities could be realized and only then if the

moratorium on OCS activities in the area is lifted. As noted in the response to comment 25 and in the economic analysis supporting this final rule, we conclude that the benefits of excluding any particular area from the designation do not outweigh the benefits of inclusion based on the speculative nature of these impacts.

Comment 31: Given the critical status of this species and the requirements of sections 4 and 9 of the ESA, the need for protection of right whales and designation of critical habitat outweighs any potential economic impacts of introducing such protection. It is also important to consider the economic benefit of the survival of this species.

Response: For the reasons described here and in the impacts analysis prepared for the designation, we determined that the benefits of excluding any particular area from the designation do not outweigh the benefits of inclusion.

Comment 32: NMFS has created, by its own admission, critical habitat that will not be adversely modified by oil or gas exploration activity.

Response: We have designated critical habitat pursuant to the ESA, which defines occupied critical habitat as areas that contain those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. We have consulted extensively with the MMS regarding oil and gas leasing action on the Alaskan OCS, and we concur that none of these consultations has resulted in a determination that OCS oil and gas activities were likely to jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat. In addition, we found in the impacts analysis prepared for the proposed rule that oil and gas exploration, development, and commercial production represent a relatively low risk to critical habitat for the right whale. Although we recognize there is a potential for impacts, the amount of future anticipated OCS oil and gas related activities in the proposed right whale critical habitat and the regulatory requirements imposed by MMS on OCS operators to minimize the potential for adverse impacts suggest that right whale critical habitat would not be destroyed or adversely modified. Further, any potential risks of adverse modification from specific oil and gas activities will be analyzed and addressed in the context of an ESA section 7 consultation where Federal agencies must insure that the actions they authorize, fund or carry out are not likely to destroy or adversely modify critical habitat or jeopardize the continued existence of the northern right whale.

Comment 33: Currently, neither the North Aleutian Basin nor the St. George Basin Planning areas are available for lease, owing to the 2012 deferral order. Many steps must occur before a field in either of these areas could reach production, and none of these steps are certain to occur.

Response: According to MMS documentation, the St. George Basin Planning Area is not part of the 2012 deferral order and could be considered for leasing by MMS in the proposed 2007 to 2012 OCS 5-year OCS Leasing (although it is currently not included in the proposed plan). The comment regarding the North Aleutian Basin Planning Area is noted.

Comment 34: The proposed EBS designation incorporates about one-third of the (oil and gas) high-potential part of North Aleutian Basin and most of the area of potential in St. George Basin. No exploration drilling has taken place in the North Aleutian Basin (one non-exploratory well was drilled in 1983). Economic studies show that the marginal prices for the North Aleutian Basin are well below current market prices, illustrating economically producible resources could exist at much lower than current prices, improving the area's feasibility as a potential energy source. If this area becomes available for leasing, pre-lease oil and gas exploration reveals commercial quantities of petroleum, market conditions remain favorable, and commercial discoveries are of a scale to support liquified natural gas exports, then the direct revenues to Federal, state, and local governments could approach $15 billion over a 30-year life cycle. Indirect benefits and economic multiplier effects to the Alaska economy are also likely to be several billions of dollars.

Response: MMS documentation notes that the ''one non-exploratory well drilled in 1983'' refers to the COST well that provides information on stratigraphy, which informs the evaluation of resource potential and planning of an exploration effort.

Otherwise, as noted in response to an earlier comment, the conclusions referenced in this comment are predicated upon a number of hypothetical actions and outcomes and a fundamental assumption of the value of petroleum resources in the area. The probability of occurrence of each of these actions is uncertain at this time, as is the value of petroleum resources in the area.

Comment 35: A basic cost/benefit analysis conducted by the MMS is submitted for petroleum activities in the North Aleutian Planning Area to demonstrate the economic potential and revenues that may be associated with commercial development. The overall conclusion is economic benefits would accrue to Federal, state, and local governments, as well as the Alaska economy, if a leasing program in the North Aleutian planning area results in commercial development of gas and oil on the scale envisioned by the MMS modeling scenario.

Response: We reviewed the submitted economic analysis discussed in detail above in response to similar comments on the potential value of oil and gas reserves in the subject area. The MMS report points out the series of assumptions based on available data and modeling that must be made about fundamental aspects of the area's petroleum potential to draw any conclusions about the value of petroleum resources in the area and economic impacts of opening lease sales in this area. MMS did not ask us to exclude any particular area within the critical habitat area under section 4(b)(2) of the ESA, and we find no compelling evidence that justifies an exclusion. Indeed, at present, these areas are explicitly withdrawn from OCS lease sale by Presidential order.

Other Comments

Comment 36: NMFS should designate critical habitat as marine sanctuaries because this would protect other marine assets such as corals.

Response: The National Marine Sanctuary Program is administered by the National Oceanic and Atmospheric Administration's National Ocean Service. Designation of areas as marine sanctuaries is beyond the scope of this action to designate critical habitat pursuant to the ESA.

Comment 37: NMFS should recognize the voluntary conservation efforts of the fishing industry towards public awareness and avoidance of vessel strikes.

Response: We have recognized and appreciate the efforts of the fishing industry to educate fishery participants to recognize right whales and use avoidance techniques to mitigate certain possible effects of fishing on this endangered species.

Comment 38: The **Federal Register** notice should include data on the seasonal occurrence of right whales in the proposed critical habitat areas, present an analysis of vessel and fishing gear interaction based on photographic evidence, and discuss the effects of

climate change and variable ice patterns on zooplankton.

Response: The seasonal occurrence of right whales in the critical habitat areas is described here as generally during spring and summer. Specific months are identified for certain sighting data. Acoustic data provide some additional insight to the seasonal occurrence; acoustic recording packages deployed in the SEBS recorded right whale calls from May through November (Munger *et al.*, 2000). This action is to designate critical habitat in the North Pacific for the right whale; analysis of vessel and gear interaction are take issues which are properly addressed in ESA section 7 consultations on Federal actions authorizing fisheries or in incidental take permit applications evaluated pursuant to section 10 of the ESA, and therefore are not included with this final rule. We have no reliable information regarding the effects of climate change and variable ice patterns on zooplankton production, distribution, and concentration in the North Pacific.

Comment 39: The Alaska OCS oil and gas leasing program has existed for 30 years, during which time the MMS has demonstrated that industry activities can be carried out in a manner that does not jeopardize the continued existence of threatened or endangered species, or adversely affect designated critical habitat.

Response: We have consulted extensively with the MMS regarding oil and gas leasing actions on the Alaskan OCS, and we concur that none of these has been determined likely to jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat designated for another listed marine mammal species, the Steller sea lion. In addition, we found in the impacts analysis prepared for the proposed rule that oil and gas exploration, development, and commercial production represent a relatively low risk to critical habitat for the right whale. Although we recognize there is a potential for impacts that could result in destruction or adverse modification of critical habitat, the amount of future anticipated OCS oil and gas related activities in the proposed right whale critical habitat and the regulatory requirements imposed by MMS on OCS operators to minimize the potential for adverse impacts suggest that right whale critical habitat would not be destroyed or adversely modified. Further, any potential risks of destruction or adverse modification from specific oil and gas activities will be analyzed and addressed in the context of an ESA section 7 consultation where Federal agencies must insure that the actions they authorize, fund or carry out are not likely to destroy or adversely modify critical habitat or jeopardize the continued existence of the northern right whale.

Comment 40: There is no evidence that commercial trawling in the North Pacific or EBS results in any adverse impacts on the benthic environment, and certainly none that could adversely impact the PCEs identified under the proposed designation of critical habitat in these areas.

Response: Comment noted. We have considered the potential impact of commercial fishing, including trawling, on the described PCEs. Although we conclude that these activities may affect the PCEs, we find it unlikely that these activities would result in destruction or adverse modification of critical habitat. We concur that bottom trawling does not likely have the potential to destroy or adversely modify right whale critical habitat by impacting the identified PCEs. We take no position on the commenter's assertion that there is no evidence that commercial trawling in the North Pacific or EBS results in any adverse impacts on the benthic environment, because the benthic effects of trawling are not the subject of the current critical habitat designation action.

Critical Habitat Identification and Designation

Geographical Area Occupied by the Species at the Time of Listing

The ESA defines critical habitat (in part) as areas within the geographical area occupied by the species at the time it was listed under the ESA. Because this geographical area has not been previously described for the northern right whale in the Pacific Ocean, it is necessary to establish this range when designating critical habitat. The northern right whale was listed as endangered in 1973. Prior to the onset of commercial whaling in 1835, right whales were widely distributed across the North Pacific (Scarff, 1986; Clapham *et al.*, 2004; Shelden *et al.*, 2005). By 1973, the northern right whale in the Pacific Ocean had been severely reduced by commercial whaling. Sighting data from this remnant population are too sparse to identify the range of these animals in 1973. However, no reason exists to suspect that the right whales that remain alive today inhabit a substantially different range than right whales alive during the time of the Soviet catches; indeed, given the longevity of this species, it is likely that some of the individuals who survived that whaling episode remain extant. Both the SEBS and the western GOA (shelf and slope waters south of Kodiak) have been the focus of many sightings (as well as the illegal Soviet catches) in recent decades. In general, the majority of northern right whale sightings (historically and in recent times) in the Northeast Pacific have occurred from about 40§ N to 60§ N latitude. There are historical records from north of 60§ N latitude, but these are rare and are likely to have been misidentified bowhead whales. Right whales have on rare occasions been recorded off California and Mexico, as well as off Hawaii. However, as noted by Brownell *et al.* (2001), there is no evidence that either Hawaii or the west coast of North America from Washington State to Baja California were ever important habitats for right whales. Given the amount of whaling effort as well as the human population density in these regions, it is highly unlikely that substantial concentrations of right whales would have passed unnoticed. Furthermore, no archaeological evidence exists from the U.S. west coast suggesting that right whales were the target of local native hunts. Consequently, the few records from this region are considered to represent vagrants. The geographical area occupied by the northern right whale at the time it was listed under the ESA extends over a broad area of the North Pacific Ocean as depicted in Figure 1.

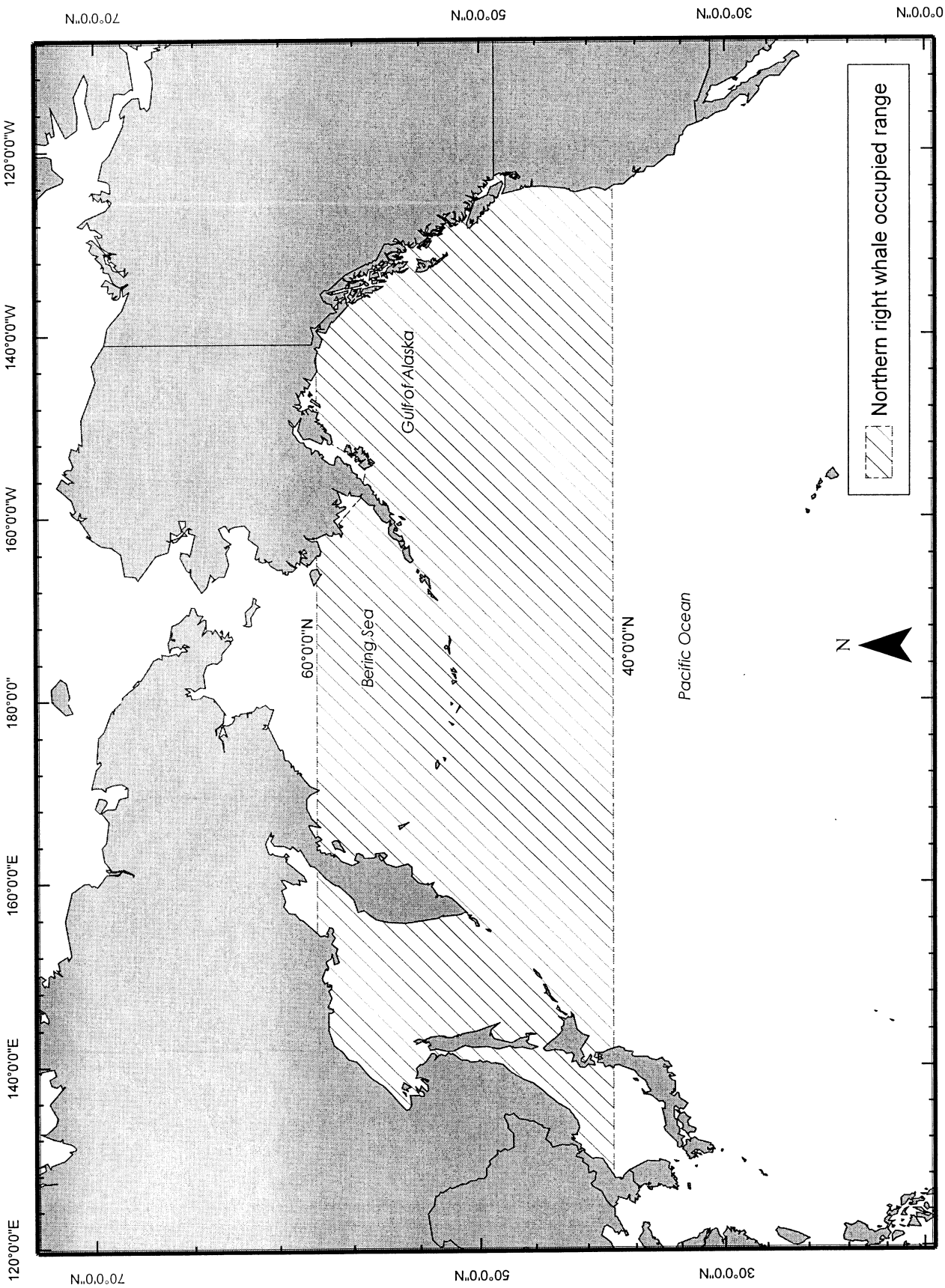


Figure 1. Occupied range of Northern right whales in the North Pacific at time of listing under the Endangered Species Act.

Unoccupied Areas

ESA section 3(5)(A)(ii) further defines critical habitat to include ''specific areas outside the geographical area occupied'' if the areas are determined by the Secretary of Commerce (Secretary) to be ''essential for the conservation of the species.'' 50 CFR 424.12(e) specifies that NMFS ''shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' We are not designating any areas not occupied at the time of listing because it is not known whether any unoccupied areas are essential to the conservation of the species. Future revisions to the critical habitat of the northern right whale may consider new information which might lead to designation of areas outside the area occupied by these whales.

Physical or Biological Features Essential to the Conservation of the Species (Primary Constituent Elements)

In determining what areas are critical habitat, 50 CFR 424.12(b) requires that NMFS consider those physical or biological features that are essential to the conservation of a given species and that may require special management considerations or protection, including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species. The regulations further direct NMFS to ''focus on the principal biological or physical constituent elements . . . that are essential to the conservation of the species,'' and specify that the ''[k]nown primary constituent elements shall be listed with the critical habitat description.'' The regulations identify PCEs as including, but not limited to: ''roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.'' An area must contain one or more PCEs to be eligible for designation as critical habitat; an area lacking a PCE may not be designated in the hope it will acquire one or more PCEs in the future.

Our scientists considered PCEs for the northern right whale in the Pacific Ocean during a workshop held during July 2005. Unfortunately, many data gaps exist in our knowledge of the ecology and biology of these whales, and very little is known about the PCEs that might be necessary for their conservation. The life-requisites of these whales for such factors as temperatures, depths, and substrates are unknown, or may be highly variable. One certainty is the metabolic necessity of prey species to support feeding by right whales. Examination of harvested whales in the North Pacific and limited plankton tows near feeding right whales in recent years show that several species of large copepods and other zooplankton constitute the primary prey of the northern right whale in the North Pacific Ocean.

The PCEs for the northern right whale in the North Pacific Ocean are species of large copepods and other zooplankton in areas where they concentrate in densities sufficient to support and encourage feeding. Specifically, these are: *Calanus marshallae*, *Neocalanus cristatus*, *N. plumchris*. and *Thysanoessa raschii*, a euphausiid whose very large size, high lipid content and occurrence in the region likely makes it a preferred prey item for right whales (J. Napp, pers. comm.). Although the proposed rule referred to each of these species of zooplankton as a ''copepod,'' the final rule correctly identifies *T. raschii* as a euphausiid. A description of the critical habitat areas below establishes the presence of these PCEs within those areas. In addition to the physical presence of these PCEs within the critical habitat, it is likely that certain physical forcing mechanisms are present that act to concentrate these prey in densities that allow for efficient foraging by right whales. Evidence indicates that there may in fact be critical or triggering densities below which right whale feeding does not occur. The PCEs essential for the conservation of the northern right whale in the North Pacific and these physical forcing or concentrating mechanisms contribute to the habitat value of the areas to be designated.

Special Management Considerations or Protection

An occupied area may be designated as critical habitat if it contains physical and biological features that are essential to conservation and that ''may require special management considerations or protection.'' 50 CFR 424.02(j) defines ''special management considerations or protection'' to mean ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' We considered whether the zooplankton in areas where they concentrate in densities sufficient to support and encourage feeding, which have been identified as the PCEs for the northern right whale in the North Pacific Ocean, may require special management considerations or protection.

Zooplankton can be affected by physical and chemical alterations within the water column both by natural processes such as global climate change or the Pacific Decadal Oscillation, as well as by pollution from various potential sources, including oil spills and discharges resulting from oil and gas drilling and production. The OCS oil and gas exploration and development permits or authorizations already are routinely conditioned with operational restraints, mitigative measures, or technological changes to protect the marine environment from these impacts. While such management measures and protections are not necessarily designed to protect these zooplankton in right whale feeding areas per se, they could be useful in protecting these PCEs for the conservation of northern right whales in the North Pacific Ocean. Therefore, we find that these PCEs may require special management considerations or protection.

Critical Habitat

The current abundance of northern right whales in the North Pacific Ocean is considered to be very low in relation to historical numbers or their habitat's carrying capacity, which is not determined. The existence of a persistent concentration of right whales found within the SEBS since 1996 is somewhat extraordinary in that it may represent a substantial portion of the remaining population. These areas of concentration where right whales feed are characterized as containing the PCEs described above. We consider these feeding areas, supporting a significant assemblage of the remaining right whales in the North Pacific, to be essential for right whale conservation. For the reasons given below, we have based designation of critical habitat on these areas, rather than where right whales have appeared sporadically or in transit. We have been able to substantiate the assumption that these areas are right whale feeding areas by observations of feeding behavior, direct sampling of plankton near feeding right whales, or records of stomach contents of dead whales. These assumptions underlie the critical habitat areas shown in Figure 2 and described below. Two areas are designated, as depicted in

Figure 2: an area of the SEBS and an area south of Kodiak Island in the GOA.

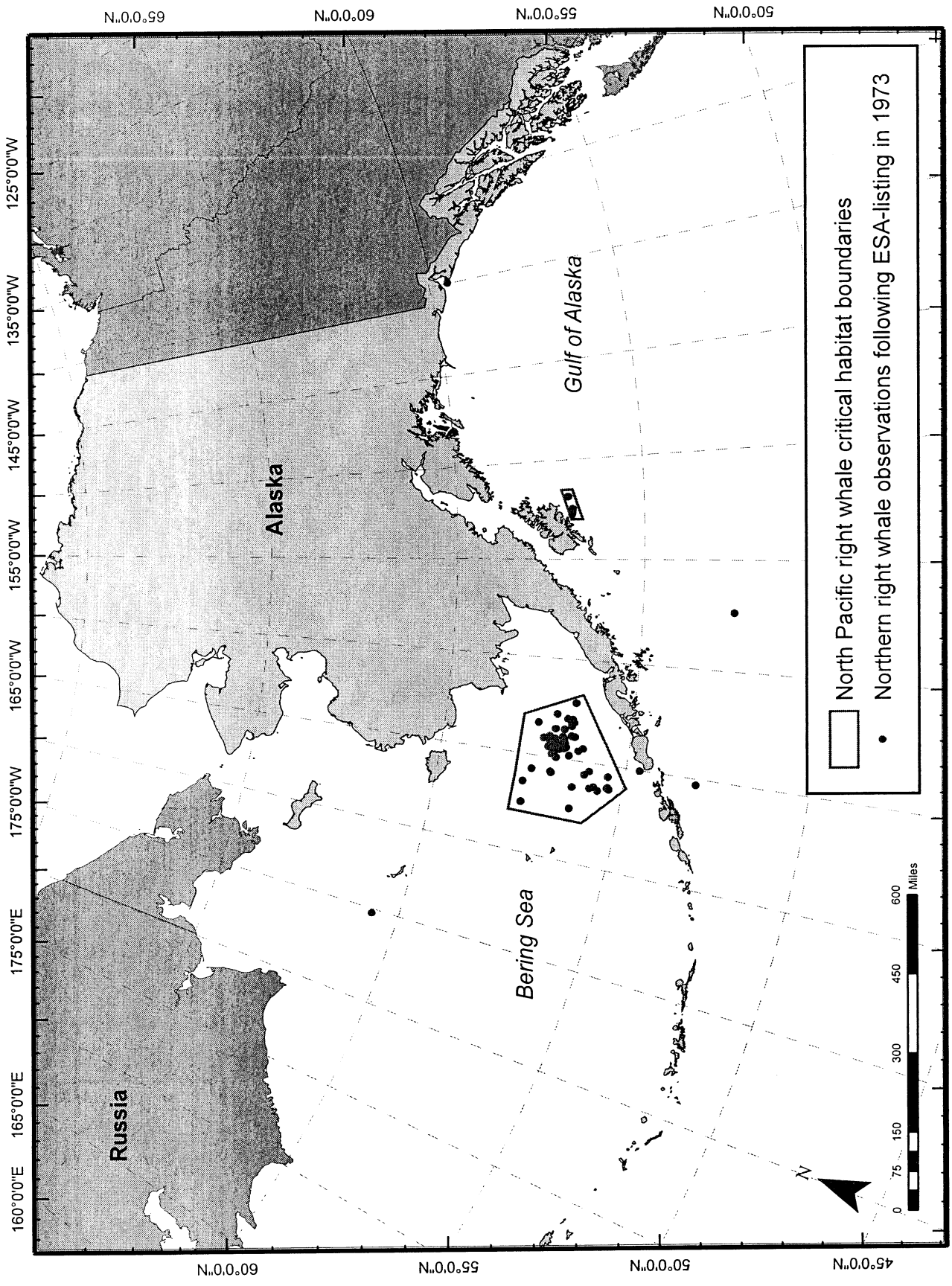


Figure 2. Critical habitat for Northern right whales in the North Pacific.

Shelden *et al.* (2005) reviewed prey and habitat characteristics of northern right whales in the North Pacific. They noted that habitat selection is often associated with features that influence abundance and availability of the whales' prey. Right whales in the North Pacific are known to prey upon a variety of zooplankton species. Availability of these zooplankton greatly influences the distribution of the small North Pacific population on their feeding grounds in the SEBS and GOA. Right whales are known to feed on zooplankton patches of very high density, and these patches may typically be small and unpredictably distributed over space and time (Mayo and Marx, 1990).

Typical zooplankton sampling is too broad-scale in nature to detect patches of these densities, and directed studies employing fine-scale sampling cued by the presence of feeding right whales are the only means of doing this (Mayo and Marx, 1990). Accordingly, there may be no obvious correlation between the abundance and distribution of zooplankton (as measured by broad-scale oceanographic sampling) and the distribution of right whales (M. Baumgartner, in prep.) In light of this, we must rely upon the whales themselves to indicate the location of important feeding areas in the North Pacific.

Aggregations of right whales in high latitudes can be used with high confidence as an indicator of the presence of suitable concentrations of prey, and thus of feeding behavior by the whales. Right whales feed daily during spring and summer, and studies in the North Atlantic have consistently found an association between concentrations of whales and feeding behavior, with dense zooplankton patches recorded by oceanographic sampling around such groups of whales (Mayo and Marx, 1990; Baumgartner *et al.*, 2003, 2003b). In the North Atlantic, an analysis of sighting data by NMFS indicated that a density of 4 or more right whales per 100 nm^2 was a reliable indicator of a persistent feeding aggregation (Clapham and Pace, 2001), and this has been used for Dynamic Area Management fisheries closures to reduce the risk of right whales becoming entangled in fishing gear in North Atlantic fisheries. While this metric is a reliable indicator of the presence of persistent feeding aggregations in the North Atlantic, it is not necessarily the only metric suitable for application in the North Pacific; the much smaller population of right whales in the eastern North Pacific Ocean typically results in sightings of single animals or pairs. Unlike with larger groups, such small numbers sometimes indicate transient passage through an area and thus cannot be unequivocally linked with feeding behavior. However, while sporadic sightings of right whales in such small numbers generally would not be considered a reliable indication of a feeding area, consistent sightings of right whales - even of single individuals and pairs - in a specific area in spring and summer over a long period of time is sufficient indication that the area is a feeding area containing suitable concentrations of zooplankton.

Therefore, in the absence of data that describe the densities, as well as presence, of the PCEs themselves, the distribution of right whales is used here as a proxy for the existence of suitably dense zooplankton patches and thus to identify the areas designated as critical habitat. We have used sighting records since the time of listing to make this determination because these records are more recent and are taken to be a more reliable indicator of current distribution than historical sightings, especially given that most of the latter relate to animals that were removed from the population by whaling.

Southeastern Bering Sea

We designate critical habitat in the Bering Sea (Figure 2), described as an area delineated by a series of straight lines connecting the following coordinates in the order listed: 58°00′ N/168°00′ W; 58°00′ N/163°00′ W; 56°30′ N/161°45′ W; 55°00′ N/166°00′ W; 56°00′ N/168°00′ W and returning to 58°00′ N/168°00′ W. The area described by these boundaries lies completely within the waters of the United States and its Exclusive Economic Zone, outside of waters of the State of Alaska. State waters extend seaward for 3 nautical miles; very few sightings occurred within this area. Right whale encounters occurring after ESA-listing in 1973 totaled 182 within this area, out of 184 encounters north of the Aleutian Islands during this time period.

Gulf of Alaska

We designate critical habitat in the GOA (Figure 2), described as an area delineated by a series of straight lines connecting the following coordinates in the order listed: 57°03′ N/153°00′ W, 57°18′ N/151°30′ W, 57°00′ N/151°30′ W, 56°45′ N/153°00′ W, and returning to 57°03′ N/153°00′ W. The area described by these boundaries lies completely within the waters of the United States and its Exclusive Economic Zone. Right whale encounters occurring after ESA-listing in 1973 totaled 5 within this area, out of 14 encounters in the GOA during this time period.

Existence of the PCEs Within the Critical Habitat Southeastern Bering Sea Slope Waters

The Bering Sea slope is a very productive zone, sometimes referred to as the 'Greenbelt,' where annual primary production can exceed that on the adjacent shelf and basin by 60 percent and 270 percent, respectively (Springer *et al.*, 1996). Physical processes at the shelf edge, such as intensive tidal mixing, eddies and up-canyon flow, bring nutrients to the surface, thereby supporting enhanced productivity and elevated biomass of phytoplankton, zooplankton, and fish. Northern right whales in the western North Pacific have been observed in association with oceanic frontal zones that produce eddies southeast of Hokkaido Island, Japan, and southeast of Cape Patience (Mys Terpeniya), Sakhalin Island, in the Okhotsk Sea (Omura *et al.*, 1969). Whether or not the Bering Slope Current, or eddies shed from it, support production or entrain right whale prey is unknown.

From August to October in 1955 and 1956, Soviet scientists observed aggregations of *Calanus* between the Pribilof Islands and the Aleutian Islands (around 170§ W long.) that were identified as *C. finmarchicus*, though, as mentioned above, were probably *C. marshallae* (Klumov, 1963). Flint *et al.* (2002) also report high concentrations of *C. marshallae* at frontal zones near the Pribilof Islands, with especially high biomass noted for the subthermohaline layer. This oceanographic front effectively separates slope and outer shelf *Neocalanus* spp. from the inshore middle shelf community of *C. marshallae* (Vidal and Smith, 1986). Right whales were found on both sides of this frontal zone (that coincides with the shelf break at 170 m) during both the 19th and 20th centuries. This is similar to the habitat described by Baumgartner *et al.* (2003a) for right whales feeding in the North Atlantic. Six right whales that were caught under scientific permit in late July-early August 1962–63 in Bering Sea slope waters had exclusively consumed *N. cristatus* (*C. cristatus*: Omura *et al.*, 1969). Although oceanic species such as *Neocalanus* usually enter diapause and migrate to depths greater than 200 m by late summer in the slope waters of the Bering Sea (Vidal and Smith, 1986), right whales may still be able to use these resources by targeting regions where the bottom mixed layer forces the zooplankton into shallower, discrete layers (e.g. Baumgartner *et al.*, 2003a).

Southeastern Bering Sea Middle-Shelf Waters

The SEBS shelf has been the focus of intense oceanographic study since the late 1970s (e.g. Schumacher *et al.*, 1979; Coachman, 1986; Napp *et al.*, 2000; Hunt *et al.*, 2002a; Hunt *et al.*, 2002b), largely due to the considerable commercial fishing effort in the area (National Research Council, 1996). Coachman (1986) described the now well-established hydrographic domains of the inner-, middle- and outer-shelf, separated by a front or transition zone at roughly the 50–m (inner front) and 100–m (outer front) isobaths. During the 1990s, research focused on these domains demonstrated dynamic advection of nutrient-rich Bering slope water onto the shelf in both winter and summer, via eddies, meanders and up-canyon flow (Schumacher and Stabeno, 1998; Stabeno and Hunt, 2002). These intrusions of nutrient-rich water, physical factors related to water column stratification, and long summer day length result in a very productive food web over the SEBS shelf (e.g., Livingston *et al.*,1999; Napp *et al.*, 2002; Coyle and Pinchuk, 2002; Schumacher *et al.*, 2003). Specifically, copepod species upon which right whales feed (e.g. *C. marshallae*, *Pseudocalanus* spp. and *Neocalanus* spp.) are among the most abundant of the zooplankton sampled over the middle shelf (Cooney and Coyle, 1982; Smith and Vidal, 1986). Small, dense patches (up to densities greater than 500 mg/m–3) of euphausiids (*T. raschii*, *T. inermis*), potential right whale prey, have also been reported for waters near the SEBS inner front (Coyle and Pinchuk, 2002).

Zooplankton sampled near right whales seen in the SEBS in July 1997 included *C. marshallae*, *P. newmani*, and *Acartia longiremis* (Tynan, 1998). *C. marshallae* was the dominant copepod found in these samples as well as samples collected near right whales in the same region in 1999 (Tynan *et al.*, 2001). *C. marshallae* is the only ''large'' calanoid species found over the SEBS middle shelf (Cooney and Coyle, 1982; Smith and Vidal, 1986). Concentrations of zooplankton were significantly higher in 1994–98 than in 1980–81 by at least an order of magnitude (Napp *et al.*, 2002) and Tynan *et al.* (2001) suggest that this increased production may explain the presence of right whales in middle shelf waters. However, at least three right whales were observed in 1985 in the same location as the middle shelf sightings reported in the late 1990s (Goddard and Rugh, 1998).

Gulf of Alaska

The central GOA is dominated by the Alaskan gyre, a cyclonic feature that is demarcated to the south by the eastward flowing North Pacific Current and to the north by the Alaska Stream and Alaska Coastal Current, which flow westward near the shelf break. The bottom topography of this region is rugged and includes seamounts, ridges, and submarine canyons along with the abyssal plain. Strong semi-diurnal tides and current flow generate numerous eddies and meanders (Okkonen *et al.*, 2001) that influence the distribution of zooplankton.

Copepods are the dominant taxa of mesozooplankton found in the GOA and are patchily distributed across a wide variety of water depths. Three large herbivorous species comprise more than 70 percent of the biomass: *N. cristatus*, *N. plumchrus*, and *Eucalanus bungii* (Cooney 1986, 1987). In northern GOA shelf waters, the late winter and spring zooplankton is dominated by calanoid copepods (*Neocalanus* spp.), with a production peak in May; this is a cycle that appears resistant to environmental variability associated with El Niño/ Southern Oscillation (ENSO) (Coyle and Pinchuk, 2003). In oceanic waters (50§ N lat., 145§ W long.), *N. plumchrus* dominate (Miller and Nielsen, 1988; Miller and Clemons, 1988) and have demonstrated dramatic shifts in the timing of annual peak biomass from early May to late July (Mackas *et al.*, 1998). From late summer through autumn, *N. plumchrus* migrate to deep water ranging from 200 m to 2000 m depending on location within the GOA (Mackas *et al.*, 1998). The three right whales caught under scientific permit on August 22, 1961, south of Kodiak Island had all consumed *N. plumchrus* (*C. plumchrus*: Omura *et al.*, 1969), potentially by targeting areas where adult copepods remained above 200 m (e.g. Baumgartner *et al.*, 2003a).

The area designated as critical habitat within the SEBS presents several similarities to that to be designated within the GOA. Both areas are influenced by large eddies, submarine canyons, or frontal zones that enhance nutrient exchange and act to concentrate prey. These areas lie adjacent to major ocean currents (the ACC and the Aleutian ocean passes) and are characterized by relatively low circulation and water movement (P. Stabeno, pers. com.).

Right Whale Sightings as a Proxy for Locating the PCEs

As noted above, consistent sightings of right whales - even of single individuals and pairs - in a specific area in spring and summer over an extended period of time can be used with high confidence as an indicator of the presence of the PCEs in a feeding area. We have used sighting records since the time of listing to make this determination because these records are more recent and are taken to be a more reliable indicator of current distribution of feeding whales than historical sightings, especially given that most of the latter relate to animals that were removed from the population by whaling and are thus no longer extant. Of the 184 post-listing right whale sightings reported north of the Aleutian Islands, 182 occurred within the critical habitat in the Bering Sea. Since 1996, right whales have been consistently sighted in this area over a period of years during the spring and summer feeding seasons. For example, NMFS surveys alone recorded between two and four sightings in 1996 (Goddard and Rugh, 1998), 13 sightings in 2000 (Le Duc, et al) and over 23 sightings in 2004. Single right whales as well as pairs and aggregations up to five animals were sighted during this period, and all sightings were within 100 nm^2 of one another. Based on consideration of these factors, we conclude that the right whale sightings in the specific area in the Bering Sea described in Figure 2 are a suitable proxy for the presence of the PCEs, and, therefore, designate this area as critical habitat for the northern right whale in the North Pacific Ocean.

Recent sightings of right whales are fewer in number in the GOA than in the Bering Sea. However, three individuals were sighted recently in the critical habitat in the GOA. These sightings occurred at a time when right whales typically feed in the North Pacific Ocean. In July 1998, a single right whale exhibiting behavior consistent with feeding activity was observed among a group of about eight humpback whales (Waite, Wynne and Mellinger, 2003). In August 2004, a NMFS researcher observed a single right whale among a group of humpbacks. In August 2005, a NMFS researcher reported yet another sighting of a right whale within 250 to 500 meters of groups of humpback and fin whales. Acoustic monitoring of the area conducted in summer 2000 recorded what appeared to be right whale calls in the area on September 6 (Waite, Wynne and Mellinger, 2003). Compared to the Bering Sea sightings, the GOA right whale sightings do not provide as strong an indication of feeding behavior. However, individual right whales have been directly observed in 1998, 2004, and 2005 and

detected acoustically in 2000 during the spring and summer feeding seasons in the specific area in the GOA described in Figure 2. It is also instructive that one of these animals was exhibiting feeding behavior at the time it was observed. Based on consideration of these factors, we conclude that the right whale sightings in the specific area in the GOA described in Figure 2 are a reasonably reliable proxy for the presence of the PCEs, and, therefore, designate this area as critical habitat for the northern right whale in the North Pacific Ocean.

Exclusions from Designation

Section 4 (b)(2) of the ESA states that critical habitat shall be designated on the basis of the best scientific and commercial data available and after taking into consideration the economic impact, impacts to national security, and any other relevant impact. Any area may be excluded from critical habitat if the benefits of exclusion are found to outweigh those of inclusion, unless such exclusion would result in the extinction of the species. We are to apply the statutory provisions of the ESA, including those in section 3 that define ''critical habitat'' and ''conservation,'' to determine whether a proposed action might result in the destruction or adverse modification of critical habitat.

Based upon the best available information, it appears that the probability of oil or gas production within (or immediately adjacent to) the right whale critical habitat is uncertain within the 10-year timeframe of our assessment. MMS reports that there are no commercial production facilities in operation, currently under development, or 'permitted' for future development within these critical habitat areas. Neither has oil and gas exploration taken place in most of the EBS OCS region.

During the preparation of this final rule, we became aware that the oil and gas industry has expressed renewed interest in exploring for and developing petroleum resources in the EBS, with most interest being expressed in the North Aleutian Basin OCS Planning Area. This OCS area resides in the southeast corner of the proposed critical habitat, and, according to MMS estimates, represents approximately 8 percent of the total critical habitat area being proposed for designation in the EBS. MMS also reports that the State of Alaska has announced support for oil and gas development in this region, although local groups are divided on the issue. The Governor of Alaska stated that ''[he] hope[s] that public and industry input will provide the secretary and the state with adequate information to decide whether or not to ask the President to lift the current withdrawal and allow a sale during the 2007 - 2012 program.'' Through communication between NMFS and MMS, and the MMS comments submitted in response to publication of the proposed rule to revise critical habitat, we have a substantially fuller understanding of the potential effects of critical habitat designation on the MMS OCS program. MMS has revealed that, while the industry desires to include the North Aleutian Basin OCS Planning Area in the 2007–2012 Lease Sale program, this is only possible through the rescission of a Presidential withdrawal of this (and adjacent) area(s) that is in effect until July 2012. Even if the withdrawal were rescinded in time to include the North Aleutian Basin in the upcoming lease sale offering, MMS projects that this specific area would likely not be put up for lease sales until 2010 and again in 2012, and then only if the area were to be included in MMS lease sale planning. Even in the most optimistic scenario envisioned by MMS analysts, substantial development (and certainly commercial production) would involve many years, perhaps even decades, of planning, design, review, consultation, and approval. Consequently, the prospects for oil and gas exploration and development in this area are uncertain at this time. Moreover, even if the withdrawal were lifted and the area opened for exploration and development, monetary benefits accruing from oil and gas production in this area over the 10-year analytical horizon we used to evaluate the economic and socioeconomic impacts of the critical habitat revision are uncertain. Therefore, we cannot conclude that the benefits of excluding this area for oil and gas purposes exceed the benefits of inclusion.

While we expect to consult on fishery-related proposed actions that ''may affect'' critical habitat, none of these consultations would be expected to result in a finding of ''adverse modification,'' and thus none would be expected to result in imposition of costs on commercial fishery participants. Because fisheries do not target or affect the PCEs for northern right whales, it follows that no fishing or related activity (e.g., at-sea processing, transiting) would be expected to be restricted or otherwise altered as a result of critical habitat designation in the two areas being designated. We did not find any specific areas in which the costs exceed benefits for fishing activities that may affect critical habitat, and, therefore, we have not excluded any areas from designation. We point out, however, that if an injurious or lethal incidental take of a right whale were to occur in the commercial fisheries, right whale avoidance measures may be required in commercial fisheries to avoid future interactions. These measures, however, would be required to prevent take of the endangered right whale and would not be attributable solely to the designation of critical habitat.

This action is anticipated to result in consultations on seafood processing waste discharges with the Environmental Protection Agency (EPA); Department of Defense (DoD) authorized military ''underway training'' activities; and U.S. Coast Guard (USCG) oil spill response plan approval, among others. It is unlikely that these activities will result in an ''adverse modification'' finding and, thus, no mandatory modifications would be imposed. It must follow then that no ''costs'' are imposed as a result of designation beyond the small costs attributable to inter-agency (occasionally intra-agency) consultation. As explained in the impacts analysis prepared for this action, some larger benefit accrues to society as a result of designation, including the educational value derived from identification and designation of the critical habitat areas within which the PCEs are found. Thus, we believe that the benefits of exclusion are outweighed by the benefits of inclusion of the designated areas.

Our analysis (available on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*) did not find any specific areas that merit exclusion in consideration of economic impacts, nor have we determined that national security interests or other relevant impacts warrant the exclusion of any specific areas from this designation.

Effects of Critical Habitat Designation

Section 4(b)(8) of the ESA requires that we evaluate briefly and describe, in any revision of designated critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect critical habitat and, when carried out, funded, or authorized by a Federal agency, require that an ESA section 7 consultation be conducted. Such activities include, but are not limited to, oil and gas leasing and development on the OCS, Federal management of high seas fisheries in territorial waters and the Exclusive Economic Zone of the United States, dredge and fill, mining,

pollutant discharges, other activities authorized or conducted by the Army Corps of Engineers and the EPA, and military training exercises and other functions of the U.S. armed forces.

This designation of critical habitat will provide these agencies, private entities, and the public with clear notification of the existence of critical habitat for northern right whales and the boundaries of the habitat. This designation will also assist these agencies and others in evaluating the potential effects of their activities on critical habitat and in determining if ESA section 7 consultation with us is needed.

Required Determinations

Regulatory Planning and Review

This rule has been determined to be significant for purposes of Executive Order (E.O.) 12866. As part of our exclusion process under section 4(b)(2) of the ESA, the economic benefits and costs of the critical habitat designations are described in our draft economic report (NMFS, 2005). This approach is in accord with OMB's guidance on regulatory analysis (OMB Circular A–4, Regulatory Analysis, September 17, 2003).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). We have prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and a final regulatory flexibility analysis (FRFA) for this final rule incorporating the IFRA and comments received on the economic impacts of the rule. These documents are available upon request (see **ADDRESSES**). These Regulatory Flexibility Act analyses evaluate the potential effects of the critical habitat designation on federally regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the rule are discussed earlier in the preamble. A summary of the analyses follows.

The small entities that may be directly regulated by this action are those that seek formal approval (e.g., a permit) from, or are otherwise authorized or funded by, a Federal agency to undertake an action or activity that ''may affect'' critical habitat for the northern right whale. Submission of such a request for a Federal agency's approval or funding, from a small entity, would require that agency (i.e., the ''action agency'') to consult with NMFS (i.e., the ''consulting agency'').

Consultations vary, from simple to complex, depending on the specific facts of each action or activity for which application is made. Attributable costs are directly proportionate to complexity. In the majority of instances projected to take place under the critical habitat designation, these costs are expected to accrue solely to the Federal agencies that are party to the consultation. In only the most complex of formal consultations might it be expected that a private sector applicant could potentially incur costs directly attributable to the consultation process itself. Furthermore, if destruction or adverse modification of critical habitat is found at the conclusion of formal consultation, the applicant must implement modifications to avoid such effects. These modifications could result in adverse economic impacts.

An examination of the Federal agencies with management, enforcement, or other regulatory authority over activities or actions within, or immediately adjacent to, the critical habitat area, resulted in the following list. Potential action agencies may include: the EPA, USCG, DoD, MMS, and NMFS. Activities or actions with a nexus to these Federal agencies that are expected to require consultation include: EPA permitting of seafood processing waste discharges at-sea; USCG oil spill response plan approval, as well as emergency oil spill response; DoD authorization of military training activities in the Bering Sea and Aleutian Islands (BSAI) and GOA; MMS oil and gas exploration and production permitting; and NMFS fishery management actions in the BSAI and GOA.

A 10-year post-designation analytical horizon was adopted, during which time we may reasonably expect to consult an estimated 27 times on critical habitat-related actions with one or more of the action agencies identified above. The majority of the consultations are expected to be informal, projected to represent approximately 52 percent of the total. The more complex and costly formal consultations are projected to account for, perhaps, 37 percent; while the simplest and least costly pre-consultation are expected 11 percent of the time. These figures reflect the best estimates information and experience can presently provide.

On the basis of the underlying biological, oceanographic, and ecological science used to identify the PCEs that define critical habitat for the right whale in the Pacific, as well as the foregoing assumptions, empirical data, historical information, and accumulated experience regarding human activity in the BSAI and GOA, we recognize the potential for oil and gas exploration and production activity to destroy or adversely modify northern right whale critical habitat, though adverse modification is unlikely.

As previously indicated, MMS has authority over OCS oil and gas permitting. An examination of published information from the MMS Alaska Region reveals that three MMS OCS planning areas overlap some portion of the northern right whale critical habitat areas. Previously, we have consulted extensively with the MMS regarding oil and gas leasing actions on the Alaskan OCS, and we concur that none of these has been determined likely to jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat. In addition, we found in the impacts analysis prepared for the proposed rule that oil and gas exploration, development, and commercial production represent a relatively low risk to critical habitat for the right whale. Although we recognize there is a potential for impacts that could result in destruction or adverse modification of critical habitat, the amount of future anticipated OCS oil and gas related activities in the proposed fright whale critical habitat and the regulatory requirements imposed by MMS on OCS operators to minimize the potential for adverse impacts suggest that right whale critical habitat would not be destroyed or adversely modified. Further, any potential risks of destruction or adverse modification from specific oil and gas activities will be analyzed and addressed in the context of an ESA section 7 consultation where Federal agencies must insure that the actions they authorize, fund or carry out are not likely to destroy or adversely modify critical habitat or jeopardize the continued existence of the northern right whale.

Further, MMS sources indicate that in only one of these has there been any exploratory well drilling (i.e., St. George Basin). A total of 10 exploratory wells were permitted, all of which were completed in 1984 and 1985, and no subsequent associated exploration activity occurred. It appears that there

has been no activity on the part of the lease holders in this or the other referenced areas to seek authorization to undertake additional exploratory activity or develop production facilities. MMS reports no planned or scheduled OCS lease sales for these areas, at least through 2007 (the latest projected date MMS has published on its web site). This suggests that the only private sector entities that potentially could be directly regulated and adversely impacted by the designation would be those entities that own the lease rights to develop oil and gas production facilities in these areas. However, during the preparation of the proposed rule we became aware that the oil and gas industry has expressed recent interest in exploring and developing oil and gas resources in the North Aleutian Basin OCS Planning Area and that the State of Alaska announced support for this activity.

When MMS records were consulted as to the identity of the entities holding leases to the wells in the St. George Basin, six businesses were listed for the 10 permitted exploratory wells. These include: SHELL Western E&P Inc. (2 wells); ARCO Alaska Inc. (3 wells); EXXON Corp. (2 wells); Mobile Oil Corp. (1 well) (now merged with EXXON); GULF Oil Corp. (1 well); and CHEVRON USA Inc. (1 well). These data were last updated, according to the MMS website, March 17, 2005. None of these entities could reasonably be characterized as ''small,'' for RFA purposes. All are widely recognized multi-national corporations and employ more than ''500 full-time, part-time, temporary, or any other category of employees, in all of their affiliated operations worldwide'' (the criterion specified by SBA for assessing entity size for this sector).

Under the Regulatory Flexibility Act, the preferred alternative was compared to the ''No Action'' (or status quo) alternative and an alternative proposed by the petitioner, the Center for Biological Diversity. NMFS rejected the ''No Action'' alternative because it did not comply with the remand order in *Center for Biological Diversity* v. *Evans*, Civ. No. 04–04496 (N.D. Cal. June 14, 2005) or satisfy the agency's obligations under the ESA. NMFS rejected the petitioner's alternative because the best scientific information available did not support a finding that the physical or biological features essential for conservation of the right whale in the North Pacific Ocean are found throughout the area identified by the petitioner, and thus the area did not meet the ESA definition of critical habitat.

Because our analysis did not identify costs to any small entities attributable to the critical habitat designation action, there is no identified alternative that imposes lesser impacts on this group while achieving the requirements of the ESA and the objectives of this action.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the final action. No comments were received on the IRFA identifying analytical deficiencies or objecting to the reported RFAA interpretations and conclusions

Military Lands

The Sikes Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). The recent National Defense Authorization Act for Fiscal Year 2004 (Public Law No. 108–136) amended the ESA to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(I) of the ESA (16 U.S.C. 1533(a)(3)(B)(I)) now provides that ''[t]he Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' We have determined no military lands would be impacted by this rule.

E.O. 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

We have considered the potential impacts of this action on the supply, distribution, or use of energy and find the designation of critical habitat will not have impacts that exceed the thresholds identified above.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, we make the following findings:

(a) This final rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5) (7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon state, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to state, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.'' The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of

critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above to state governments.

(b) Due to the prohibition against take of this species both within and outside of the designated areas, we do not anticipate that this final rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630, this final rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. Private lands do not exist within the critical habitat and therefore would not be affected by this action.

Federalism

In accordance with E.O. 13132, this final rule does not have significant federalism effects. A federalism assessment is not required. In keeping with Department of Commerce policies, we have requested information from, and will coordinate development of, this critical habitat designation with appropriate State of Alaska resource agencies. The designation may have some benefit to State and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the survival of the northern right whale are specifically identified.

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Commerce has determined that this final rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O. We are designating critical habitat in accordance with the provisions of the ESA. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the northern right whale.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that an environmental analyses as provided for under the National Environmental Policy Act of 1969 for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Government-to-Government Relationship With Tribes

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 - Consultation and Coordination with Indian Tribal Governments- outlines the responsibilities of the Federal Government in matters affecting tribal interests.

We have determined designation of critical habitat for the northern right whale in the North Pacific Ocean would not have tribal implications, nor affect any tribal governments or issues. None of the critical habitat occurs on tribal lands or affects tribal trust resources or the exercise of tribal rights. In addition, as discussed above and in the economic analysis supporting this rulemaking, we consider economic impacts of designation on oil and gas activity in the area to be speculative.

References Cited

A complete list of all references cited in this rulemaking can be found on the NMFS Alaska Region's website at *http://www.fakr.noaa.gov/* and is available upon request from the NMFS office in Juneau, Alaska (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: June 29, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 226 is amended to read as follows:

PART 226—DESIGNATED CRITICAL HABITAT

■ 1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 2. In § 226.203, the section heading and the introductory text are revised; paragraphs (a), (b), and (c) are redesignated as paragraphs (a)(1), (a)(2), and (a)(3), respectively; and new paragraph (a) heading and paragraph (b) are added to read as follows:

§ 226.203 Critical habitat for northern right whale (*Eubalaena glacialis*).

Critical habitat is designated in the North Atlantic Ocean, Bering Sea, and the Gulf of Alaska for the northern right whale as described in paragraphs (a) and (b) of this section. The textual descriptions of critical habitat are the definitive source for determining the critical habitat boundaries. General location maps are provided for critical habitat in the North Pacific Ocean for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(a) *North Atlantic Ocean.* * * *

* * * * *

(b) *North Pacific Ocean*—(1) *Primary Constituent Elements.* The primary constituent elements essential for conservation of the northern right whale are the copepods *Calanus marshallae*, *Neocalanus cristatus*, and *N. plumchris*, and the euphausiid *Thysanoëssa raschii*, in areas of the North Pacific Ocean in which northern right whales are known or believed to feed, as described in paragraphs (b)(2) and (3) of this section.

(2) *Bering Sea.* An area described by a series of straight lines connecting the following coordinates in the order listed:

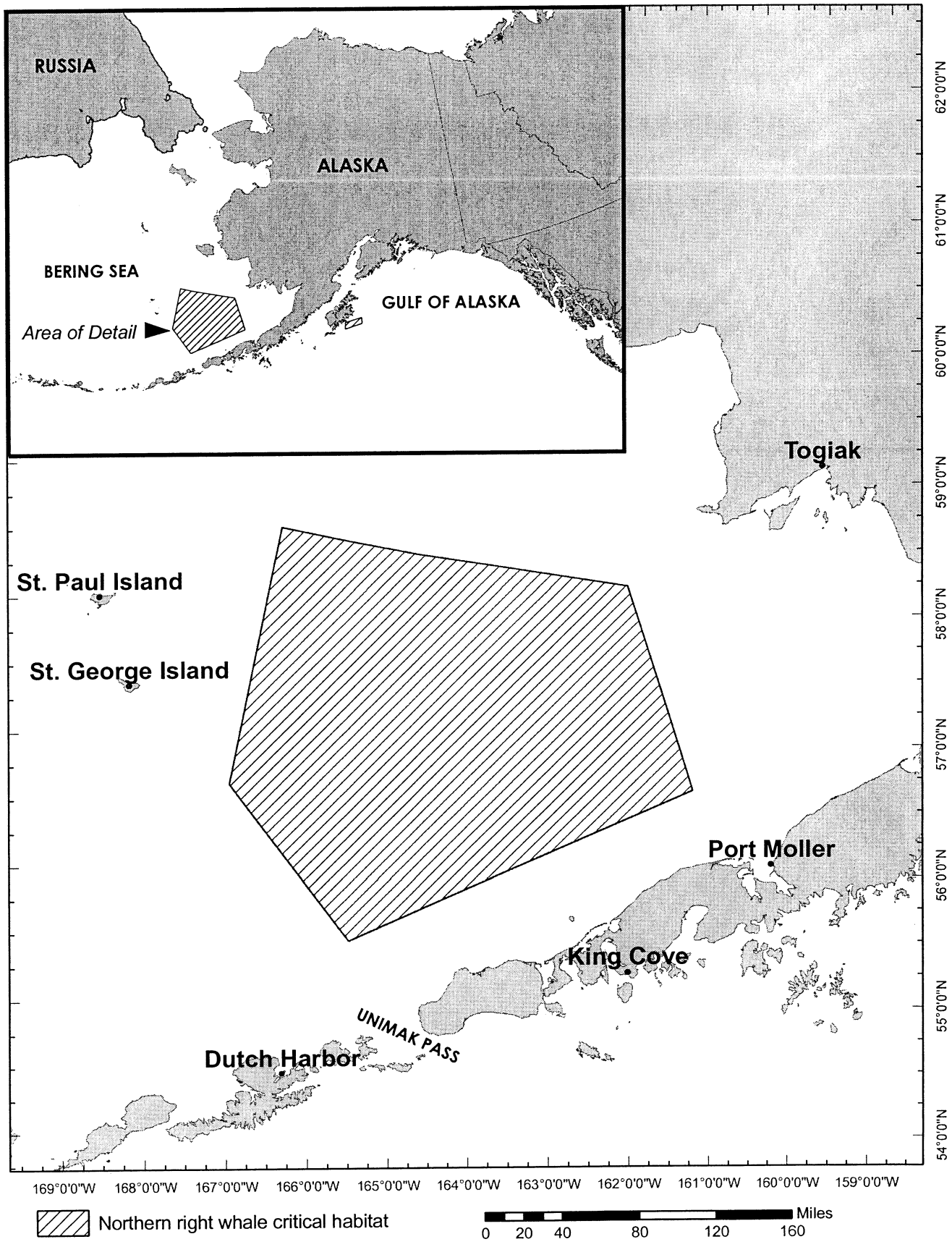
58°00′ N/168°00′ W
58°00′ N/163°00′ W
56°30′ N/161°45′ W
55°00′ N/166°00′ W
56°00′ N/168°00′ W
58°00′ N/168°00′ W.

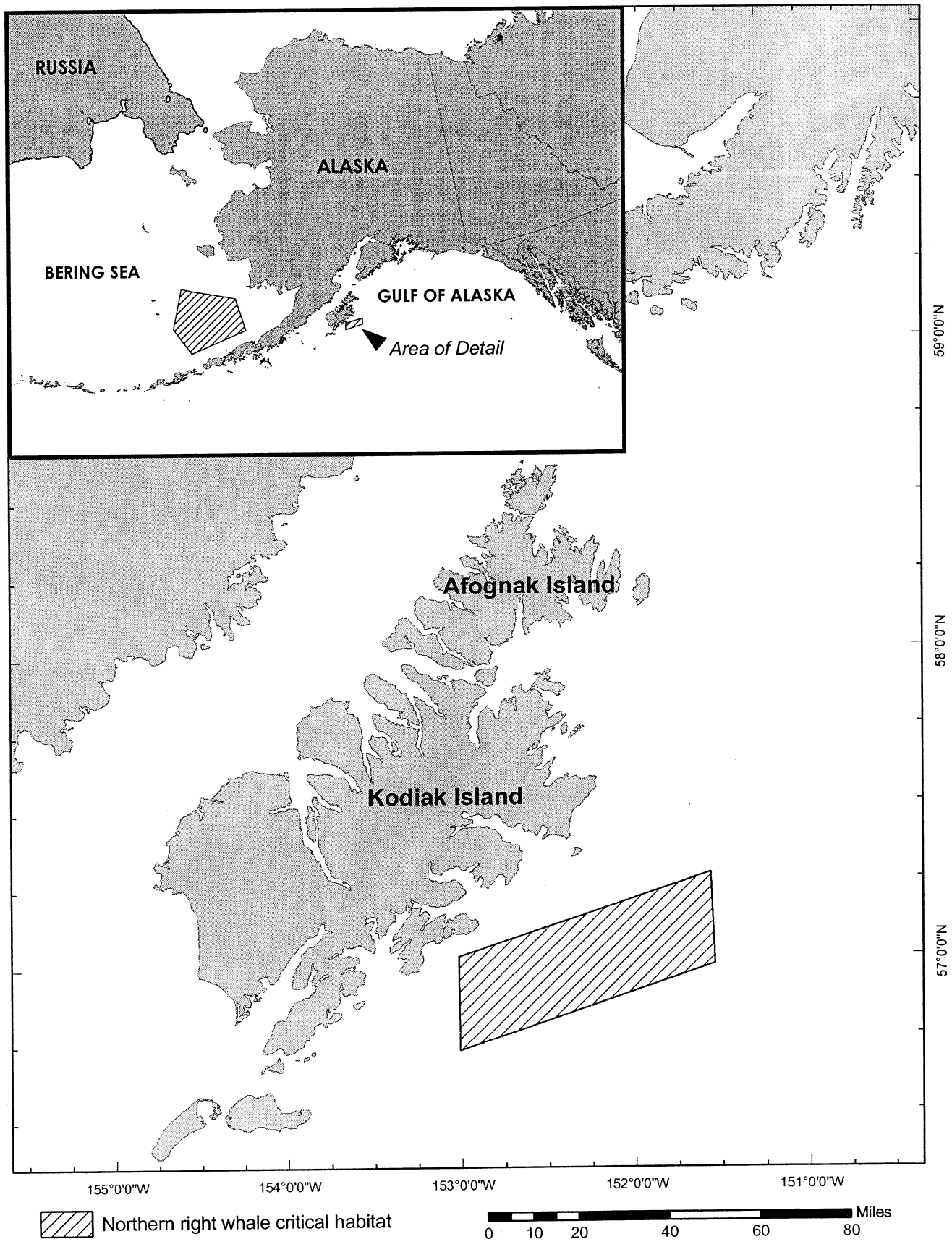
(3) *Gulf of Alaska.* An area described by a series of straight lines connecting

the following coordinates in the order listed:

57°03′ N/153°00′ W
57°18′ N/151°30′ W
57°00′ N/151° 30′ W
56°45′ N/153°00′ W
57°03′ N/153°00′ W.

(4) Maps of critical habitat for the northern right whale in the North Pacific Ocean follow:


RUSSIA
ALASKA
BERING SEA
GULF OF ALASKA
Area of Detail
Togiak
St. Paul Island
St. George Island
Port Moller
King Cove
UNIMAK PASS
Dutch Harbor
62°0'0"N
61°0'0"N
60°0'0"N
59°0'0"N
58°0'0"N
57°0'0"N
56°0'0"N
55°0'0"N
54°0'0"N
169°0'0"W
168°0'0"W
167°0'0"W
166°0'0"W
165°0'0"W
164°0'0"W
163°0'0"W
162°0'0"W
161°0'0"W
160°0'0"W
159°0'0"W
Northern right whale critical habitat
Miles
0 20 40 80 120 160


RUSSIA
ALASKA
BERING SEA
GULF OF ALASKA
Area of Detail
Afognak Island
Kodiak Island
59°0'0"N
58°0'0"N
57°0'0"N
155°0'0"W
154°0'0"W
153°0'0"W
152°0'0"W
151°0'0"W
Northern right whale critical habitat
Miles
0 10 20 40 60 80

[FR Doc. 06–6014 Filed 6–30–06; 1:05 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 050719189–5286–03; I.D. 062706A]

RIN 0648–AT33

International Fisheries; Pacific Tuna Fisheries; Restrictions for 2006 Longline Fisheries in the Eastern Tropical Pacific Ocean; Fishery Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing the U.S. longline fishery for bigeye tuna in the Inter-American Tropical Tuna Commission (IATTC) Convention Area for the remainder of 2006, because the bigeye tuna catch in the Convention Area has reached the 150–metric ton (mt) limit for 2006. This action, implemented under the regulations for the Pacific Tuna Fisheries will contribute to efforts to end overfishing of bigeye tuna in the eastern tropical Pacific Ocean (ETP), consistent with recommendations by the IATTC that have been approved by the Department of State (DOS) under the Tuna Conventions Act. This action is intended to limit fishing mortality on the bigeye tuna stock caused by longline fishing in the Convention Area and contribute to the long-term conservation of the bigeye tuna stock at levels that support healthy fisheries.

DATES: Effective 12:01 a.m. (0001 hrs) Hawaii Standard Time (HST) on July 6, 2006, through 12:01 a.m. (0001 hrs) HST on January 1, 2007.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980–4030.

SUPPLEMENTARY INFORMATION: The United States is a member of the IATTC, which was established under the Convention for the Establishment of an Inter-American Tropical Tuna Commission signed in 1949 (Convention). The IATTC was established to provide an international arrangement to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area for this purpose is defined to include the waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the status of stocks of tuna and the fisheries to determine appropriate harvest limits or other measures to prevent overexploitation of tuna stocks and promote viable fisheries. Under the Tuna Conventions Act, 16 U.S.C. 951–962, NMFS must publish regulations to carry out IATTC recommendations and resolutions that have been approved by DOS. The Southwest Regional Administrator also is required by regulations at 50 CFR 300.25(b)(3) to issue a direct notice to the owners or agents of U.S. vessels that operate in the ETP of actions recommended by the IATTC and approved by the DOS. A notice to the fleet was sent May 31, 2005, advising the U.S. bigeye tuna longline fleet of the bigeye tuna quota in the ETP for the 2005 and 2006 fishing years. The 150–mt quota and procedure to close the U.S. longline bigeye fishery upon reaching the quota in 2006 was established by a final rule published on November 22, 2005 (70 FR 70549).

The IATTC recommended and the DOS approved a measure whereby the U.S. longline fishery for bigeye tuna in the Convention Area will close for the remainder of calendar year 2006 if the catch of bigeye tuna by U.S. longline vessels in the Convention Area reaches 150 mt (the amount estimated to have been caught by the U.S. longline fishery in the Convention Area in 2001). The measure recommended by the IATTC and approved by DOS states that no bigeye tuna may be caught and retained by a nation's longline bigeye tuna vessels in the Convention Area during the remainder of the calendar year 2006 once the nation's longline harvest of bigeye in the Convention Area has reached the nation's catch level for bigeye tuna harvested in the Convention Area by longline in 2001.

NMFS has determined that the 150–mt catch level has been reached, and hereby closes the U.S. longline fishery for bigeye tuna in the Convention Area for the remainder of the year 2006. It is, therefore, prohibited for a U.S. longline bigeye tuna vessel to catch and retain bigeye tuna in the Convention Area from the effective date of this action through December 31, 2006.

Classification

This action is consistent with the Tuna Conventions Act and regulations for the Pacific Tuna Fisheries found at 50 CFR 300.25.

This action responds to the best available information obtained from the fishery. For the reasons set forth below, the Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. § 553(b)(B) to waive the requirement for prior notice and opportunity for public for this action, which closes the U.S. bigeye tuna longline fishery in the IATTC Convention Area for the remainder of the 2006 fishing season. Similarly, the AA finds good cause to waive the 30-day delay in the effective date for this action under 5 U.S.C. 553(d)(3). Providing prior notice and opportunity for public comment is impracticable and contrary to the public interest because it would take time to effectuate, resulting in continued harvest of bigeye tuna by the U.S. longline fleet over the 2001 catch levels. Exceeding the quota violates US obligations to conserve bigeye tuna under the Convention. In 2003, 2004, and 2005, IATTC stock assessment scientists concluded that the bigeye tuna stock is at a level below that which would produce the average maximum sustainable yield. Furthermore, NOAA has determined that bigeye tuna in the Pacific are subject to overfishing, using the standards for ''overfishing'' in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq*. At this time, the public's interests are best served by immediately closing this fishery. Closing this fishery now will ensure that the U.S. does not exceed the U.S. longline bigeye tuna quota, and will contribute to maintaining the bigeye tuna stocks at levels that will sustain the stocks at maximum sustainable yield for the future. For the same reasons, the AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. § 553(d)(3).

This action is authorized by 50 CFR 300.25(b), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 951–961 *et seq*.

Dated: June 29, 2006.

James P. Burgess,

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

[FR Doc. 06–6015 Filed 6–30–06; 1:19 pm]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 060215036–6178–02; I.D. 101501A]

RIN 0648–AU30

Pacific Halibut Fisheries; Guideline Harvest Levels for the Guided Recreational Halibut Fishery; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects the regulatory text of a final rule published August 8, 2003, (FR Doc. 03–20285) that implemented the guideline harvest level (GHL) for the charter sport fishery for Pacific halibut in waters off Alaska. This action is necessary to correct a typographical error in regulations implementing the GHL.

DATES: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Jason Gasper, NMFS, 907–586–7228 or email at *jason.gasper@noaa.gov*.

SUPPLEMENTARY INFORMATION: A final rule published August 8, 2003, (68 FR 47256) implemented guideline harvest level (GHL) measures for managing the harvest of Pacific halibut (*Hippoglossus stenolepis*) in the charter sport fishery in International Pacific Halibut Commission (Commission) management Area 2C and Area 3A in and off Alaska. This correcting amendment revises the regulation at 50 CFR 300.65(c)(2) to change the reference to Commission management from Area 3B to Area 3A. Paragraph (c)(2) is set out as paragraph (i)(2) in the August 8, 2003, rule and was redesignated as paragraph (c)(2) on April 1, 2005 (70 FR 16742).

Need for Correction

Current text at § 300.65(c)(2) incorrectly indicates that the GHL will be established for Commission Area 3B. This regulation states that ''NMFS will publish a notice in the **Federal Register** on an annual basis establishing the GHL for Area 2C and Area 3B for that Calendar year within 30 days of receiving information from the Commission which establishes the constant exploitation yield for that year.'' This regulation is not consistent with § 300.65(c)(1), which provides for the annual determination of GHLs for Area 2C and Area 3A based on the constant exploitation yield (CEY) for halibut in Area 2C and Area 3A. When the Commission establishes the annual CEY, § 300.65(c)(2) provides that NMFS must notify the public of the GHLs by publication of a notice in the **Federal Register**, presumably for Area 2C and Area 3A as prescribed in § 300.65(c)(1) rather than for Area 2C and Area 3B as currently stated in § 300.65(c)(2). The regulation also is not consistent with § 300.65(c)(3) which codifies procedures that NMFS takes if the GHL is exceeded in Area 2C and Area 3A. Therefore, the reference to Area 3B at § 300.65(c)(2) is not consistent with the Commission areas outlined in all other GHL regulations at § 300.65(c). In addition, the GHL was not intended to apply in Area 3B as it was described in the proposed rule (67 FR 3867, January 28, 2002), or in the preamble to the final rule implementing the GHL (68 FR 47256, August 8, 2003). Reference to Area 3B at § 300.65(c)(2) is a typographical mistake. This rule issues a correcting amendment to correct the typographical error at § 300.65(c)(2) to indicate Commission management Area 3A instead of Area 3B.

Classification

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this correcting amendment to the GHL regulations, as such procedures would be unnecessary. Notice and comment is unnecessary because this action makes a minor, non-substantive change correcting a Commission area in § 300.65(c)(2), which is itself a ministerial provision requiring NOAA to publish in the **Federal Register** notice to the public of the GHLs set for Areas 2C and 3A pursuant to § 300.65(c)(1). The rule does not make any substantive change in the rights and obligations of charter sport fishermen managed under the GHL halibut regulations. No aspect of this action is controversial and no change in operating practices in the fishery is required. Because this action makes only the minor, non-substantive changes to § 300.65(c)(2) described above, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: June 29, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 300 is corrected by making the following correcting amendment:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.65, paragraph (c)(2) is revised to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(c) * * *

(2) NMFS will publish a notice in the **Federal Register** on an annual basis establishing the GHL for Area 2C and Area 3A for that Calendar year within 30 days of receiving information from the Commission which establishes the constant exploitation yield for that year.

* * * * *

[FR Doc. E6–10556 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 060404093–6177–02; I.D. 033106A]

RIN 0648–AU24

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing changes to the regulations for the Crab Rationalization Program. This action is necessary to correct two discrepancies in the scope of the sideboard protections for Gulf of Alaska (GOA) groundfish fisheries provided in a previous rulemaking. Specifically, this

action would remove the sideboard restrictions from vessels that did not generate Bering Sea snow crab (*Chionoecetes opilio*) quota share and would apply the sideboards to federally permitted vessels operating in the State of Alaska (State) parallel fisheries. This action is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective on August 7, 2006.

ADDRESSES: Copies of the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action, and copies of the Bering Sea and Aleutian Islands Crab Fisheries Final Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh, Records Officer, and from the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228 or *gretchen.harrington@noaa.gov*.

SUPPLEMENTARY INFORMATION: In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). As amended, section 313(j)(1) requires the Secretary of Commerce to approve and implement by regulation the Crab Rationalization Program (Program), as it was approved by the North Pacific Fishery Management Council (Council). In June 2004, the Council consolidated its actions on the Program into Amendment 18 to the FMP. Additionally, in June 2004, the Council developed Amendment 19 to the FMP, which represents minor changes necessary to implement the Program. NMFS published a final rule to implement Amendments 18 and 19 on March 2, 2005 (70 FR 10174).

NMFS published the proposed rule for the sideboard restriction regulatory change in the **Federal Register** on April 24, 2006 (71 FR 20966), with a public comment period through May 9, 2006. NMFS received no public comments on the proposed rule.

This final rule corrects two aspects of the sideboard provisions in the regulations implementing the Program. One change removes the sideboard limits from vessels that did not generate Bering Sea snow crab quota share under the Program. The second change clarifies that the sideboard protections apply to federally permitted vessels that fish in the State parallel groundfish fisheries. These changes are necessary to implement the Program's sideboard provisions. A description of this action is provided in the preamble to the proposed rule and is briefly summarized here.

State parallel fisheries occur in State waters but are opened at the same time as Federal fisheries in Federal waters. State parallel fishery harvests are considered part of the Federal total allowable catch (TAC) and federally permitted vessels move between State and Federal waters during the concurrent parallel and Federal fisheries. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.

Sideboard limits restrict the ability of vessels whose histories resulted in Bering Sea snow crab quota share, or fishing under License Limitation Program (LLP) licenses derived from those vessels, to participate in GOA groundfish fisheries. The purpose of the sideboard limits is to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery. Historically, the Bering Sea snow crab fishery and GOA groundfish fisheries operated concurrently from January through March, meaning that a crab vessel owner had to decide whether to fish for Bering Sea snow crab or GOA groundfish but could not participate fully in both fisheries. With crab rationalization, vessel owners have the flexibility to fish for snow crab during a greatly extended season, or to lease their crab individual fishing quota (IFQ) and not fish at all. This increased flexibility for crab fishermen could lead to increases in fishing effort in GOA groundfish fisheries, especially the Pacific cod fishery, and could negatively affect the other participants in those fisheries.

Need for Regulatory Changes

This action makes two changes to the regulations governing sideboard provisions for the GOA groundfish fisheries at 50 CFR 680.22. The first change removes the sideboard restrictions from vessels whose histories did not generate Bering Sea snow crab quota share. The second change clarifies that the sideboard restrictions apply to federally permitted vessels that fish in the State parallel groundfish fisheries.

The Council intended the sideboards to apply to vessels that qualify for Bering Sea snow crab quota share under the Program. The proposed rule for the Program included regulatory language to this effect (69 FR 63200, October 29, 2004). However, this language was changed in the final rule to apply the sideboards to vessels that had snow crab landings during the qualifying period. This change has the unintended consequence of applying the sideboards to vessels that did not qualify for quota share. This final rule changes the regulatory language to reflect the original language in the Program's proposed rule. NMFS received no public comments on this aspect of the Program's proposed rule.

The existing regulations restrict participation in Federal fisheries but not in the adjacent State waters fisheries. This omission in the regulations would allow vessels whose history generated quota share to increase their participation in the groundfish fisheries. This final rule changes the regulations to clarify that the GOA groundfish sideboard directed fishing closures apply to federally permitted vessels while fishing in the State parallel fisheries.

NMFS finds it necessary to apply the sideboard limits to federally permitted vessels fishing in State parallel fisheries in order to implement the FMP. Without this regulatory change, vessels that traditionally participated in the Bering Sea snow crab fishery could use the flexibility of the Program to increase their participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery, because they could circumvent the directed fishing closures by fishing in State waters. NMFS has notified the public that it will implement the sideboard limits in the State parallel fisheries in the preamble to the proposed and final rules for the Program and in the notice of availability for Amendments 18 and 19.

Changes from the Proposed Rule

One non-substantive change was made from the proposed rule to the final rule. In § 680.22(f), the phrase ''that are required to have'' was changed to ''with'' because the term ''required'' implied that a Federal Fisheries Permit or LLP license was required in State waters. The term ''with'' clarifies that Federal regulations apply to vessels operating under Federal permits.

Classification

NMFS has determined that the final rule is consistent with the FMP, the

Magnuson-Stevens Act, and other applicable laws.

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

NMFS prepared a final regulatory flexibility analysis (FRFA) as required by section 604(a) of the Regulatory Flexibility Act (RFA). The FRFA describes the economic impact this rule will have on small entities. A description of the action, why it is being considered, and the legal basis for it are included at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Issues Raised by Public Comments on the IRFA

NMFS received no public comments on the IRFA.

Need for and Objectives of this Action

This action is necessary to correct two aspects of the sideboard provisions in the regulations implementing the Program that were inadvertently misstated at 50 CFR 680.22.

Number and Description of Small Entities Directly Regulated by the Rule

One hundred and ninety five entities are subject to the sideboard regulations and fish in the GOA groundfish fisheries. A fishing operation is considered to be a small entity for RFA purposes if its total annual gross receipts, from all sources, is less than $4 million. The 2004 gross revenue data from the State fishticket database is readily available and includes revenue from all fishing operations in Alaska and adjacent EEZ waters. Based on these data, as many as 189 of the 195 entities may be considered small.

Description of Significant Alternatives and a Description of Steps Taken to Minimize the Significant Economic Impacts on Small Entities

No significant alternatives to the proposed rule exist that accomplish the stated objectives, are consistent with applicable statutes, and would minimize the economic impact of the proposed rule on small entities. A no action alternative was considered, but was rejected because it did not meet the objectives of the Program's sideboard provisions. No significant adverse effects are shown for this action.

The Council created the sideboards with the expressed purpose of restricting the owners of vessels acquiring snow crab quota share from using the resulting increased operational flexibility to expand their participation in the already fully subscribed GOA groundfish fisheries. The proposed regulatory changes are necessary owing to the introduction of two inconsistencies that exist between the Program provisions and the language in the implementing regulations. These corrections will implement the sideboards as intended by the Council.

Sideboards on Vessels Without Quota Share

Six small entities, as defined for RFA purposes, would be directly regulated by the removal of the sideboard provisions from vessels that did not generate snow crab quota shares. These entities are currently, although inadvertently, subject to the economic burden of the sideboard restrictions, despite not having qualified for snow crab quota shares. The proposed action would lift this uncompensated burden from these six small entities by removing their sideboard restrictions.

Sideboards in the State Parallel Groundfish Fisheries

As promulgated, the current regulatory language may allow federally permitted vessels to circumvent the Program's sideboards by fishing only in the State parallel groundfish fisheries in the GOA. Since the start of the 2006 A season Pacific cod fishery (the first GOA groundfish opening following implementation of the current Program provisions), no vessels prohibited by these sideboard provisions from fishing for Pacific cod have fished in the State parallel fisheries. The fact that no vessels currently are exploiting this loophole in the regulations is testament to the clear intent that the sideboards apply to the State parallel fisheries, and the plain language understanding of the term ''GOA.'' This action proposes to correct the sideboard provisions of the Program's implementing regulations, by applying them to federally permitted vessels fishing in State parallel groundfish fisheries. Therefore, the preferred action has no economic effects beyond those considered in the EIS prepared for the Program (see **ADDRESSES**).

Sideboard restrictions prevent adverse spillover effects in other fisheries from an influx of effort from the rationalized crab fisheries. The Crab Rationalization Program, because it issued quota share to vessel owners and provided them the ability to form cooperatives, provides these directly regulated entities substantial economic benefits, as discussed in the EIS prepared for the Program (see **ADDRESSES**). As discussed in that analysis, the sideboard limits prevent these participants from using these benefits to increase their effort in the GOA groundfish fisheries. The sideboard restrictions provide the sideboarded vessels the ability to maintain their historic harvest levels in GOA groundfish fisheries, and therefore, do not make the sideboarded vessels worse-off economically. Vessels with minimal harvests in the snow crab fisheries and substantial harvests in the Pacific cod fishery would be exempt from the sideboard restrictions, since these vessels have little dependence on the crab fisheries. In addition, vessels with less than a minimum historic harvest from GOA groundfish fisheries are not permitted to participate in GOA groundfish fisheries.

The proposed action does not likely have the potential to impose disproportionate impacts on small entities, relative to large entities. The regulatory change applying the sideboard constraints to State waters during the parallel fisheries would provide all qualifying vessels, large and small, a level playing field upon which to operate, as had been the intention of the Council from the outset. Because this change merely rescinds an unintentional and unexploited regulatory loophole, the only possible effect is to codify the commonly held understanding among the fishing industry of the sideboard rule.

This rule does not have the potential to significantly reduce profits for small entities. The absence of cost data precludes quantitative estimation of potential impacts on profitability, although these would be expected to be minimal, because no vessels chose to exploit this loophole in the 2006 A season (the first groundfish fishery after sideboard implementation).

This regulation does not impose new recordkeeping and reporting requirements on any directly regulated small entities.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the Internet at *http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm* to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 680 as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

■ 2. In § 680.22, paragraph (a)(1)(i) is revised and paragraph (f) is added to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries.

* * * * *

(a) * * *

(1) * * *

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab (*C. opilio*) between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab (*C. opilio*) fishery QS; and

* * * * *

(f) *Sideboard protections in the State of Alaska parallel groundfish fisheries.* Vessels subject to the sideboard restrictions under paragraph (a) of this section, with a Federal Fisheries Permit or LLP license, shall be subject to the regulations of this section while participating in any groundfish fishery in State waters adjacent to the GOA opened by the State of Alaska and for which the State of Alaska adopts a Federal fishing season.

[FR Doc. E6–10554 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 129
Thursday, July 6, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2006–0073]

Importation of Shelled Garden Peas From Kenya

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas would have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by the Kenya Plant Health Inspectorate Service. This action would allow for the importation of shelled peas from Kenya into the continental United States while continuing to protect against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before September 5, 2006.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0073 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to APHIS–2006–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to APHIS–2006–0073.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The Kenya Plant Health Inspectorate Service (KEPHIS) has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow shelled garden peas from Kenya to be imported into the United States. As part of our evaluation of Kenya's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instruction for accessing Regulations.gov).

The PRA, titled ''Importation of Garden Peas, Shelled *Pisum sativum* L. from Kenya into the Continental United States, a Qualitative Pathway-Initiated Risk Assessment'' (May 2006), evaluates the risks associated with the importation of shelled garden peas into the continental United States (the lower 48 States and Alaska) from Kenya. The PRA identified 13 pests of quarantine significance present in garden peas (*Pisum sativum*) in Kenya: The weevils *Callosobruchus analis, C. chinensis, C. maculates*, and *C. phaseoli*; the borers *Crocidosema aporema, Leucinodes orbonalis*, and *Maruca vitrata*; the grasshopper *Diabolocatantops axillaris*; the bollworm *Helicoverpa armigera;* the caterpillar *Lampides boeticus;* the leafworm *Spodoptera littoralis;* the flower thrips *Thrips flavus;* and the looper *Thysanoplusia orichalcea.*

However, the assessment took into account the post-harvest handling that the peas would be subjected to in Kenya and further determined that none of the 13 quarantine significant pests identified may be reasonably expected to follow the pathway of shelled garden pea shipments from Kenya. As a result of these findings, the 13 pests of quarantine significance were listed as not following the pathway, and, therefore, were not analyzed further.

The specific post-harvest processing procedures suggested by KEPHIS that were considered in the PRA and that would be required under this proposed rule are described in the following paragraphs.

The imports of garden peas would be limited to peas that have been removed from their shell. Shelling allows for visual inspection and removes most of the larval pests that may be feeding on the pods and exposes pests that feed on the pea. These pests are highly visible and easily detected during the shelling process.

The shelled peas would then have to be washed in a disinfectant wash in water at 3 to 5 °C containing 50 ppm of chlorine. The washing of the shelled peas further aids in the removal of any insects that might feed on individual peas.

In addition, we would require that KEPHIS inspect the shelled peas and issue a phytosanitary certificate for each consignment of peas. The phytosanitary certificate would have to bear an additional declaration confirming that the required post-harvest shelling and washing procedures have been

followed, as well as a statement confirming that the peas have been inspected and found free of pests.

We have determined that these proposed measures would prevent the introduction of plant pests into the United States. The proposed conditions described above for the importation of shelled garden peas from Kenya into the United States would be added to the fruits and vegetables regulations as a new § 319.56–2ss.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the fruits and vegetables regulations to allow the importation of shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas would have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by KEPHIS. This action would allow for the importation of shelled peas from Kenya into the continental United States while continuing to protect against the introduction of quarantine pests.

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities. In accordance with the Act, APHIS has performed an initial regulatory flexibility analysis regarding the economic effects of this proposed rule on small entities. We do not have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities that may incur benefits or costs from the implementation of this proposed rule. However, based on the information we do have, we believe that most, if not all, of the businesses affected by the proposed rule would be small, and there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities.

The United States is the third largest producer of garden peas after India and China. However, less than 1 percent of U.S. production goes into the fresh market, the reason being that fresh garden peas require harvesting by hand, whereas peas destined for processing can be machine-harvested. The cost of farm labor is considerably higher in the United States than in many other countries.

According to industry sources, fresh garden peas grown in the United States are mainly produced in California (more than 85 percent), with the rest grown mainly in Florida. Published data on domestic production of fresh garden peas exist only for two counties in California, San Luis Obispo County and Santa Barbara County.[1] Based on the 2000–2004 data for these two counties, California snow pea production declined over that 5-year period, while green pea production has expanded. The value of pea production in those two counties in 2004 was $29 million.

The United States is a net importer of fresh/chilled peas, and our major foreign supplier of fresh garden peas in 2005 was Guatemala, with a 45 percent share (by value) of U.S. imports, followed by Peru (29 percent) and Mexico (24 percent). Nearly all U.S. fresh pea exports go to Canada.

Our reported domestic supply of fresh garden peas (California production plus net U.S. imports) in 2004 totaled about 39,700 metric tons, valued at $42.7 million. These totals exclude U.S. production that may have taken place outside of San Luis Obispo and Santa Barbara Counties.

If we include the 15 percent of unreported U.S. production of fresh garden peas thought to occur outside of the two California counties, then the 2004 domestic supply would total about 42,800 metric tons, with roughly 65 percent imported and 35 percent supplied by U.S. producers.

U.S. entities that could be affected by the proposed rule are domestic producers of fresh garden peas and wholesalers who import fresh garden peas. Businesses producing green peas and snow peas are classified in the North American Industry Classification System (NAICS) within the category of Other Vegetable (except Potato) and Melon Farming (NAICS code 111219). The Small Business Administration's (SBA) small entity definition for these producers is annual receipts of not more than $750,000. Firms that would import fresh, shelled garden peas from Kenya are defined as small entities if they have 100 or fewer employees (NAICS code 424480, Fresh Fruit and Vegetable Merchant Wholesalers).[2]

In general, firms engaged in production or importation of agricultural commodities are predominantly small. We believe that most if not all of the businesses affected by the proposed rule would be small.

We do not know the number of U.S. producers of fresh garden peas. According to the 2002 Census of Agriculture for California Counties, there were 327 vegetable farms in San Luis Obispo and Santa Barbara Counties, the two counties for which there are published fresh garden pea production data. We do not know how many of these vegetable farms produce fresh garden peas. Also, we do not know their size, but in general, such entities are predominantly small. We welcome information that the fresh vegetable industry or general public may provide on the number and size of entities that could be affected by the proposed rule.

Alternatives

An alternative to the proposed rule would be to require that a different set of phytosanitary measures be satisfied. Risk assessment and risk management documents prepared by APHIS identify 13 quarantine pests for fresh garden peas from Kenya. For the current proposed rule, the commodity would be subject to certain risk mitigations, including removal of the seeds from the pod, washing of the shelled peas in water at 3 to 5 °C containing 50 ppm chlorine, phytosanitary certification by KEPHIS, and U.S. port-of-entry inspection. These conditions are expected to successfully mitigate risks posed to U.S. agriculture. Import requirements less or more stringent than those proposed would, respectively, either not provide an appropriate level of phytosanitary protection or impose unduly burdensome measures.

We would appreciate any comments on the potential economic effects of allowing the importation into the continental United States of garden peas from Kenya, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives.

This proposed rule contains certain reporting and recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12988

This proposed rule would allow shelled garden peas to be imported into the continental United States from Kenya. If this proposed rule is adopted, State and local laws and regulations regarding shelled garden peas imported under this rule would be preempted while the fruit is in foreign commerce.

[1] Annual County Agricultural Commissioner Report Data (Sacramento: California Department of Food and Agriculture, 2000–2004).

[2] The wholesale sector comprises two types of wholesalers: Those that sell goods on their own account and those that arrange sales and purchases for others for a commission or fee. Importers are included in both cases.

Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to APHIS–2006–0073. Please send a copy of your comments to: (1) APHIS–2006–0073, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the fruits and vegetables regulations to allow the importation of shelled garden peas from Kenya into the continental United States. In order to be eligible for importation, the peas would have to be shelled, washed, and inspected and accompanied by a phytosanitary certificate issued by KEPHIS. The phytosanitary certificate would have to bear an additional declaration stating that the peas had been shelled and washed in accordance with the proposed requirements and had been inspected and found free of pests.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.15 hour per response.

Respondents: Importers of peas, KEPHIS.

Estimated annual number of respondents: 2.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 40.

Estimated total annual burden on respondents: 6 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. A new § 319.56–2ss would be added to read as follows:

§ 319.56–2ss Conditions governing the entry of shelled garden peas from Kenya.

Garden peas (*Pisum sativum*) may be imported into the continental United States from Kenya only under the following conditions:

(a) The peas must be shelled from the pod.

(b) The peas must be washed in disinfectant water at 3 to 5 °C containing 50 ppm chlorine.

(c) Each shipment of peas must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Kenya bearing the following additional declaration: ''These peas have been shelled and washed in accordance with 7 CFR 319.56–2ss and have been inspected and found free of pests.''

Done in Washington, DC, this 29th day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–10551 Filed 7–5–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20351; Directorate Identifier 2003–NM–269–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for all Boeing Model 767 airplanes. The original NPRM would have required an inspection of each main tank fuel boost pump for the presence of a pump shaft flame arrestor, and if the flame arrestor is missing, replacement of that pump with a pump having a pump shaft flame arrestor. The original NPRM would also have required repetitive measurements of the flame arrestor's position in the pump, and corrective actions if necessary. The original NPRM resulted from reports that certain fuel boost pumps may not have flame arrestors installed in the pump shaft and reports

that the pin that holds the flame arrestor in place can break due to metal fatigue. This action revises the original NPRM by proposing the replacement of the pump with a new or modified pump, which would end the repetitive measurements. This action also revises the compliance times for certain airplanes. We are proposing this supplemental NPRM to prevent the possible migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion.

DATES: We must receive comments on this supplemental NPRM by July 31, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: John Vann, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6513; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2005–20351; Directorate Identifier 2003–NM–269–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. 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 in the Nassif Building at the DOT street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for all Boeing Model 767 series airplanes. The original NPRM was published in the **Federal Register** on February 15, 2005 (70 FR 7678). The original NPRM proposed to require an inspection of each main tank fuel boost pump for the presence of a pump shaft flame arrestor, and if the flame arrestor is missing, replacement of that pump with a pump having a pump shaft flame arrestor. The original NPRM also proposed to require repetitive measurements of the flame arrestor's position in the pump, and corrective actions if necessary.

Actions Since Original NPRM Was Issued

The preamble to the original NPRM explains that we consider the proposed requirements ''interim action'' and were considering further rulemaking. Since we issued the original NPRM, the manufacturer has issued new service information, which specifies actions that terminate the repetitive measurements proposed in the original NPRM. This supplemental NPRM follows from the determination that the additional actions are necessary.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 767–28A0088 (for Model 767–200, –300, and –300F series airplanes) and 767–28A0089 (for Model 767–400ER series airplanes), both dated February 24, 2005. The alert service bulletins describe procedures for replacing the left and right main tank fuel boost pumps with new or modified pumps that have a better flame arrestor installation. Doing the replacements ends the inspections specified in Boeing Alert Service Bulletin 767–28A0077 (for Model 767–200, –300, and –300F series airplanes) or 767–28A0081 (for Model 767–400ER series airplanes), both Revision 1, both dated July 8, 2004, as applicable.

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

Boeing Alert Service Bulletins 767–28A0088 and 767–28A0089 reference Hamilton Sundstrand Service Bulletin 5006003–28–3, dated December 8, 2004, as the appropriate source of service information for modifying the pump.

Comments

We have considered the following comments on the original NPRM.

Support for the Original NPRM

The Air Line Pilots Association agrees with the original NPRM.

Request To Allow Credit

ABX Air requests that actions done in accordance with Boeing Alert Service Bulletin 767–28A0077, dated March 6, 2003, be accepted as a method of compliance with the requirements of the original NPRM. The commenter indicates that there are no substantive differences between the actions of the original version and Boeing Alert Service Bulletin 767–28A0077, Revision 1, dated July 8, 2004 (Revision 1 is listed as the appropriate source of service information for doing the actions specified in paragraph (g) of the original NPRM for Model 767–200, –300, and –300F series airplanes).

We agree that any work done before the effective date of the AD in accordance with Boeing Alert Service Bulletin 767–28A0077, dated March 6, 2003, is acceptable for compliance with the actions specified in paragraphs (f) and (g) of this supplemental NPRM (specified as paragraph (g) in the original NPRM) for Model 767–200, –300, and –300F series airplanes. In addition, we have determined that any

work done before the effective date of the AD in accordance with Boeing Alert Service Bulletin 767–28A0081, dated March 6, 2003, is acceptable for compliance with the actions specified in paragraphs (f) and (g) of this supplemental NPRM for Model 767–400ER series airplanes (Boeing Alert Service Bulletin 767–28A0081, Revision 1, dated July 8, 2004, is listed as the appropriate source of service information for doing the actions specified in paragraph (g) of the original NPRM for Model 767–400ER series airplanes).

We have added new paragraph (j) to this supplemental NPRM to give credit for actions done before the effective date of the AD in accordance with these service bulletins. We have also removed the service bulletin reference paragraph from this supplemental NPRM (specified as paragraph (f) in the original NPRM) and we have included the service bulletin information in paragraphs (f) and (g) of this supplemental NPRM (specified as paragraph (g) in the original NPRM).

Request To Add Terminating Action

ABX Air, Continental Airlines, All Nippon Airways (ANA), UPS, and Boeing state that there is now a terminating action for the repetitive inspections (measurements) specified in paragraph (g) of original NPRM since Boeing has issued Alert Service Bulletins 767–28A0088 and 767–28A0089, both dated February 24, 2005, which replace the main tank fuel boost pumps with new or modified pumps. Several commenters request that a statement be added to the original NPRM that the incorporation of the above service bulletins constitutes an optional terminating action for the repetitive inspections of paragraph (g) of the original NPRM. ANA also requests clarification that the new pumps are not subject to the repetitive inspections. Several commenters also point out that Note 3 of the original NPRM specifies that there is no terminating action available for the actions in paragraph (g) and request that Note 3 be deleted because there is an optional terminating action.

We agree with the commenters that the replacements specified in Boeing Alert Service Bulletins 767–28A0088 and 767–28A0089 are terminating action for the repetitive measurements specified in paragraphs (f) and (g) of this supplemental NPRM. However, we do not agree that the replacement should be optional. Paragraph (i) of this supplemental NPRM would require replacing the fuel pumps and is a terminating action for the repetitive measurements specified in paragraphs (f) and (g) of this supplemental NPRM. We have also removed Note 3 from this supplemental NPRM because there is now terminating action.

Request To Exclude Part From Requirements of Paragraph (h)

ABX Air requests that pump assembly part number (P/N) 5006003D be excluded from the requirements of paragraph (h) of the original NPRM. The commenter indicates that P/N 5006003D is approved to be installed on Model 767 airplanes per Boeing Alert Service Bulletins 767–28A0088 and 767–28A0089.

We agree. We have revised paragraph (k) of this supplemental NPRM (specified as paragraph (h) in the original NPRM) to allow the installation of the main fuel tank boost pump P/N 5006003D.

Request To Revise Compliance Times To Match Service Bulletins

ANA requests that the compliance times for the original NPRM follow the compliance times specified in Boeing Alert Service Bulletins 767–28A0077 and 767–28A0081. The commenter notes that the original NPRM specifies that ''prior to the accumulation of 15,000 total flight hours, or within 365 days after the effective date of this AD, whichever is later; do a detailed inspection * * *.'' The commenter contends that this is different from the alert service bulletins. The commenter notes that it is performing the inspections in accordance with the alert service bulletins.

We agree with the commenter's request to follow the compliance times in the alert service bulletins. For certain airplanes specified in the alert service bulletins, the initial inspections should be done within 365 days after the airplane has accumulated 15,000 total flight hours. We recognize that the compliance times in the original NPRM penalize the operators with airplanes that have accumulated fewer flight hours, and that the start of the repetitive inspections should be based on the number of hours the airplane has accumulated. Therefore, we have revised the compliance times in this supplemental NPRM to align with the compliance times specified in the alert service bulletins.

Request To Extend Initial Compliance Times to Within 24 Months

The Air Transport Association requests that the compliance time for the initial inspections be extended to 24 months. The commenter indicates that a compliance time of 24 months would better align with the scheduled maintenance of operators of Model 767 airplanes and would align with other fuel tank system actions that may be required as a result of Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83). The commenter also contends that dry running pumps in the main tanks does not present a meaningful risk during ground or flight operations because those concerns would be eclipsed by fuel starvation of the engine. The commenter also states that although there is the risk of dry running pumps during defueling operations, it looks to proper maintenance procedures for mitigation. The commenter concludes that allowing 24 months to do the initial inspection would not impair the intended level of safety.

We do not agree with the commenter to allow the initial inspections within 24 months after the effective date of the AD. A study made by Hamilton Sundstrand, the manufacturer of the affected fuel pumps, shows that up to 25% of the pumps could have loose or missing flame arrestors. For this reason, it is necessary to divide the airplanes into two groups. For airplanes having line numbers (L/Ns) 1 through 914, an investigation has indicated that the subject fuel pumps might not have flame arrestors. These airplanes would need to be inspected for missing flame arrestors within 365 days as specified in Boeing Alert Service Bulletins 767–28A0077 and 767–28A0081. For airplanes having L/Ns 915 and subsequent: The inspection would need to done within 365 days on airplanes that have accumulated more than 15,000 total flight hours; and on airplanes that accumulated less than 15,000 total flight hours, the inspection would need to be done within 365 days after the airplane accumulates 15,000 total flight hours. As there are many Model 767 airplanes in the world fleet that have accumulated more than 15,000 flight hours, we find that the compliance time of 365 days would provide an adequate level of safety.

We also do not agree that dry running pumps in the main tank does not present a meaningful risk during ground or flight operations. We are concerned that dry running pumps without flame arrestors are hazardous due to the lack of data on the ability of the flame front to propagate to the ullage through some depth of fuel prior to fuel starvation of the engine. Additionally, airplane attitude variation during flight operations can uncover at least one of the fuel pump inlets prior to fuel starvation, especially during a low fuel

go around on approach. Proper maintenance procedures mitigate the risk during defueling operations; however, defueling can occur with passengers on board and we have concerns with improperly conducted maintenance procedures.

The basis for the compliance times specified by this supplemental NPRM includes the fact that a missing flame arrestor does not present a very high risk for most flight conditions when there is enough fuel to cover the pump inlet as the probability of a flame reaching the fuel tank is significantly reduced if fuel covers the pump inlet.

In developing appropriate compliance times for this supplemental NPRM, we considered the manufacturer's recommendation specified in the alert service bulletins, the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet and the time necessary to perform the actions. In light of all of these factors, we find that the compliance times specified in this supplemental NPRM represent an appropriate interval of time for affected airplanes to continue to operate without compromising safety. However, an operator may request an alternative method of compliance (AMOC) to extend the compliance time in accordance with paragraph (l) of this supplemental NPRM.

Request To Revise Applicability and Compliance Times

Boeing recommends that the compliance times for airplanes having L/Ns 915 through 926 be revised to match the compliance times specified in the alert service bulletins for airplanes having L/Ns 1 through 914. The commenter notes that the applicability of L/Ns 1 through 914 for the one set of compliance times was based on Hamilton Sundstrand determining which pumps had the missing flame arrestors. However, the commenter states that the terminating action design was incorporated at L/N 927 with the new main boost pump part number specified in Boeing Alert Service Bulletins 767–28A0088 and 767–28A0089. Therefore, the commenter notes that including airplanes having L/Ns 915 through 926 in the compliance times for L/Ns 1 through 914 would clarify when the new pump number was installed. The commenter recommends the following compliance times for the original NPRM:

''For aircraft having L/N 1–926, do an initial inspection within 365 days. For those aircraft with more than 15,000 hours, do the inspection again at each 6,000 flight interval or 24 months whichever comes first. For those aircraft with less than 15,000 hours, do the inspection again within 365 days from the date the aircraft reaches 15,000 hours. Repeat the inspection at each 6,000 flight interval or 24 months whichever comes first.''

Since Boeing's comments were not consistent with its own service bulletin recommendation, we contacted the manufacturer for clarification on its position. Boeing revised its position to be consistent with Boeing Alert Service Bulletins 767–28A0077 and 767–28A0081 for airplanes having L/Ns 1 through 926 and further recommended that for airplanes having L/N 927 and on, an inspection is not required since the airplane already has the new part number installed.

While we acknowledge that airplanes having L/N 927 and subsequent have been equipped with the new pumps in production, the pumps may have been replaced since then. Therefore, all airplanes must be inspected. However, operators may examine their records to determine if the new fuel pumps are installed. If it is conclusively determined that the new pumps are installed, no further action is necessary. We have added new paragraph (h) to allow a records review to determine if the new pump is installed.

Request To Reference Future Revision of Service Bulletin

ATA, on behalf of its members, American Airlines and United Airlines, requests that the original NPRM reference Revision 2 of the Boeing Alert Service Bulletins 767–28A0077 and 767–28A0081. The commenter states that Revision 2 will cite Hamilton-Sundstrand Service Bulletin 5006003–28–3, which would provide the instructions to incorporate into the subject fuel pumps a new shaft and rotor assembly designed to correct the problem.

We do not agree. We have confirmed with Boeing that Alert Service Bulletins 767–28A0077 and 767–28A0081 will not be revised to provide a terminating action. As discussed previously, Boeing has issued Alert Service Bulletins 767–28A0088 and 767–28A0089, which constitute terminating actions for the repetitive actions of paragraphs (f) and (g) of this supplemental NPRM.

Request To Revise Cost

ATA, on behalf of its member United Airlines, requests that the cost analysis be revised. ATA requests that the cost analysis include items such as the impact of airplanes rerouting to a maintenance facility, aircraft preparation, access, correction of discrepancies found, aircraft close-up, and any additional test necessary to put the airplane back in operation. United Airlines states that the repair cost of pumps should be included because Hamilton-Sundstrand quoted a 25% failure rate. United Airlines also notes that 60% of the pumps it has inspected had inlet diffuser struts eroded beyond the specified limits and therefore, pump repairs and replacement sleeve costs should be included.

We do not agree to revise the cost analysis. In establishing the requirements of all ADs, we do consider cost impact to operators beyond the estimates of parts and labor costs contained in AD preambles. For example, where safety considerations allow, we attempt to set compliance times that generally coincide with operators' maintenance schedules. However, because operators' schedules vary substantially, we cannot accommodate every operator's optimal scheduling in each AD. Each AD does allow individual operators to obtain approval for extensions of compliance times, based on a showing that the extension will not affect safety adversely. Therefore, we do not consider it appropriate to attribute to this supplemental NPRM the costs associated with the type of special scheduling that might otherwise be required.

Furthermore, we do not consider it appropriate to attribute the costs associated with aircraft ''down time'' to this supplemental NPRM. Normally, compliance with an AD will not necessitate any additional down time beyond that of a regularly scheduled maintenance hold. Even if additional down time is necessary for some airplanes in some cases, we do not have sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional down time that may be required as this may vary from operator to operator. Therefore, attempting to estimate such costs is not appropriate.

In addition, the economic analysis does not consider the costs of conditional actions, such as repairing a crack detected during a required inspection (''repair, if necessary''). Such conditional repairs would be required, regardless of AD direction, to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations.

The compliance times presented in this supplemental NPRM were developed to minimize the economic impact on operators as much as possible while being consistent with the safety

objectives associated with this supplemental NPRM and the referenced alert service bulletins. We have not revised this supplemental NPRM in this regard.

Request for SFAR 88 Information

ATA questions if the original NPRM originated from the SFAR 88 fuel tank system safety review.

We confirm that this supplemental NPRM did not originate from the SFAR 88 fuel tank system safety review.

Request To Remove Repetitive Inspections

Delta Airlines states that it is not convinced the repetitive inspections specified in the original NPRM are necessary. We infer that the commenter requests that the repetitive inspections be removed. The commenter states that the risk of problems associated with missing or loose boost pump flame arrestors is not great enough to justify repetitive inspections fleetwide. The commenter also states that the pump flame arrestors have been found loose but not missing, and that they retain their flame arresting qualities if loose. In addition, the commenter states that if a sheared roll pin is going to cause a problem, it is going to occur immediately after the pin fails; since the roll pin can shear at any time, no amount of inspections would prevent pin failures.

The commenter believes that the more likely scenario, dry running pumps in the main tanks during ground or flight operations, is not a meaningful risk because those concerns would be eclipsed by fuel starvation of the engines. The commenter notes that it looks to proper maintenance procedures for mitigation of the risk of dry running pumps during defueling operations. The commenter suggests that installation of an improved pin or a pin replacement program would solve the problem better than repetitive inspections.

We understand Delta's concerns; however, we do not agree to remove the repetitive inspections. The objective of the flame arrestor is to preclude a flame originated in the reprime unit or beyond from moving to the fuel tank. The flame arrestor may drop into the reprime unit area if the flame arrestor pin is broken and contacts rotating parts; in this position, a flame arrestor might create sparks that ignite the fuel vapors. A misplaced or missing flame arrestor represents a latent failure that leaves the airplane one failure away from a fuel tank ignition.

The probability of a flame reaching the fuel tank is significantly reduced if fuel covers the pump inlet. The compliance times specified by this supplemental NPRM recognize the fact that a missing flame arrestor does not present a very high risk for most flight conditions when there is enough fuel to cover the pump inlet. We find that, to achieve an adequate level of safety for the affected fleet, repetitive inspections are necessary. We have not revised this supplemental NPRM in this regard.

Request To Reference Part Numbers

The Modification and Replacement Parts Association (MARPA) requests that we identify the affected fuel pumps in the original NPRM by either Boeing or Hamilton Sundstrand (or both) part numbers. The MARPA also requests that we include any possible defective parts manufacturer approval (PMA) alternative parts so that any defective PMA parts are also subject to the original NPRM.

The commenter asserts that, under 14 CFR 21.303, there may be fuel pumps that could be approved replacement parts for the affected fuel pumps. If replacement parts do exist, the MARPA states that the PMA fuel pumps may have a different part number from the affected fuel pumps and therefore will not likely be addressed by model or serial number in the service information. Therefore, the MARPA asserts that a regulatory loophole is created if a ''defective'' PMA part is installed, because only the original equipment manufacturer (OEM) part will be identified in the manufacturer service information. In addition, the MARPA states that the affected fuel pumps are identified in proprietary service information that is not available to the general public and that the proprietary service information may also not be available to supplier or repair facilities. Therefore, the MARPA concludes that repair and supply facilities might have defective OEM or PMA parts in stock that could be put into service unless such parts are identified as subject to the requirements of the original NPRM.

We acknowledge the MARPA's concerns; however, we do not agree that it is necessary to identify the manufacturer and part numbers of the subject fuel pumps. At this time, we are not aware of other PMA parts equivalent to the affected fuel pumps. Also, this supplemental NPRM would require that all fuel pumps be inspected, regardless of origin. Since the part numbers of the affected fuel pumps are identified in the applicable Boeing and Hamilton Sundstrand service bulletins specified in the supplemental NPRM, it is unnecessary to specify part numbers in the supplemental NPRM.

We concur with the MARPA's general request that, if we know that an unsafe condition also exists in PMA parts, the AD should address those parts, as well as the original parts. The MARPA's remarks are timely in that the Transport Airplane Directorate currently is in the process of reviewing this issue as it applies to transport category airplanes. We acknowledge that there may be other ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding addressing PMA parts in ADs needs to be revised.

In response to the commenter's statement regarding a ''regulatory loophole,'' this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including section 21.303 of the Federal Aviation Regulations (14 CFR 21.203), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition.

Since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety, no additional change has been made to the supplemental NPRM in this regard.

Request To Reference PMA Parts

The MARPA requests that the language in the original NPRM be changed to embrace any PMA alternatives.

We infer that the MARPA would like the original NPRM to permit installation of any equivalent PMA parts so that it is not necessary for an operator to request approval of an AMOC in order to install an ''equivalent'' PMA part. Whether an alternative part is ''equivalent'' in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. We are not currently aware of any such parts. Our policy is that, in order for operators to replace a part with one that is not specified in an AD, they must request an AMOC. This is necessary so that we can make a specific determination that an

alternative part is or is not susceptible to the same unsafe condition.

An AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, an AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), ''Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section.'' Unless an operator obtains approval for an AMOC, replacing a part with one not specified by an AD would make the operator subject to an enforcement action and result in a civil penalty. No change to this supplemental NPRM is necessary in this regard.

Request To Allow Doing Actions on the Main Fuel Tanks Separately

ANA requests that we permit operators to do the inspection of each main fuel tank separately and not require operators to do an inspection of all main fuel tanks on an airplane at the same maintenance stop. Also, the commenter requests that we permit operators to do any terminating action for each main fuel tank independent of the other. The commenter states that this will provide flexibility to operators. The commenter notes that it does not have many spare pumps.

We acknowledge that doing the actions in the supplemental NPRM at a separate time for each main fuel tank would provide flexibility to the operators. Operators may do the actions for each pump separately provided that operators have done the actions on all pumps within the applicable compliance times specified in the supplemental NPRM. We have added Note 1, Note 4, and Note 5 to this supplemental NPRM to clarify that the actions may be done separately provided that all actions are done within the applicable compliance times.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Explanation of Change to Applicability

We have revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

Clarification of Unsafe Condition Statement

The original NPRM specified the unsafe condition as ''the possible migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion, should the pump inlets become uncovered.'' We have revised the unsafe condition statement in this supplemental NPRM by removing the phrase ''should the pump inlets become uncovered.'' The pump inlet does not need to be uncovered for ignited vapors in the pump to cause a tank explosion.

Clarification of AMOC Paragraph

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

Costs of Compliance

This supplemental NPRM affects about 915 airplanes worldwide, and 400 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspection of flame arrestor presence/ Position.	5	$80	None	$400, per inspection cycle	$160,000, per inspection cycle.
Replacement	3	80	$25,004 ...	$25,244	$10,097,600. [1]

[1] However, the parts manufacturer states that it may cover the cost of replacement parts associated with this supplemental NPRM for certain affected airplanes, subject to warranty conditions. As a result, the costs attributable to the supplemental NPRM may be less than stated above.

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 supplemental NPRM 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 adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–20351; Directorate Identifier 2003–NM–269–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 31, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports that certain fuel boost pumps may not have flame arrestors installed in the pump shaft and reports that the pin that holds the flame arrestor in place can break due to metal fatigue. We are issuing this AD to prevent the possible migration of a flame from a main tank fuel boost pump inlet to the vapor space of that fuel tank, and consequent ignition of fuel vapors, which could result in a fire or explosion.

Compliance

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

Inspection for Presence/Position of Flame Arrestor in Main Tank Fuel Boost Pumps

(f) For airplanes having line numbers (L/Ns) 1 through 914 inclusive, except as provided by paragraph (h) of this AD: Within 365 days after the effective date of this AD, do a detailed inspection of each main tank fuel boost pump to determine if the pump shaft flame arrestor is installed, a measurement of the flame arrestor's position in the pump, and all applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0077 (for Model 767–200, –300, and –300F series airplanes) or Boeing Alert Service Bulletin 767–28A0081 (for Model 767–400ER series airplanes), both Revision 1, both dated July 8, 2004, as applicable. Repeat the measurement of the flame arrestor's position in the pump thereafter at intervals not to exceed the applicable time specified in paragraph (f)(1) or (f)(2) of this AD, until the replacement required by paragraph (i) of this AD is accomplished. All applicable corrective actions must be done before further flight.

Note 1: Any inspection/measurement of the pumps on the left and right main fuel tanks may be done separately provided that the actions are done on all pumps within the compliance time specified in paragraph (f) of this AD.

(1) For airplanes that have accumulated more than 15,000 total flight hours as of the date the initial actions are done in accordance with paragraph (f) of this AD: Repeat the measurement thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever comes first.

(2) For airplanes that have accumulated 15,000 total flight hours or fewer as of the date the initial actions are done in accordance with paragraph (f) of this AD: Do the measurement specified in paragraph (f) of this AD within 365 days after the date on which the airplane accumulates 15,000 total flight hours. Repeat the measurement thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever comes first.

Note 2: The Boeing alert service bulletins reference Hamilton Sundstrand Service Bulletin 5006003–28–2, dated October 25, 2002, as an additional source of service information for accomplishment of the inspection and corrective actions. Although the Hamilton Sundstrand service bulletin specifies to return main tank fuel boost pumps with damaged, broken, or out-of-position flame arrestors to a repair shop, that action is not required by this AD.

Note 3: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(g) For airplanes having L/Ns 915 and on, except as provided by paragraph (h) of this AD: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection of each main tank fuel boost pump to determine if the pump shaft flame arrestor is installed, a measurement of the flame arrestor's position in the pump, and all applicable corrective actions, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0077 (for Model 767–200, –300, and –300F series airplanes) or Boeing Alert Service Bulletin 767–28A0081 (for Model 767–400ER series airplanes), both Revision 1, both dated July 8, 2004, as applicable. Repeat the measurement of the flame arrestor's position in the pump thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever comes first, until the replacement required by paragraph (i) of this AD is accomplished. All applicable corrective actions must be done before further flight.

Note 4: Any inspection/measurement of the pumps on the left and right main fuel tanks may be done separately provided that the actions are done on all pumps within the compliance time specified in paragraph (g) of this AD.

(1) For airplanes that have accumulated more than 15,000 total flight hours as of the effective date of this AD, do the actions within 365 days after the effective date of this AD.

(2) For airplanes that have accumulated 15,000 total flight hours or fewer as of the effective date of this AD, do the actions within 365 days after the date on which the airplane accumulates 15,000 total flight hours.

Optional Terminating Action—Records Review

(h) For any period when the part number (P/N) of a main tank fuel boost pump installed on any airplane, as conclusively determined from a review of airplane maintenance records, is P/N 5006003D, no further action is required by paragraphs (f), (g), and (i) of this AD for that pump only.

Replacement of the Main Tank Fuel Boost Pumps

(i) Within 36 months after the effective date of this AD, replace the left and right main tank fuel boost pumps with new or modified pumps in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–28A0088 (for Model 767–200, –300, and –300F series airplanes) or Boeing Alert Service Bulletin 767–28A0089 (for Model 767–400ER series airplanes), both dated February 24, 2005, as applicable. Accomplishment of the replacement terminates the repetitive measurement requirements of paragraphs (f) and (g) of this AD for that pump only.

Note 5: Any replacement of the pumps on the left and right main fuel tanks may be done separately provided that all pumps are replaced within the compliance time specified in paragraph (i) of this AD.

Note 6: The Boeing alert service bulletins reference Hamilton Sundstrand Service Bulletin 5006003–28–3, dated December 8, 2004, as the appropriate source of service information for modifying the pump.

Inspections Accomplished According to Previous Issue of Service Bulletin

(j) Inspections accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 767–28A0077, dated March 6, 2003; or Boeing Alert Service Bulletin 767–28A0081, dated March 6, 2003; are considered acceptable for compliance with the corresponding action specified in paragraphs (f) and (g) of this AD.

Parts Installation

(k) As of the effective date of this AD, only main tank fuel boost pumps identified in paragraphs (k)(1) and (k)(2) of this AD may be installed on any airplane.

(1) Any main tank fuel boost pump that has been inspected, and on which all applicable corrective actions have been performed, in accordance with paragraph (f) or (g) of this AD.

(2) Any main tank fuel boost pump having P/N 5006003D.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office, 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.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10536 Filed 7–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25271; Directorate Identifier 2006–NM–067–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B 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 Model SAAB-Fairchild SF340A and SAAB 340B airplanes. The existing AD currently requires repetitive inspections for wear of the brushes and leads and for loose rivets of the direct current (DC) starter generator, and related investigative/corrective actions if necessary. This proposed AD would require installing new improved generator control units (GCUs). Installing the GCUs would end the repetitive inspection requirements of the existing AD. This proposed AD results from reports of premature failures of the DC starter generator prior to scheduled overhaul. We are proposing this AD to prevent failure of the starter generator, which could cause a low voltage situation in flight and result in increased pilot workload and reduced redundancy of the electrical powered systems.

DATES: We must receive comments on this proposed AD by August 7, 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

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–2006–25271; Directorate Identifier 2006–NM–067–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 February 11, 2005, we issued AD 2005–04–12, amendment 39–13984 (70 FR 9215, February 25, 2005), for certain Saab Model SAAB SF340A and SAAB 340B series airplanes. That AD requires repetitive inspections for wear of the brushes and leads and for loose rivets of the direct current (DC) starter generator, and related investigative/corrective actions if necessary. That AD resulted from reports of premature failures of the DC starter generator prior to scheduled overhaul. We issued that AD to prevent failure of the starter generator, which could cause a low voltage situation in flight and result in increased pilot workload and reduced redundancy of the electrical powered systems.

Actions Since Existing AD Was Issued

The preamble to AD 2005–04–12 explains that we considered the requirements ''interim action'' and were considering further rulemaking if a final action is identified. The manufacturer has now designed a new improved generator control unit (GCU), and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

Saab has issued Saab 340 Service Bulletin 340–24–026, Revision 03, dated December 20, 2004. The service bulletin describes procedures for installing new improved GCUs. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The Luftfartsverket (LFS), which is the airworthiness authority for Sweden, mandated the service information and issued Swedish airworthiness directive 1–197, dated November 5, 2004, to ensure the continued airworthiness of these airplanes in Sweden.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Sweden and 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. Pursuant to this bilateral airworthiness agreement, the LFS has kept the FAA informed of the situation described above. We have examined the LFS'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 2005–04–12 and would continue to require repetitive inspections for wear of the brushes and leads and for loose rivets of the direct current (DC) starter generator, and related investigative/corrective actions if necessary. This proposed AD would also require installing new improved GCUs. Installing the GCUs would end the repetitive inspection requirements of AD 2005–04–12.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2005–04–12. Since AD 2005–04–12 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 2005–04–12	Corresponding requirement in this proposed AD
paragraph (e)	paragraph (f).
paragraph (f)	paragraph (g).
paragraph (g)	paragraph (h).

We have revised the applicability to identify model designations as published in the most recent type certificate data sheet for the affected models.

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

For clarification, we have revised the definition of a ''general visual inspection'' in Note 1 of this proposed AD.

Explanation of Change to Costs of Compliance

After AD 2005–04–12 was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

This proposed AD would affect about 170 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Fleet cost
Inspections (required by AD 2005–04–02).	1	$80	$0	$80, per inspection cycle	$13,600, per inspection cycle.
Installation (new proposed action).	1	80	7,598	7,678	$1,305,260.

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 39–13984 (70 FR 9215, February 25, 2005) and adding the following new airworthiness directive (AD):

SAAB Aircraft AB: Docket No. FAA–2006–25271; Directorate Identifier 2006–NM–067–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 7, 2006.

Affected ADs

(b) This AD supersedes AD 2005–04–12.

Applicability

(c) This AD applies to Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) airplanes having serial numbers 004 through 159 inclusive, and Model SAAB 340B airplanes having serial numbers 160 through 367 inclusive; certificated in any category; on which Saab Modification 2533 has not been implemented.

Unsafe Condition

(d) This AD results from reports of premature failures of the direct current (DC) starter generator prior to scheduled overhaul. We are issuing this AD to prevent failure of the starter generator, which could cause a low voltage situation in flight and result in increased pilot workload and reduced redundancy of the electrical powered systems.

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 2005–04–12

Inspections for Wear of the DC Starter Generator Brushes and Leads

(f) For generators overhauled in accordance with Maintenance Review Board (MRB) Task 243104: Before 800 flight hours since last overhaul, or within 100 flight hours after April 1, 2005 (the effective date of AD 2005–04–12), perform a general visual inspection for wear of the DC starter generator brushes and leads, in accordance with Saab Service Bulletin 340–24–035, dated July 5, 2004.

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

Note 2: Saab Service Bulletin 340–24–035, dated July 5, 2004, references Goodrich Service Information Letter 23080–03X–24–01, dated July 1, 2004, as an additional source of service information.

(1) If the tops of the brush sets are above the top of the brush box, repeat the inspection thereafter at intervals not to exceed 800 flight hours until paragraph (i) of this AD is done.

(2) If the tops of the brush sets are below the top of the brush box, before further flight, measure the brushes and determine the remaining amount of brush life remaining, in accordance with the service bulletin.

(i) If the brush wear is within the limits specified in the service bulletin, repeat the inspection thereafter at intervals not to exceed 800 flight hours until paragraph (i) of this AD is done.

(ii) If the brush wear is outside the limits specified in the service bulletin, before further flight, replace the starter generator with a new or serviceable starter generator, in accordance with the service bulletin.

Inspections for Loose Rivets

(g) For generators overhauled in accordance with MRB Task 243104: Before 800 flight hours since last overhaul, or within 100 flight hours after April 1, 2005, whichever occurs later, perform a general visual inspection of each leading wafer brush for loose rivets, in accordance with Saab Service Bulletin 340–24–035, dated July 5, 2004. Repeat the inspection thereafter at intervals not to exceed 800 flight hours until paragraph (i) of this AD is done. If any rivet is loose, before further flight, replace the DC starter generator with a new or serviceable starter generator, in accordance with the service bulletin.

MRB Task 243103 or 243101

(h) For generators overhauled or with brush replacement accomplished in accordance with MRB Task 243103 or 243101, no action is required by paragraphs (f) and (g) of this AD.

New Requirements of This AD

Installation

(i) For all generators: Within 36 months after the effective date of this AD, install new improved generator control units (GCUs) in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–24–026, Revision 03, dated December 20, 2004. Installing the GCUs terminates the repetitive inspection requirements of paragraphs (f) and (g) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) Swedish airworthiness directive 1–197, dated November 5, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on June 28, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10537 Filed 7–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 742, 744 and 748

[Docket No. 060622180–6180–01]

RIN 0694–AD75

Revisions and Clarification of Export and Reexport Controls for the People's Republic of China (PRC); New Authorization Validated End-User

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: It is the policy of the United States Government to prevent exports that would make a material contribution to the military capability of the People's Republic of China (PRC), while facilitating U.S. exports to legitimate civil end-users in the PRC. Consistent with this policy, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) by revising and clarifying United States licensing requirements and licensing policy on exports and reexports of goods and technology to the PRC.

The proposed amendments include a revision to the licensing review policy for items controlled on the Commerce Control List (CCL) for reasons of national security, including a new control based on knowledge of a military end-use on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC. The items subject to this license requirement will be set forth in a list. This rule further proposes to revise the licensing review policy for items controlled for reasons of chemical and biological proliferation, nuclear nonproliferation, and missile technology for export to the PRC, requiring that applications involving such items be reviewed in conjunction with the revised national security licensing policy.

This rule proposes the creation of a new authorization for validated end-users in certain destinations, including the PRC, to whom certain, specified items may be exported or reexported. Such validated end-users would be placed on a list in the EAR after review

and approval by the United States Government.

Finally, this rule proposes to require exporters to obtain an End-User Certificate, issued by the PRC Ministry of Commerce, for all items that both require a license to the PRC for any reason and exceed a total value of $5,000. The current PRC End-Use Certificate applies only to items controlled for national security reasons. This rule also proposes to eliminate the current requirement that exporters submit PRC End-User Certificates to BIS with their license applications but provides that they must retain them for five years.

DATES: Comments must be received by November 3, 2006.

ADDRESSES: Written comments on this rule may be sent to the Federal eRulemaking Portal: *http://www.regulations.gov,* or by e-mail to *publiccomments@bis.doc.gov.* . Include RIN 0694–AD75 in the subject line of the message. Comments may be submitted by mail or hand delivery to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, D.C. 20230, ATTN: RIN 0694–AD75; or by fax to (202) 482–3355.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; telephone: (202) 482–0092, or e-mail: *bkritzer@bis.doc.gov.*

SUPPLEMENTARY INFORMATION

Background

This rule proposes revisions and clarifications to United States policy on exports to the People's Republic of China (PRC) of goods and technologies controlled for national security and foreign policy reasons. As the PRC has increased its participation in the global economy, bilateral trade between the PRC and the United States has grown rapidly, and the PRC has emerged as a major market for U.S. exports. In addition, as the PRC also increasingly has allowed foreign investment, many U.S. companies have established significant business operations there. This greatly expanded economic relationship is beneficial for both nations. The United States and China share an interest in expanding free and fair trade, which has increased the prosperity of both the American and Chinese people. At the same time, the United States has a long standing policy of not permitting exports that would make a material contribution to the PRC's military capability. Thus, the United States seeks to facilitate trade for confirmed civil end-uses and end-users in the PRC, while preventing trade that would serve military end-uses.

In 2005, U.S. companies exported approximately $41 billion worth of items to the PRC. During the same period, approximately $2.4 billion worth of exports were licensed for export to the PRC, while $12.5 million worth of exports were denied. In order to strengthen U.S. Government confidence that these U.S. exports conform to U.S. policy and to determine the *bona fides* of potential and actual end-users, the U.S. Government conducts end-use visits, consisting of Pre-License Checks (PLCs) and Post-Shipment Verifications (PSVs). In April 2004, the Vice Minister of Commerce of the PRC and the U.S. Under Secretary of Commerce for Industry and Security exchanged letters transmitting an understanding on strengthened procedures for conducting such end-use visits. This end-use visit understanding has facilitated exports of items on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR) by providing greater assurance that U.S. exports of controlled dual-use items are being used by their intended recipients for their intended purposes.

This rule proposes certain revisions and clarifications to licensing requirements and policies with regard to the PRC to more precisely reflect U.S. export control policy.

Revision of Licensing Review Policy and License Requirements

To strengthen U.S. efforts to prevent U.S. exports to the PRC that would make a material contribution to the PRC's military capabilities, this rule proposes revisions to the licensing review policy for items controlled on the CCL for reasons of national security (i.e., controlled pursuant to the Wassenaar Arrangement), set forth in section 742.4(b)(7) of the EAR. Specifically, this rule amends section 742.4(b)(7) to reaffirm that the overall policy of the United States for exports to the PRC of these items is to approve exports for civil applications but generally to deny exports that will contribute to the advancement of Chinese military capabilities.

Consistent with this revised policy and U.S. commitments as a Participating State in the Wassenaar Arrangement regarding review of items not on that regime's dual use list that are destined for military end-use in a country subject to an arms embargo, this rule proposes to implement a new control on exports to the PRC of certain CCL items that otherwise do not require a license to the PRC when the exporter has knowledge, as defined in section 772.1 of the EAR, that such items are destined for military end-use in the PRC or is informed that such items are destined for such an end-use. The additional items that would be subject to this military end-use restriction are based on careful interagency review of items listed on the CCL that currently do not require a license for export to the PRC but have the potential to advance the military capabilities of the PRC. For purposes of serving this revised policy and U.S. commitments as a Participating State in the Wassenaar Arrangement, this rule proposes to define ''military end-use'' as: incorporation into, or use for the production , design, development, maintenance, operation, installation, or deployment, repair, overhaul, or refurbishing of items (1) described on the U.S. Munitions List (USML) (22 CFR Part 121, International Traffic in Arms Regulations); (2) described on the Munitions List (IML) (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); or (3) listed under Export Control Classification Numbers (ECCNs) ending in ''A018'' on the CCL in Supplement No. 1 to Part 774 of the EAR. This new control would be set forth in new section 744.21 of the EAR.

Applications to export, reexport, or transfer items controlled pursuant to proposed section 744.21 would be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the PRC and would result in advancing the country's military activities contrary to the national security interests of the United States. Other end-use controls in part 744 of the EAR will continue to apply. In addition, BIS proposes to also review license applications for items controlled for chemical and biological proliferation, nuclear nonproliferation and missile technology under sections 742.2, 742.3 and 742.5, respectively, of the EAR, in accordance with the licensing policies in both paragraph (b) of the particular

proliferation section and section 742.4(b)(7) of the EAR when those items are destined to the PRC.

Items primarily affected by the revisions discussed in this section are items controlled for anti-terrorism reasons under the EAR. The specific items that are subject to the military end-use license requirement will be set forth, by ECCN, including specific parameters, in a list in Supplement No. 2 to Part 744 of the EAR.

See sections 744.6 (Restrictions on certain activities of U.S. persons), 744.21 (Restrictions on Certain Military End-uses in the People's Republic of China (PRC)), and Supplement No. 2 to Part 744 (Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use License Requirement of Section 744.21) of the EAR.

Revision of End-User Certificate Requirements

To strengthen implementation of the April 2004 end-use visit understanding between the Vice Minister of Commerce of the PRC and the U.S. Under Secretary of Commerce for Industry and Security, this rule proposes that the requirement for exporters to obtain PRC End-User Certificates from the Ministry of Commerce of the PRC be expanded to apply to all exports of controlled goods and technologies over a specific value threshold (and not merely to those exports controlled for national security reasons, as currently set forth in section 748.10 of the EAR). Specifically, exporters would be required to obtain an End-User Certificate, issued by the PRC Ministry of Commerce, for all items that require a license to the PRC for any reason and exceed a total value of $5,000 per single ECCN entry. Consistent with the existing Regulations, BIS will continue to require End-User Certificates for all computer exports to the PRC that require license applications, regardless of the dollar value of the export. BIS anticipates that this expansion of the End-Use Certificate requirement will facilitate BIS's ability to conduct end-use checks on exports or reexports of controlled goods and technologies to the PRC, consistent with the existing end-use visit understanding with the Government of the PRC. Facilitation of end-use checks should facilitate increased U.S. exports to the PRC. This revised requirement would be set forth in revised section 748.10 of the EAR.

To minimize the impact that this expanded support documentation requirement will have on exporters, this rule also proposes to eliminate the requirement that exporters submit PRC End-User Certificates to BIS as required support documentation provided with the license application. Instead, this rule would require exporters to include the serial number of the PRC End-User Certificate in an appropriate field of the license application, and to retain the PRC End-User Certificate in accordance with the recordkeeping provisions of the EAR. See section 762.3 (Records exempt from recordkeeping requirements) of the EAR. These changes would be set forth in sections 748.9 (Support Documents for License Applications), 748.10 (Import and End-User Certificates), and 748.12 (Special Provisions for Support Documents) of the EAR.

New Authorization Validated End-User (VEU)

To facilitate legitimate exports to civilian end-users, BIS proposes to establish a new authorization for validated end-users in section 748.15 of the EAR. This proposed authorization would allow the export, reexport, and transfer of eligible items to specified end-users in an eligible destination, including the PRC. These validated end-users would be those who meet a number of criteria, including a demonstrated record of engaging only in civil end-use activities and not contributing to the proliferation of weapons of mass destruction or otherwise engaged in activity contrary to U.S. national security or foreign policy interests.

In conjunction with other relevant agencies, BIS proposes to evaluate prospective validated end-users on the basis of a range of specific factors, which include the party's record of exclusive engagement in civil end-use activities; the party's compliance with U.S. export controls; the party's capability to comply with the requirements for VEU; the party's agreement to on-site compliance reviews by representatives of the United States Government; and the party's relationships with U.S and foreign companies. In addition, when evaluating the eligibility of an end-user, agencies would consider the status of export controls in the eligible destination and the support and adherence to multilateral export control regimes of the government of the eligible destination. The proposed rule states that requests to be listed as a validated end-user should be submitted in the form of an advisory opinion request as set forth in new section 748.15(a)(2) (Eligible end-users) of the EAR. In addition, requests would have to include a list of items identified by ECCN that would be exported, reexported or transferred to an eligible end-user. Those items would have to be specified to the extent of the applicable subparagraph of the ECCN entry. The request also should include a description of how each item would be used by the eligible end-user in an eligible destination. Such requests would be accepted from exporters, reexporters and end-users. A list of validated end-users, respective eligible items, and eligible destinations would appear in proposed Supplement No. 7 to Part 748 (Supplement No. 7 to Part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Eligible Items and Eligible Destinations) of the EAR.

The proposed rule also provides, as set forth in proposed section 748.15(c) (Item restrictions), that some items would not be eligible for export, reexport, or transfer under this authorization. Ineligible items are those restricted by statute.

Finally, under new section 748.15, exporters, reexporters and end-users who use authorization VEU would be required to comply with recordkeeping and reporting requirements, as described in sections 748.15(e) (Certification and recordkeeping) and (f) (Reporting and auditing requirements) of the EAR. As required in proposed section 748.15(e), prior to the initial export or reexport under authorization VEU, exporters or reexporters would be required to receive and retain certifications from eligible end-users that state that they are informed of and will abide by all VEU end-use restrictions; they have procedures in place to ensure compliance with the terms and conditions of VEU; they will not use items obtained under VEU in any of the prohibited activities described in part 744 of the EAR; and they agree to allow on-site visits by U.S. Government officials to verify their compliance with the conditions of VEU. Validated end-users found to be not in compliance with the requirements of VEU as set forth in section 748.15 will be subject to removal from the list of validated end-users and other action, as appropriate.

In addition, as described in proposed section 748.15(f)(1), exporters and reexporters who use authorization VEU would be required to submit annual reports to BIS. These reports must include specific information regarding the export or reexport of eligible items to each validated end-user. Exporters, reexporters, and end-users who avail themselves of VEU also would be audited on a routine basis, as described in proposed section 748.15(f)(2) (Audits). Upon request by BIS, exporters, reexporters, and validated end-users would be required to allow

inspection of records or on-site compliance review. For audit purposes, this rule would require records and information identified in proposed section 748.15 to be retained in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

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

Expansion of Foreign Policy-Based Controls

[The following language will apply at the point the rule passes the proposed stage: This action is taken after consultation with the Secretary of State. This rule imposes new export controls for foreign policy reasons. As required by section 6 of the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to the Congress on *[INSERT DATE OF DELIVERY TO THE CONGRESS.]]. Although the Act expired on August 20, 2001, Executive Order 1322 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.]*

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule contains collections of information subject to the requirements of the PRA. These collections have been approved by OMB under Control Numbers 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748, and 0694–0093, ''Import Certificates and End-User Certificates,'' which carries a burden of 15 minutes per submission. This proposed rule also contains a proposed revision to the existing collection under Control Number 0694–0088 for recordkeeping, reporting and auditing requirements, which would be submitted in connection with proposed authorization Validated End-User and would carry an estimated burden of 30 minutes per submission. An amendment to the existing collection under Control Number 0694–0088 will be submitted to OMB for approval. Public comment will be sought regarding the burden of the collection of information associated with preparation and submission of these proposed requirements. This proposed rule is not expected to result in a significant increase in license applications or other documentation submitted to BIS. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation are inapplicable because this regulation involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. However, in order to obtain the benefit of a variety of viewpoints before publishing any final rule, BIS is issuing this proposed rule with a request for comments. The period for submission of comments will close on November 3, 2006. In developing a final rule, BIS will consider all comments on all aspects of this proposed rule that are received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of the final rule. All public comments on this proposed rule must be in writing (including fax or e-mail) and will be a matter of public record, available for public inspection and copying at the Federal eRulemaking Portal at *http://www.regulations.gov* and on the BIS Freedom of Information Act (FOIA) web site at *http://www.bis.doc..gov/foia.* BIS does not maintain a separate public inspection facility. If you have technical difficulties accessing this web site, please call BIS's Office of Administration at (202) 482–0500 for assistance.

List of Subjects

15 CFR Parts 740 and 748

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

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 740, 742, 744 and 748 of the Export Administration Regulations (15 CFR parts 730–799) are proposed to be amended as follows:

PART 742—[AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 18 U.S.C. 2510 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec 1503, Pub. L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005); Notice of October 25, 2005, 70 FR 62027 (October 27, 2005).

2. Amend § 742.2 by adding paragraph (b)(4) to read as follows:

§ 742.2 Proliferation of Chemical and Biological Weapons.

* * * * *

(b) * * *

(4) BIS will review license applications for items described in paragraph (a) of this section in accordance with the licensing policies described in paragraph (b) of this section and the licensing policies in both paragraph (b) of this section and § 742.4(b)(7) when those items are destined to the People's Republic of China.

* * * * *

3. Amend § 742.3 by adding paragraph (b)(4) to read as follows:

§ 742.3 Nuclear nonproliferation.

* * * * *

(b) * * *

(4) BIS will also review license applications for items described in paragraph (a) of this section in accordance with the licensing policies described in paragraph (b) of this section and the licensing policies in both paragraph (b) of this section and § 742.4(b)(7) when those items are destined to the People's Republic of China.

* * * * *

4. Amend § 742.4 by revising paragraph (b)(7) to read as follows:

§ 742.4 National Security.

* * * * *

(b) * * *

(7) For the People's Republic of China, there is a general policy of approval for license applications to export, reexport, or transfer items to civil end-uses. There is a presumption of denial for items that would make a material contribution to the military capabilities of the People's Republic of China. Thus, all license applications for exports, reexports, and transfers to the People's Republic of China will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the People's Republic of China. In addition, license applications may be reviewed under missile technology, nuclear nonproliferation, or chemical and biological weapons review policies, to determine if the end-user may be involved in proliferation activities.

* * * * *

5. Amend § 742.5 by adding paragraph (b)(4) to read as follows:

§ 742.5 Missile Technology.

* * * * *

(b) * * *

(4) BIS will also review license applications for items described in paragraph (a) of this section in accordance with the licensing policies described in paragraph (b) of this section and the licensing policies in both paragraph (b) of this section and section 742.4(b)(7) of the EAR when those items are destined to the People's Republic of China.

* * * * *

PART 744—[AMENDED]

6. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005); Notice of October 25, 2005, 70 FR 62027 (October 27, 2005).

7. Amend § 744.6 by revising paragraph (a)(1)(ii) to read as follows:

§ 744.6 Restrictions on certain activities of U.S. persons.

(a) * * *

(1) * * *

(ii) No U.S. person, as defined in paragraph (c) of this section, shall, without a license from BIS, knowingly support an export or reexport, or transfer that does not have a license as required by this section or by § 744.21. Support means any action, including financing, transportation, and freight forwarding, by which a person facilitates an export, reexport, or transfer without being the actual exporter or reexporter.

* * * * *

8. Section 744.21 is added to read as follows:

§ 744.21 Restrictions on Certain Military End-uses in the People's Republic of China (PRC).

(a) *General prohibition.* In addition to the license requirements for items specified on the Commerce Control List (CCL), you may not export, reexport, or transfer any item listed in Supplement No. 2 to Part 744 to the PRC without a license or under a license exception described in paragraph (c) of this section if, at the time of the export, reexport, or transfer, you know, meaning either:

(1) You have knowledge that the item is intended, entirely or in part, for a ''military end-use,'' as defined in paragraph (f) of this section, in the PRC; or

(2) You have been informed by BIS that the item is or may be intended, entirely or in part, for a ''military end-use'' in the PRC.

(b) *Additional prohibition on those informed by BIS.* BIS may inform you either individually by specific notice, through amendment to the EAR published in the **Federal Register**, or through a separate notice published in the **Federal Register**, that a license is required for specific exports, reexports, or transfers of any item because there is an unacceptable risk of use in or diversion to military end-use activities in the PRC. Specific notice will be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by written notice within two working days signed by the Deputy Assistant Secretary for Export Administration or the Deputy Assistant Secretary's designee. The absence of BIS notification does not excuse the exporter from compliance with the license requirements of paragraph (a) of this section.

(c) *License Exception.* The only License Exception that may apply to the prohibitions described in paragraphs (a) and (b) of this section are the provisions of License Exception GOV set forth in § 740.11(b)(2)(i) or (ii) of the EAR.

(d) *License application procedure.* When submitting a license application pursuant to this section, you must state in the ''additional information'' section of the BIS–748P ''Multipurpose Application'' or its electronic equivalent that ''this application is submitted because of the license requirement in § 744.21 of the EAR (Restrictions on Certain Military End-uses in the People's Republic of China).'' In addition, either in the additional information section of the application or in an attachment to the application, you must include all known information concerning the military end-use of the item(s). If you submit an attachment with your license application, you must reference the attachment in the additional information section.

(e) *License review standards.* (1) Applications to export, reexport, or transfer items described in paragraph (a) of this section will be reviewed on a case-by-case basis to determine whether the export, reexport, or transfer would make a material contribution to the military capabilities of the PRC and would result in advancing the country's military activities contrary to the national security interests of the United States.

(2) Applications may be reviewed under missile technology, nuclear

nonproliferation, or chemical and biological weapons review policies if the end-user may be involved in certain proliferation activities.

(3) Applications for items requiring a license for other reasons that are destined to the PRC for a military end-use also will be subject to the review policy stated in paragraph (e) of this section.

(f) In this section, ''military end-use'' means: incorporation into, or use for the production, design, development, maintenance, operation, installation, or deployment, repair, overhaul, or refurbishing of items:

(1) Described on the U.S. Munitions List (USML) (22 CFR Part 121, International Traffic in Arms Regulations);

(2) Described on the International Munitions List (IML) (as set out on the Wassenaar Arrangement Web site at *http://www.wassenaar.org*); or

(3) Listed under ECCNs ending in ''A018'' on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the EAR.

Note to paragraph (f) of this section: For purposes of this section: ''production'' means integration, assembling, inspection, or testing; ''development'' means design, and includes testing and building of prototypes; ''maintenance'' means performing work to bring an item to its original or designed capacity and efficiency for its intended purpose, and includes testing, measuring, adjusting, inspecting, replacing parts, restoring, calibrating, overhauling; ''operation'' means to cause to function as intended; ''installation'' means to make ready for use, and includes connecting, integrating, incorporating, loading software, and testing; ''deployment'' means placing in battle formation or appropriate strategic position.

9. Supplement No. 2 to Part 744 is added to read as follows:

Supplement No. 2 to Part 744—List of Items Subject to the Military End-Use License Requirment of § 744.21

The following items are subject to the military end-use license requirement in § 744.21.

(1) Category 1—Materials, Chemicals, Microorganisms, and Toxins

(i) 1A290 Depleted uranium (any uranium containing less than 0.711% of the isotope U–235) in shipments of more than 1,000 kilograms in the form of shielding contained in X-ray units, radiographic exposure or teletherapy devices, radioactive thermoelectric generators, or packaging for the transportation of radioactive materials.

(ii) 1B999 Equipment controlled by 1B999.e specially designed for the production of structural composites, fibers, prepregs and preforms controlled in Category 1, n.e.s.

(iii) 1C990 Fibrous and filamentary materials, not controlled by 1C010 or 1C210, for use in ''composite'' structures and with a specific modulus of 3.18×10^6m or greater and a specific tensile strength of 7.62×10^4m or greater.

(iv) 1C995 Mixtures not controlled by 1C350, 1C355 or 1C395 that contain chemicals controlled by 1C350 or 1C355 and medical, analytical, diagnostic, and food testing kits not controlled by 1C350 or 1C395 that contain chemicals controlled by 1C350.d, as follows (see List of Items Controlled), except 1C995.c ''Medical, analytical, diagnostic, and food testing kits.''

(v) 1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the following characteristics (see List of Items Controlled).

(vi) 1D999 Specific software controlled by 1D999.b for equipment controlled by 1B999.e specially designed for the production of structural composites, fibers, prepregs and preforms controlled in Category 1, n.e.s.

(vii) 1D993 ''Software'' specifically designed for the ''development'', ''production'', or ''use'' of equipment or materials controlled by 1C210.b, or 1C990.

(viii) 1E994 ''Technology'' for the ''development'', ''production'', or ''use'' of fibrous and filamentary materials controlled by 1C990.

(2) Category 2—Materials Processing

(i) 2A991 Bearings and bearing systems not controlled by 2A001.

(ii) 2B991 Limited to machine tools controlled under 2B991 having ''positioning accuracies'', with all compensations available, better than 0.010 mm along any linear axis; and machine tools having the characteristic of one or more contouring ''tilting spindles'' controlled by 2B991.d.1.a.

(iii) 2B992 Non-''numerically controlled'' machine tools for generating optical quality surfaces, and specially designed components therefor.

(iv) 2B993 Limited to gear making and/or finishing machinery not controlled by 2B003 capable of producing gears to a quality level of better than AGMA 12.

(v) 2B996 Dimensional inspection or measuring systems or equipment not controlled by 2B006.

(3) Category 3—Electronics Design, Development and Production

(i) 3A292 Oscilloscopes and transient recorders other than those controlled by 3A002.a.5, and specially designed components therefor.

(ii) 3A999 Limited to items controlled by 3A999.c.

(iii) 3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.

(iv) 3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic components and materials, and specially designed components and accessories therefor.

(v) 3D991 ''Software'' specially designed for the ''development'', ''production'', or ''use'' of electronic devices or components controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 and 3B992.

(vi) 3E292 ''Technology'' according to the General Technology Note for the ''development', ''production'', or ''use'' of equipment controlled by 3A292.

(vii) 3E991 ''Technology'' for the ''development'', ''production'', or ''use'' of electronic devices or components controlled by 3A991, general purpose electronic equipment controlled by 3A992, or manufacturing and test equipment controlled by 3B991 or 3B992.

(4) Category 4—Computers

(i) 4A994 Limited to computers not controlled by 4A003, with an Adjusted Peak Performance (''APP'') exceeding 0.1 Weighted TeraFLOPS (WT).

(ii) 4D993 ''Program'' proof and validation ''software'', ''software'' allowing the automatic generation of ''source codes'', and operating system ''software'' not controlled by 4D003 that are specially designed for real time processing equipment.

(iii) 4D994 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 4A101, 4A994 with an Adjusted Peak Performance (''APP'') exceeding 0.1 Weighted TeraFLOPS (WT), 4B994 and materials controlled by 4C994.

(iv) 4E992 ''Technology'' for the ''development'', ''production'', or ''use'' of equipment controlled by 4A994, as described in this Supplement No. 2 to Part 744, and 4B994, materials controlled by 4C994, or ''software'' controlled by 4D993 or 4D994.

(5) Category 5—(Part 1) Telecommunications

(i) 5A991 Limited to items controlled by 5A991.a., 5A991.b.5., 5A991.b.7. and 5A991.f.

(ii) 5B991 Telecommunications test equipment, n.e.s.

(iii) 5C991 Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A991.

(iv) 5D991 ''Software'' specially designed or modified for the ''development'', ''production'', or ''use'' of equipment controlled by 5A991 and 5B991.

(v) 5E991 ''Technology'' for the ''development'', ''production'' or ''use'' of equipment controlled by 5A991 or 5B991, or ''software'' controlled by 5D991, and other ''technologies'' as follows (see List of Items Controlled).

(6) Category 5—(Part 2) Information Security

(i) 5A992 Equipment not controlled by 5A002, except mass market encryption commodities and software described in §§ 742.15(b)(1)(i) and 742.15(b)(2); certain ''short-range wireless'' commodities and software described in § 742.15(b)(3)(ii); and commodities and software with limited cryptographic functionally described in § 742.15(b)(3)(iii).

(ii) 5D992 ''Information Security'' ''software'' not controlled by 5D002, except mass market encryption commodities and software described in §§ 742.15(b)(1)(i) and 742.15(b)(2); certain ''short-range wireless'' commodities and software described in § 742.15(b)(3)(ii); and commodities and

software with limited cryptographic functionality described in § 742.15(b)(3)(iii).

(iii) 5E992 ''Information Security'' ''technology'', not controlled by 5E002.

(7) Category 6—Sensors and Lasers

(i) 6A995 ''Lasers'', not controlled by 6A005 or 6A205.

(ii) 6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a ''beat length'' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by mole fraction.

(8) Category 7—Navigation and Avionics

(i) 7A994 Other navigation direction finding equipment, airborne communication equipment, all aircraft inertial navigation systems not controlled under 7A003 or 7A103, and other avionic equipment, including parts and components, n.e.s.

(ii) 7B994 Other equipment for the test, inspection, or ''production'' of navigation and avionics equipment.

(iii) 7D994 ''Software'', n.e.s., for the ''development'', ''production'', or ''use'' of navigation, airborne communication and other avionics.

(iv) 7E994 ''Technology'', n.e.s., for the ''development'', ''production'', or ''use'' of navigation, airborne communication, and other avionics equipment.

(9) Category 8—Marine

(i) 8A992 Underwater systems or equipment, not controlled by 8A002, and specially designed parts therefor.

(ii) 8D992 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 8A992.

(iii) 8E992 ''Technology'' for the ''development'', ''production'' or ''use'' of equipment controlled by 8A992.

(10) Category 9—Propulsion Systems, Space Vehicles and Related Equipment

(i) 9A991 ''Aircraft'', n.e.s., and gas turbine engines not controlled by 9A001 or 9A101 and parts and components, n.e.s.

(ii) 9B990 Vibration test equipment and specially designed parts and components, n.e.s.

(iii) 9D990 ''Software'', n.e.s., for the ''development'' or ''production'' of equipment controlled by 9A990 or 9B990.

(iv) 9D991 ''Software'', for the ''development'' or ''production'' of equipment controlled by 9A991 or 9B991.

(v) 9E990 ''Technology'', n.e.s., for the ''development'' or ''production'' or ''use'' of equipment controlled by 9A990 or 9B990.

(vi) 9E991 ''Technology'', for the ''development'', ''production'' or ''use'' of equipment controlled by 9A991 or 9B991.

PART 748—[AMENDED]

10. The authority citation for 15 CFR part 748 continues to read as follows:

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

11. Section 748.9 is amended:

a. By revising paragraph (b)(1) introductory text;

b. By revising paragraph (b)(2) introductory text before the list of countries;

c. By revising paragraphs (b)(2)(i) and (b)(2)(ii); and

d. By revising paragraph (c)(1).

The revisions read as follows:

§ 748.9 Support Documents for License Applications.

* * * * *

(b) * * *

(1) Does your transaction involve items controlled for national security reasons?

Does your transaction involve items destined for the People's Republic of China (PRC)?

* * * * *

(2) Does your transaction involve items controlled for national security reasons destined for one of the following countries? (This applies only to those overseas destinations specifically listed.) If your item is destined for the PRC, does your transaction involve items that require a license to the PRC for any reason?

* * * * *

(i) If *yes*, your transaction may require an Import or End-User Certificate. If your transaction involves items destined for the PRC that are controlled to the PRC for any reason, your transaction may require a PRC End-User Certificate. Note that if the destination is the PRC, a Statement of Ultimate Consignee and Purchaser may be substituted for a PRC End-User Certificate when the item to be exported (i.e., replacement parts and sub-assemblies) is for servicing previously exported items and is valued at $75,000 or less.

(ii) If no, your transaction may require a Statement by Ultimate Consignee and Purchaser. Read the remainder of this section, then proceed to § 748.11 of the EAR.

(c) *License Applications Requiring Support Documents.* * * *

(1) License applications supported by an Import or End-User Certificate. You may submit your license application upon receipt of a facsimile or other legible copy of the Import or End-User Certificate, provided that no shipment is made against any license issued based upon the Import or End-User Certificate prior to receipt and retention of the original statement by the applicant.

* * * * *

12. Section 748.10 is amended:

a. By revising the fourth sentence in paragraph (a);

b. By redesignating paragraph (b)(4) as paragraph (b)(5) and by adding a new paragraph (b)(4) and revising newly designated paragraph (b)(5);

c. By revising paragraph (c)(1);

d. By revising paragraph (c) (3) introductory text; and

e. By revising paragraph (g).

The additions and revisions read as follows:

§ 748.10 Import and End-User Certificates.

(a) *Scope.* * * * This section describes exceptions and relationships true for both Import and End-User Certificates, and applies only to transactions involving national security controlled items destined for one of the countries identified in § 748.9(b)(2) of this part, or, in the case of the PRC, for all items that require a license to the PRC for any reason.

(b) * * *

(4) Your transaction involves an export to the People's Republic of China (PRC) of commodities and software classified in a single entry on the CCL, the total value of which exceeds $5,000. Note that this $5,000 threshold does not apply to exports to the PRC of computers, which are subject to the provisions of § 748.10(b)(3).

(i) Your license application may list several separate CCL entries. If the total value of entries that require a license to the PRC for any reason on the CCL on a license application exceeds $5,000, then a PRC End-User Certificate covering all controlled items on your license application must be obtained;

(ii) You may be specifically requested by BIS to obtain an End-User Certificate for a transaction valued under $5,000 or for a transaction that requires a license to the PRC for reasons in the EAR other than those listed on the CCL.

(5) Your transaction involves a destination other than the PRC and your license application involves the export of commodities and software classified in a single entry on the CCL, the total value of which exceeds $5,000.

(i) Your license application may list several separate CCL entries. If any entry controlled for national security reasons exceeds $5,000, then an Import Certificate must be obtained covering all items controlled for national security reasons on your license application;

(ii) If your license application involves a lesser transaction that is part of a larger order for items controlled for national security reasons in a single ECCN exceeding $5,000, an Import Certificate must be obtained.

(iii) You may be specifically requested by BIS to obtain an Import Certificate for a transaction valued under $5,000.

(c) *How to obtain an Import or End-User Certificate.* (1) Applicants must

request that the importer (e.g., ultimate consignee or purchaser) obtain the Import or End-User Certificate, and that it be issued covering only those items that are controlled for national security reasons. Note that in the case of the PRC, applicants must request that the importer obtain an End-User Certificate for all items on a license application that are controlled to the PRC for any reason on the CCL. Importers should not be requested, except in the case of the PRC, to obtain an Import or End-User Certificate for items that are controlled for reasons other than national security. Applicants must obtain original Import or End-User Certificates from importers.

* * * * *

(3) If your transaction requires the support of a PRC End-User Certificate, you must ensure that the following information is included on the PRC End-User Certificate signed by an official of the Department of Scientific and Technological Development and Trade in Technology of the PRC Ministry of Commerce (MOFCOM), with MOFCOM's seal affixed to it:

* * * * *

(g) *Submission of Import and End-User Certificates.* Certificates must be retained on file by the applicant in accordance with the recordkeeping provisions of part 762 of the EAR, and should not be submitted with the license application. For more information on what Import and End-user Certificate information must be included in license applications, refer to § 748.9(c) of the EAR. In addition, as set forth in § 748.12(e), to assist in license reviews, BIS will require applicants, on a random basis, to submit specific original Import and End-user Certificates.

* * * * *

§ 748.12 [Amended]

13. Section 748.12 is amended by removing and reserving paragraph (a).

14. Supplement No. 4 to Part 748, is amended by revising the entry for ''China, People's Republic of'', to read as follows:

Supplement No. 4 to Part 748—Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End-Use Certificate Systems in Foreign Countries

Country	IC/DV authorities	System administered
* *	* * *	* *
China, People's Republic of	Export Control Division I Department of S&T No. 2 Dong Chang An Street Beijing Phone: 8610–6519–7366 Fax: 8610–6519–7926.	PRC End-User Certificate.
* *	* * *	* *

15. Section 748.15 is added to read as follows:

§ 748.15 Authorization Validated End-User (VEU).

Authorization Validated End-User (VEU) permits the export, reexport, and transfer to validated end-users of any eligible items that will be used in an eligible destination. Validated end-users are those who have been approved in advance pursuant to the requirements of this section. To be eligible for authorization VEU, exporters, reexporters, and potential validated end-users must adhere to the conditions and restrictions set forth in paragraphs (a) through (f) of this section.

(a) *Eligible end-users.* The only end-users to whom eligible items may be exported, reexported, or transferred under VEU are those validated end-users identified in Supplement No. 7 to Part 748.

(1) In evaluating an end-user for eligibility under this authorization, BIS, in consultation with the Departments of State, Energy, and Defense and other agencies, as appropriate, will consider a range of information, including such factors as: The party's record of exclusive engagement in civil end-use activities; the party's compliance with U.S. export controls; the party's capability to comply with the requirements of authorization VEU; the party's agreement to on-site compliance reviews by representatives of the United States Government; and the party's relationships with U.S and foreign companies. In addition, when evaluating the eligibility of an end-user, agencies will consider the status of export controls and the support and adherence to multilateral export control regimes of the government of the eligible destination.

(2) Requests for authorization must be submitted in the form of an advisory opinion request, as described in § 748.3(c), and should include a list of items, identified by Export Control Classification Number (ECCN), that exporters or reexporters intend to export, reexport or transfer to an eligible end-user. In addition to the information described in § 748.3, the items identified by ECCN should be specified to the extent of the applicable subparagraph of the ECCN entry. The request also should include a description of how each item would be used by the eligible end-user in an eligible destination. Requests for authorization will be accepted from exporters, reexporters and end-users. Submit the request to:

The Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Room 2075, Washington, DC 20230; or to

The Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

Mark the package sent to either address ''Request for Authorization Validated End-User''.

(3) Exports, reexports, or transfers made under authorization VEU may only be made to an end-user listed in Supplement No. 7 to Part 748 if the items will be consigned to and for use by the validated end-user.

(b) *Eligible destinations.* Authorization VEU may be used for the following destinations:

(1) The People's Republic of China.

(2) [Reserved].

(c) *Item restrictions.* (1) Items controlled under the EAR for missile technology (MT) and crime control (CC) reasons may not be exported or reexported under this authorization.

(d) *End-use restrictions.* Items obtained under authorization VEU may not be used for any activities described in part 744. Eligible end-users who obtain items under VEU may only:

(1) Use such items at the end-user's own facility located in an eligible destination or at a facility located in an eligible destination over which the end-user demonstrates effective control;

(2) Consume such items during use; or

(3) Transfer or reexport such items only as authorized by BIS.

(e) *Certification and recordkeeping.* Prior to the initial export or reexport under authorization VEU, exporters or reexporters must receive and retain end-use certifications from eligible end-users stating that:

(1) They are informed of and will abide by all authorization VEU end-use restrictions;

(2) They have procedures in place to ensure compliance with authorization VEU destination and end-use restrictions;

(3) They will not use items obtained under authorization VEU in any of the prohibited activities described in part 744 of the EAR; and

(4) They agree to allow on-site visits by U.S. Government officials to verify the end-users' compliance with the conditions of authorization VEU.

Note to paragraph (e) of this section: These certifications must be retained by exporters or reexporters in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

(f) *Reporting and auditing requirements*—(1)(i) *Reports.* Exporters and reexporters who use authorization VEU are required to submit annual reports to BIS. These reports must include, for each validated end-user to whom the exporter or reexporter exported or reexported eligible items:

(A) The name and address of any validated end-users to whom the exporters or reexporters exported or reexported eligible items;

(B) The eligible destination to which the items were exported or reexported;

(C) The quantity of such items;

(D) The value of such items; and

(E) The ECCN(s) of such items.

(ii) Reports are due by February 15 of each year, and must cover the period of January 1 through December 31 of the prior year. Packages containing such reports should be marked ''Authorization Validated End-User Reports.'' Reports should be sent to: Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–4520, Washington, DC 20230.

(2) *Audits.* Users of authorization VEU will be audited on a routine basis. Upon request by BIS, exporters, reexporters, and validated end-users must allow inspection of records or on-site compliance reviews. For audit purposes, records, including information identified in paragraphs (e), (f)(1) and the note to paragraph (c) of this section, should be retained in accordance with the recordkeeping requirements set forth in part 762 of the EAR.

12. Supplement No. 7 to Part 748 is added to read as follows:

Supplement No. 7 to Part 748—Authorization Validated End-User (VEU): List of Validated End-Users, Respective Eligible Items and Eligible Destinations

Validated End-Users, Respective Eligible Items and Eligible Destinations for Exports and Reexports Under Authorization VEU:

Certified End-User
Eligible Items
Eligible Destination

Dated: June 29, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E6–10504 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 764 and 766

[Docket No. 060511128–6128–01]

RIN 0694–AD63

Antiboycott Penalty Guidance

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This notice corrects a transposition error in the Regulatory Identification Number (RIN) in the preamble to a proposed rule that the Bureau of Industry and Security published on June 30, 2006 (71 FR 37571). The correct RIN is 0694–AD63. The RIN was incorrectly listed as 0694–AD36. In addition this notice corrects that same transposition error that appeared in the final sentence of the **ADDRESSES** paragraph of the preamble of that propose rule. As corrected, the final sentence of the **ADDRESSES** paragraph reads:

ADDRESSES: * * * Please refer to RIN 0694–AD63 in all comments.

FOR FURTHER INFORMATION CONTACT: Edward O. Weant III, Acting Director, Office of Antiboycott Compliance, Bureau of Industry and Security, United States Department of Commerce, at (202) 482–2381.

Dated: June 30, 2006.

Eileen Albanese,

Director, Office of Export Services.

[FR Doc. E6–10560 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL TRADE COMMISSION

16 CFR Part 311

Test Procedures and Labeling Standards for Recycled Oil

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comment on the overall costs, benefits, and regulatory and economic impact of its rule specifying Test Procedures and Labeling Standards for Recycled Oil (''Recycled Oil Rule'' or ''Rule''), as part of the Commission's systematic review of all current FTC rules and guides.

DATES: Written comments will be accepted until September 5, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''16 CFR Part 311 Comment—Recycled Oil Rule, Matter No. R511036'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the Office of the Secretary, Federal Trade Commission, Room H–135 (Annex P), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be submitted by clicking on the following: *https://secure.commentworks.com/ftc-recycledoil* and following the instructions on the web-based form.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Janice Podoll Frankle, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3022.

SUPPLEMENTARY INFORMATION:

I. Background

Section 383 of the Energy Policy and Conservation Act of 1975 (''EPCA''), 42 U.S.C. 6363, mandated that the FTC promulgate a rule prescribing testing procedures and labeling standards for recycled oil. This section of EPCA is intended to encourage the recycling of used oil, promote the use of recycled oil, reduce consumption of new oil by promoting increased utilization of recycled oil, and reduce environmental hazards and wasteful practices associated with the disposal of used oil. 42 U.S.C. 6363(a).

EPCA also mandated that the National Institute of Standards and Technology (''NIST'') develop (and report to the FTC) test procedures to determine whether processed used oil is substantially equivalent to new oil for a particular end use. 42 U.S.C. 6363(c). EPCA required that, within 90 days after receiving NIST's test procedures, the FTC issue a rule that permits any processed used oil container to bear a label indicating a particular end use (*e.g.*, engine lubricating oil), as long as a determination of ''substantial equivalency'' with new oil has been made in accordance with NIST test procedures. 42 U.S.C. 6363(d)(1)(B).

On July 27, 1995, NIST reported to the FTC test procedures for determining the substantial equivalence of processed used engine oil with new engine oil. The FTC's Rule, which was issued on October 31, 1995 (60 FR 55421), implements EPCA's requirements by permitting a manufacturer or other seller to label recycled engine oil as substantially equivalent to new engine oil, as long as that determination is made in accordance with the test procedures entitled ''Engine Oil Licensing and Certification System,'' American Petroleum Institute Publication 1509, Thirteenth Edition, January 1995.

II. Regulatory Review Program

The Commission reviews all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of its Recycled Oil Rule; possible conflict between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic, or other industry changes.

III. Request for Comment

The Commission solicits written public comment on the following questions:

(1) Is there a continuing need for the Rule as currently promulgated?

(2) What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

(3) Has the Rule imposed costs on purchasers?

(4) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers? How would these changes affect the costs the Rule imposes on firms subject to its requirements? How would these changes affect the benefits to purchasers?

(5) What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements? Has the Rule provided benefits to such firms? If so, what benefits?

(6) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements? How would these changes affect the benefits provided by the Rule?

(7) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(8) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(9) Since the Rule was issued, the American Petroleum Institute has published the Fifteenth Edition of Publication 1509. Should this updated version of Publication 1509 be incorporated by reference into the Rule?

List of Subjects in 16 CFR Part 311

Energy conservation, Incorporation by reference, Labeling, Recycled oil, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. E6–10503 Filed 7–5–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–139059–02]

RIN 1545–BB86

Expenses for Household and Dependent Care Services Necessary for Gainful Employment; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to notice of proposed rulemaking that was published in the **Federal Register** on Wednesday, May 24, 2006 (71 FR 29847) regarding the credit for expenses for household and dependent care services necessary for gainful employment.

FOR FURTHER INFORMATION CONTACT: Sara Shepherd, (202) 622–4960 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–139059–02) that is the subject of this correction is under section 21 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–139059–02) contains an error that may prove to be misleading and is in need of correction.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–139059–02), that was the subject of FR Doc. E6–7390, is corrected as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.21–1 [Corrected]

Par. 2. On page 29851, column 1, § 1.21–1 is amended by revising paragraph (b)(5)(ii) to read as follows:

§ 1.21–1 Expenses for household and dependent care services necessary for gainful employment.

* * * * *

(b) * * *

(5) * * *

(ii) *Custodial parent allowed the credit.* A child to whom this paragraph (b)(5) applies is the qualifying individual of only one parent in any taxable year and is the qualifying child of the custodial parent even if the noncustodial parent may claim the dependency exemption for that child for that taxable year. See section 152(e). The custodial parent is the parent with whom a child shared the same principal place of abode the greater portion of the calendar year. See section 152(e)(4)(A).

* * * * *

Guy R. Traynor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–10132 Filed 7–5–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–139059–02]

RIN 1545–BB86

Expenses for Household and Dependent Care Services Necessary for Gainful Employment; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to notice of proposed rulemaking that was published in the **Federal Register** on Wednesday, May 24, 2006 (71 FR 29847) regarding the credit for expenses for household and dependent care services necessary for gainful employment.

FOR FURTHER INFORMATION CONTACT: Sara Shepherd, (202) 622–4960 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–139059–02) that is the subject of this correction is under section 21 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–139059–02) contains an error that may prove to be misleading and is in need of correction.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–139059–02), that was the subject of FR Doc. E6–7390, is corrected as follows:

1. On page 29848, column 2, in the preamble under the paragraph heading ''*3. Special Rule for Children of Separated or Divorced Parents*'', line 4 from the bottom of the paragraph, the language ''section 152(e)(3)(A) as the parent with'' corrected to read ''section 152(e)(4)(A) as the parent with.''

Guy R. Traynor,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6–10141 Filed 7–5–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–148864–03]

RIN 1545–BC93

Disclosure of Return Information to the Bureau of Economic Analysis

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations regarding additional items of return information disclosable to the Bureau of Economic Analysis (Bureau) of the Department of Commerce for purposes related to measuring economic change in the U.S. national economic accounts. These temporary regulations provide guidance to IRS personnel responsible for disclosing the information. The text of these temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** serves as the text of the proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by October 4, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148864–03), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–148864–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs*, or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–148864–03).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180; concerning the temporary regulations, Joel D. McMahan at (202) 622–4580 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Secretary of the Treasury must furnish to the Bureau return information that is prescribed by Treasury regulations for purposes related to measuring economic change in the U.S. national economic accounts. Section 301.6103(j)(1)–1(c) of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose. Periodically, the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document contains proposed regulations authorizing IRS personnel to disclose additional items of return information that have been requested by the Secretary of Commerce.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR Part 301) relating to Internal Revenue Code (Code) section 6103(j). The temporary regulations contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and national economic accounts and conducting related statistical activities authorized by law.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Joel D. McMahan, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure and Privacy Law Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended in part, by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(j)(1)–1 also issued under 26 U.S.C. 6103(j)(1); * * *

Par. 2. In § 301.6103(j)(1)–1 paragraphs (c) and (f) are revised to read as follows:

§ 301.6103(j)(1)–1 Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(c) [The text of this proposed paragraph is the same as the text of § 301.6103(j)(1)–1T(c) published elsewhere in this issue of the **Federal Register**].

* * * * *

(f) [The text of this proposed paragraph is the same as the text of § 301.6103(j)(1)–1T(f) published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–9555 Filed 7–5–06; 8:45 am]

BILLING CODE 4830–01–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Parts 1193 and 1194

[Docket No. 2006–1]

Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of establishment; appointment of members; date of first meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has decided to establish an advisory committee to assist it in revising and updating accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology. The Telecommunications and Electronic and Information Technology Advisory Committee (Committee) includes organizations which represent the interests affected by these accessibility guidelines and standards. This notice also announces the time and place of the first Committee meeting, which will be open to the public.

DATES: The first meeting of the Committee is scheduled for September 27, 2006 through September 29, 2006 beginning at 1 p.m. on September 27, and 9 a.m. on the subsequent days. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

ADDRESSES: The first meeting of the Committee will be held at the National Science Foundation, Room II–555, 4201 Wilson Boulevard, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Timothy Creagan, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0016 (Voice); (202) 272–0082 (TTY). Electronic mail address: *creagan@access-board.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 18, 2006, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice of intent to establish an advisory committee to provide recommendations for revisions and updates to accessibility guidelines for telecommunications products and accessibility standards for electronic and information technology (71 FR 19839; April 18, 2006). The notice identified the interests that are likely to be significantly affected by this rulemaking:

- Federal agencies;
- The telecommunications and electronic and information technology industry, including manufacturers;
- Organizations representing the access needs of individuals with disabilities;
- Representatives from other countries and international standards setting organizations; and
- Other organizations affected by these accessibility guidelines and standards.

For the reasons stated in the notice of intent, the Access Board has determined that establishing the Telecommunications and Electronic and Information Technology Advisory Committee (Committee) is necessary and in the public interest. The Access Board has appointed the following organizations as members to the Committee:

- Adobe Systems, Inc.
- American Association of People with Disabilities
- American Council of the Blind
- American Foundation for the Blind
- Apple Computer, Inc.

- Association of Assistive Technology Act Programs
- Assistive Technology Industry Association
- AT&T
- Avaya, Inc.
- Canon USA, Inc.
- Cingular Wireless
- Communication Service for the Deaf
- CTIA—The Wireless Association
- Dell, Inc.
- Easter Seals
- European Commission
- Hearing Loss Association of America
- Human Rights and Equal Opportunity Commission (Australia)
- IBM
- Inclusive Technologies
- Industry Canada
- Information Technology Association of America
- Information Technology Industry Council
- Microsoft Corporation
- National Association of State Chief Information Officers
- National Center on Disability and Access to Education
- National Federation of the Blind
- National Network of Disability and Business Technical Assistance Centers
- Panasonic Corporation of North America
- Paralyzed Veterans of America
- SRA International, Inc.
- Sun Microsystems, Inc.
- Telecommunications Industry Association
- The Paciello Group, LLP
- Trace Research and Development Center
- Usability Professionals' Association
- U.S. Department of Homeland Security
- U.S. Social Security Administration
- WGBH National Center for Accessible Media
- World Wide Web Consortium—Web Accessibility Initiative

The Access Board regrets being unable to accommodate all requests for membership on the Committee. In order to keep the Committee to a size that can be effective, it was necessary to limit membership. It is also desirable to have balance among members of the Committee representing different clusters of interest, such as disability organizations and the technology industry. The Committee membership identified above provides representation for each interest affected by the issues to be discussed.

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee. Members of groups or individuals who are not members of the Committee may also have the opportunity to participate with subcommittees of the Committee. The Access Board believes that participation of this kind can be very valuable for the advisory committee process. Additionally, all interested persons will have the opportunity to comment when proposed rules are issued in the **Federal Register** by the Access Board.

The meeting site is accessible to individuals with disabilities. Sign language interpreters and real-time captioning will be provided. Notices of future meetings will be published in the **Federal Register**. Due to security measures at the National Science Foundation, it is advisable that members of the public notify Timothy Creagan of their intent to attend the meeting (see Contact Information, above). This will ensure that a name badge is available at the National Science Foundation check-in desk to facilitate efficient building entry and will enable the Board to provide additional information about technology screening processes.

David L. Bibb,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. E6–10562 Filed 7–5–06; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2005–0538; FRL–8190–4]

RIN 2060–AN54

Protection of Stratospheric Ozone: The 2007 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an exemption to the phaseout of methyl bromide to meet the needs of 2007 critical uses. Specifically, EPA is proposing uses that will qualify for the 2007 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from stocks for those uses in 2007. EPA is taking action under the authority of the Clean Air Act to reflect recent consensus Decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) at the 17th Meeting of the Parties (MOP). EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by August 7, 2006. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on July 11, 2006. If a hearing is requested it will be held on July 21, 2006, and comments will be due to the Agency August 21, 2006. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection Web site *www.epa.gov/ozone*. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0538, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: A-and-R-docket@epa.gov*
- *Fax:* 202–343–2337, attn: Hodayah Finman.
- *Mail:* Air Docket, Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Air Docket, EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0538. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* 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 Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Hodayah Finman by telephone at (202) 343–9246, or by e-mail at *mebr.allocation@epa.gov* or by mail at Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a class I, Group VI controlled substance) for critical uses during calendar year 2007. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005 apart from allowable exemptions, namely the critical use exemption and the quarantine and pre-shipment exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2007 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or made available from stocks for proposed critical uses in 2007.

Table of Contents

I. General Information

A. Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide; Applicators, Distributors of methyl bromide; Users of methyl bromide, e.g., farmers of vegetable crops, fruits and seedlings; and owners of stored food commodities and structures such as grain mills and processors, agricultural researchers.

The above table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is aware could potentially be regulated by this proposed action. To determine whether your facility, company, business, or organization is regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR Part 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider When Preparing My Comments?

1. *Confidential Business Information.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

II. What Is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances can be found at 40 CFR Part 82, Subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a wide variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule on the phaseout schedule for methyl bromide published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018).

The phaseout schedule for methyl bromide production and consumption was revised in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. The revised phaseout schedule was again amended to allow for an exemption for quarantine and preshipment purposes on July 19, 2001 (66 FR 37751) with an interim final rule and with a final rule on January 2, 2003 (68 FR 238). Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr* and *http://www.unep.org/ozone* or by contacting the Stratospheric Ozone Hotline at 1–800–296–1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Because of this status, a restricted use pesticide is subject to certain Federal and State requirements governing its sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or Local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this proposal must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this proposed action are intended only to implement the CAA restrictions on the production, consumption and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

IV. What Is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen amendment to the Protocol. The Parties authorize critical use exemptions through their Decisions.

The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in Section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.'' EPA based its action on scientific assessments and actions by the Parties to the Montreal Protocol to freeze the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting of the Parties in Copenhagen.

At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with the CAAA of 1990 language. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide exemptions for critical uses.

These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in Section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at Section 604(d)(6), 42 U.S.C. 7671c(d)(6). On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the ''Framework Rule'') in the **Federal Register** that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from available stocks and new production or import to meet the needs of approved critical uses. EPA then published a second final rule that added additional uses to the exemption program for 2005 and allocated additional stock allowances (70 FR 73604). EPA published a final rule on February 6, 2006 to exempt production and import of methyl bromide for 2006 critical uses and indicate which uses met the criteria for the exemption program for that year (71 FR 5985). Under authority of section 604(d)(6) of the CAA, EPA is proposing the uses that will qualify as approved critical uses in 2007 and the amount of methyl bromide required to satisfy those uses.

This proposed action reflects Decision XVII/9, taken at the Parties' Seventeenth Meeting in December 2005. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The December 23, 2004 Framework Rule (69 FR 76984) discusses the relationship between the relevant provisions of the CAA and Article 2H of the Protocol, and the Decisions of the Parties that interpret Article 2H. Briefly, EPA regards certain provisions of Decisions IX/6, Ex I/4, and XVII/9 as subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. This proposed action follows the terms of these provisions to ensure consistency with the Montreal Protocol and satisfy the requirements of sections 604(d)(6) and 614(b) of the Clean Air Act.

V. What Is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants of the process for obtaining a critical use exemption to the methyl bromide phaseout. On May 8, 2003, the Agency published its first notice in the **Federal Register** (68 FR 24737) announcing the availability of the application for a critical use exemption and the deadline for submission of the requisite data. Applicants were informed that they may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (i.e. specific conditions that establish a critical need for methyl bromide). EPA has repeated this process annually since then. The critical use exemption is designed to permit production and import of methyl bromide for uses that do not have technically and economically feasible alternatives.

The criteria for the exemption are delineated in Decision IX/6 of the Parties to the Protocol. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination.'' These criteria are reflected in EPA's definition of ''critical use'' at 40 CFR 82.3.

In response to the yearly requests for critical use exemption applications published in the **Federal Register**, applicants have provided data on the technical and economical feasibility of using alternatives to methyl bromide. Applicants further submit data on their use of methyl bromide, on research programs into the use of alternatives to methyl bromide, and on efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide and whether there would be significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates with the development of a document referred to as the ''Critical Use Nomination'' or CUN. The CUN is submitted annually by the U.S. Department of State to the United Nations Environment Programme (UNEP)'s Ozone Secretariat. The CUNs of various countries are subsequently reviewed by the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol. These bodies make recommendations to the Parties on the nominations. The Parties then take a Decision to authorize a critical use exemption for a particular country. The Decision also identifies how much methyl bromide may be supplied for the exempted critical uses. Finally, for each exemption period, EPA provides an opportunity such as this for comment on the amounts of methyl bromide that the Agency has determined to be necessary for critical uses and the uses that the Agency has determined meet the criteria of the critical use exemption.

For more information on the domestic review process and methodology employed by the Office of Pesticide Programs, please refer to a detailed memo titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' available on the docket for this rulemaking. While the particulars of the data continue to evolve and clerical matters are further streamlined, the technical review itself has remained the same since the inception of the exemption of the program.

On January 31, 2005, the U.S. Government submitted the third U.S. Nomination for a Critical Use Exemption for Methyl Bromide to the Ozone Secretariat of the United Nations Environment Programme. This third nomination contained the request for 2007 critical uses. On March 16 and 18, 2005, and June 10 and 13, 2005, MBTOC sent questions to the U.S. Government concerning technical and economic issues in the nomination. The U.S. Government transmitted responses to these requests for clarification on April 8, 2005 and August 18, 2005. These documents, together with reports by the advisory bodies noted above, can be accessed in the docket for this rulemaking. The determination in this proposed rule reflects the analysis contained in those documents.

B. How Does This Proposed Rulemaking Relate to Previous Critical Use Exemption Rulemakings?

The December 23, 2004 Framework Rule (69 FR 76982) established the bulk of the framework for the critical use exemption in the U.S. including trading provisions and recordkeeping and reporting obligations. In this action, EPA is not proposing to change the framework of the exemption program but rather to establish a list of approved critical uses for 2007 and issue allowances that will determine the amount of methyl bromide available for those uses consistent with the Framework Rule.

C. Proposed Critical Uses and Adjustments to Critical Use Amounts

In Decision XVII/9, taken in December 2005, the Parties to the Protocol agreed as follows: ''for the agreed critical-use categories for 2007, set forth in table C to the annex to the present decision for each Party, to permit, subject to the conditions set forth in the present decision and decision Ex. I/4, the levels of production and consumption for 2007 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *''

The following uses are those set forth in table C of the annex to Decision XVII/9: Cucurbits; dry commodities/structures cocoa beans; dried fruit and nuts; NPMA dry commodities/structures (processed foods, herbs & spices, dried milk and cheese processing facilities); dry cure pork products (building and product); eggplant (field); forest nursery seedlings; mills and processors; nursery stock-fruit trees, raspberries, roses; orchard replant; ornamentals; peppers (field); strawberry fruit (field); strawberry runners; tomato (field) and turf grass. When added together, the agreed critical-use levels for 2007 total 6,749,060 kilograms, which is equivalent to 26.4% of the U.S. 1991 methyl bromide consumption baseline of 25,528,000 kilograms. However, the maximum amount of allowable new production or import as set forth in table D of Decision XVII/9 is 5,149,060 kgs, which is equivalent to 20% of the 1991 methyl bromide consumption baseline. The difference between allowable new production or import and total critical use exemption will be made up from available stocks. EPA further discusses the breakout between new production or import and stocks in sections V.G. and V.H. of this preamble.

EPA is proposing to make the following reductions to the amount of newly produced or imported methyl bromide authorized in Decision XVII/9 to satisfy critical uses:

(a) Reductions to accommodate uptake of sulfuryl fluoride in 2007.

(b) Reductions to account for unused critical use methyl bromide at the end of 2005.

(c) Reductions equivalent to the amount authorized for research purposes.

(d) Reductions to accommodate increased allocation of critical stock allowances (CSAs).

In the 2006 CUE Rule (71 FR 5985), EPA allocated less methyl bromide for critical uses than was authorized by the Parties, in order to account for the recent registration of sulfuryl fluoride. The Agency based those reductions on the data contained in the 2008 Critical Use Nomination (CUN), which was submitted to the Ozone Secretariat in January 2006. The 2008 CUN is available in the docket for this proposed rule. The nomination indicated that sulfuryl fluoride is registered to control the relevant pests in all post-harvest sectors except for cheese and dry cured ham use categories and that between 12 percent and 18 percent of the industry, depending on the use category, could feasibly transition to this alternative each year. This analysis still represents the best available data on the transition to sulfuryl fluoride including factors such as potential obstacles in the export of treated commodities. The report of the Methyl Bromide Technical Options Committee (MBTOC) indicated that the MBTOC did not make any reductions in these use categories for the uptake of sulfuryl fluoride in 2007 because the United States Government indicated that it would do so in its domestic allocation procedures. Therefore, EPA is proposing to reduce the total volume of critical use methyl bromide by 68,170 kilograms to reflect the continuing transition to sulfuryl fluoride. The Agency seeks comment on the transition rates for sulfuryl fluoride described in the 2008 CUN and used in this proposed rule. In particular, the Agency continues to seek comment on the ability of certain end users, such as dried fruit and nut processors, to be able to use sulfuryl fluoride given the progress made by importing countries in establishing and approving tolerance levels for the use of sulfuryl fluoride. A copy of the 2008 analysis is available in the rulemaking docket for comment.

As described in the December 23, 2004 Framework Rule (69 FR 76997), EPA is not permitting entities to build stocks of methyl bromide produced or imported under the critical use exemption program. To prevent the unintended build up of such stocks, the Agency indicated that any volumes of methyl bromide produced or imported under the critical use exemption in a calendar year, but not used in that year, must be reported to EPA the following year. These reporting requirements appear at §§ 82.13(f)(3)(xvi), 82.13(g)(4)(xviii), and 82.13(bb)(2)(iii). An amount equivalent to this ''carry-over,'' whether pre-plant or post-harvest, would then be deducted from the total level of allowable new production and import in the year following the year of the data report. For example, all carry-over methyl bromide that was produced or imported under the critical use exemption in 2005 was reported to EPA in 2006 and would be reduced from the total allowable levels of new production/import in 2007. Therefore, in this proposed rule, EPA is proposing to reduce the total level of new production and import for critical uses by 443,000 kilograms to reflect the total level of carry-over material available at the end of 2005. As described in the Framework Rule, after applying this reduction to the total volumes of allowable new production or import, EPA is pro-rating critical use allowances (CUAs) to each company based on their 1991 baseline market share.

Decision XVII/9, paragraph 7, ''request[s] Parties to endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development.'' In response to this Decision, EPA is reducing the total supply of new production and import for critical uses by an amount equivalent to the total amount authorized for research purposes, which is 21,702 kilograms. The calculations used by the Agency for the research adjustment are available for public comment in the docket for this action. Further, EPA is encouraging methyl bromide suppliers to sell stocks to researchers and is encouraging researchers to purchase stocks of methyl bromide.

Lastly, the Agency is considering increasing the amount of critical stock allowances (CSAs) to allocate for 2007 critical uses from 6.2% of baseline as specified in Decision XVII/9 to 7.5% of baseline consistent with the amount allocated for 2005 critical uses. In section V.H. of this preamble, the Agency describes the rationale for proposing and seeking comment on two different amounts of CSAs to allocate. In allocating additional CSAs, the Agency must make a corresponding reduction in the amount of new production and import under the exemption program. In this proposed action, EPA will list two tables of CUA and CSA allocations

reflecting both the lower and upper CSA scenarios.

On February 6, 2006, EPA amended the label for 1,3–dichloropropene (1,3–D) regarding karst restrictions and copies of the amended labels are available in the docket for this proposed rule . The previous label states ''Do not apply in areas overlying karst geology'' whereas the new label states ''Do not apply this product within 100 feet of karst topographical features.'' The new label language is more instructive on the use of 1,3–D in areas with karst topography, while still protecting the environment, than the previous label language. EPA's assessment of the amount of methyl bromide that may be displaced by the use of 1,3–D over karst areas in the 2007 technical analysis is already based on the revised label language now in place. Therefore, EPA is not proposing to make further reductions to the volumes of pre-plant methyl bromide based on the label change. EPA refers commenters to the more detailed explanation of this matter in the responses to the MBTOC available in the docket for this rulemaking. A copy of the label amendment is available in the docket as well.

In this proposed rule, EPA is proposing to modify Columns B and C of Appendix L to 40 CFR Part 82, Subpart A to reflect the agreed critical-use categories identified in Decision XVII/9 for the 2007 control period (calendar year). The Agency is proposing to amend the table of critical uses based, in part, on the technical analysis contained in the 2007 U.S. nomination that assesses data submitted by applicants to the critical use exemption program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA is seeking comment on the aforementioned analysis and, in particular, any information regarding changes to the registration or use of alternatives that may have transpired after the 2007 U.S. nomination was written. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption. EPA notes that while we may, in response to comments, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties, we do not intend to increase the quantities or add new uses in the final rule beyond those authorized by the Parties. Therefore, if there has been a change in registration of an alternative that results in that alternative no longer being available to a particular use, EPA does not intend to add uses or amounts of methyl bromide to the critical use exemption program beyond those identified here. Under such circumstances, the user should apply to EPA, requesting that the U.S. nominate its use for a critical use exemption in the future. Based on the information described above, EPA is proposing that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2007.

TABLE I.—APPROVED CRITICAL USES

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Pre-Plant Uses:		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne fungal disease infestation. Moderate to severe disease infestation. A need for methyl bromide for research purposes.
	(b) Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe fungal disease infestation. Moderate to severe root knot nematodes. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe fungal disease infestation. Moderate to severe root knot nematodes. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. Moderate to severe disease infestation. Restrictions on alternatives due to karst geology. A need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. Moderate to severe pythium root, collar, crown and root rot. Moderate to severe disease infestation. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst geology. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne fungal disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation.
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematodes. Moderate to severe fungal disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation. Moderate to severe nematodes and worms.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe fungal disease infestation.
	(f) Michigan growers	Moderate to severe disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematodes.
	(g) Michigan herbaceous perennials growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's Raspberries and their contract growers in California and Washington).	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(c) California rose nurseries	Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Strawberry Nurseries	(a) California growers	Moderate to severe disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. A need for methyl bromide for research purposes.
	(b) Maryland, North Carolina, and Tennessee growers.	Moderate to severe black root rot. Moderate to severe root-knot nematodes. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Presence of medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(b) California table and raisin grape growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(c) California wine grape growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(d) California walnut growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(e) California almond growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Ornamentals	(a) California growers	Moderate to severe disease infestation. Moderate to severe nematodes. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe disease infestation. Moderate to severe nematodes. Karst topography A need for methyl bromide for research purposes.
Peppers	(a) California growers	Moderate to severe disease infestation. Moderate to severe nematodes. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. Moderate to severe pythium root, collar, crown and root rots. Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less. A need for methyl bromide for research purposes.
	(c) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation. Moderate to severe nematodes. Karst topography. A need for methyl bromide for research purposes.
	(d) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(e) Michigan growers	Moderate to severe fungal disease infestation. A need for methyl bromide for research purposes.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. Time to transition to an alternative. A need for methyl bromide for research purposes.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) Florida growers	Moderate to severe yellow or purple nutsedge. Moderate to severe nematodes. Moderate to severe disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Karst topography and to a lesser extent a need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge. Moderate to severe nematodes. Moderate to severe black root and crown rot. Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less. A need for methyl bromide for research purposes.
Tomatoes	(a) Michigan growers	Moderate to severe disease infestation. Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation. Moderate to severe nematodes . Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less. Karst topography. A need for methyl bromide for research purposes.
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI).	Production of industry certified pure sod. Moderate to severe bermudagrass. Moderate to severe nutsedge. Moderate to severe white grub infestation. Control of off-type perennial grass infestation. A need for methyl bromide for research purposes.
Post-Harvest Uses:		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe infestation of beetles, weevils or moths. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (For this proposed rule, "pet food" refers to domestic dog and cat food).	Moderate to severe infestation or beetles, moths, or cockroaches. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
	(c) Kraft Foods in the U.S.	Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.

TABLE I.—APPROVED CRITICAL USES—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(d) Members of the North American Millers'' Association in the U.S.	Moderate to severe beetle infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs and spices, dried milk and cheese processing facilities).	Moderate to severe beetle or moth infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates (in Riverside county only), and pistachios in California.	Rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives. A need for methyl bromide for research purposes.
Dry Cured Pork Products	(a) Members of the National Country Ham Association.	Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation.
	(b) Members of the American Association of Meat Processors.	Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation.
	(c) Nahunta Pork Center (North Carolina)	Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation.

In the December 23, 2004 Framework Rule, EPA restricted access to stocks for approved critical users as a condition of obtaining new production and import (69 FR 76987). Decision XVII/9 establishes two distinct caps on the supply of methyl bromide for critical uses: a limit on the maximum allowable level of production or import and a limit on the maximum allowable amount of methyl bromide to be used for critical uses. It further indicates that the difference between the two levels is to be made up ''by using quantities of methyl bromide from stocks that the Party has recognized to be available.'' EPA continues to view promulgated restrictions on the use of stocks by critical uses (69 FR 76987) as an appropriate means of ensuring that total critical use does not exceed the level agreed to by the Parties. The Agency also believes that the restriction on access to stocks for critical uses is an expression of the United States' ''renewed commitment'' to take stocks into account as expressed in Decision XVII/9(5).

EPA is proposing to amend the table in 40 CFR part 82, subpart A, Appendix L, as reflected above. Specifically, EPA is adding one and deleting seven references to and from column B. The changes are as follows: adding cheese processing facilities to NPMA dry commodities to reflect the authorization of this use in Decision XVII/9; removing Idaho, Kansas, Nebraska, Oregon, Utah, and Washington from the approved public nursery locations in the Forest Nursery Sector because a 2007 application for these locations was not submitted to EPA; and removing California growers from the tomato sector because this use was not authorized by the Parties for 2007.

The categories listed in Table I above have been designated critical uses for 2007 in Decision XVII/9 of the Parties. The amount of methyl bromide approved for research purposes is

included in the amount of methyl bromide approved by the Parties for the commodities for which ''research'' is indicated as a limiting critical condition in the table above. However, consistent with the approach taken in the 2006 CUE Rule, the Agency is not setting aside a specific quantity of methyl bromide to be associated with research activities. Methyl bromide is needed for research purposes including experiments that require methyl bromide as a standard control treatment with which to compare the trial alternatives' results. EPA is proposing that the following sectors be allowed to use critical use methyl bromide for research purposes: cucurbits, dried fruit and nuts, nursery stock, strawberry nurseries, turfgrass, eggplant, peppers, strawberry fruit, tomatoes, and orchard replant. In their applications to EPA, these sectors identified research programs that require the use of methyl bromide.

D. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 5 of Decision XVII/9 request parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2007 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A. and V.C. of this preamble. In section V.C., the Agency is soliciting comments from the public on the technical basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.G. and V.H. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket on the CUE process for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination, efforts to minimize use and emissions of methyl bromide where technically and economically feasible, the development of research and transition plans, and the requests in Decision Ex. I/4(5) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and in paragraph 6 for Parties that submit critical use nominations to include information on the methodology they use to determine economic feasibility are all addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy (NMS) submitted to the Ozone Secretariat in December 2005 and in on-going consultations with industry. The NMS addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

E. Emissions Minimization

EPA notes for the regulated community the reference to emission minimization techniques in paragraph 6 of Decision XVII/9, which states that Parties shall request critical users to employ ''emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible.'' In addition, EPA understands that research is being conducted on the potential to reduce rates and emissions using newly available high-barrier films and that these studies show promising results. Users of methyl bromide should make every effort to decrease overall emissions of methyl bromide by implementing measures such as the ones listed above, to the extent consistent with state and local laws and regulations. The Agency encourages researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how further emission minimization could be achieved.

F. Critical Use Allowance Allocations

EPA is proposing to allow limited amounts of new production or import of methyl bromide for critical uses for 2007 up to the amount of 4,616,188 kilograms (18.08% of baseline) or in the alternative 4,301,588 kilograms (16.85% of baseline) as shown in Tables IIa and IIb respectively below, depending on the volume of critical stocks the Agency allocates. In section V.C. of this preamble, the Agency indicated that if we allocate a larger amount from stocks, EPA would make a corresponding reduction to the volume of allowable new production/import. EPA is seeking comment on the total levels of exempted new production or import for pre-plant and post-harvest critical uses in 2007. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. This proposal for allocating the following number of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

TABLE IIa.—PROPOSED ALLOCATION OF CRITICAL USE ALLOWANCES BASED ON 1,621,702 kg FROM STOCKS

Company	2007 Critical use allowances for pre-plant uses* (kilograms)	2007 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp	2,573,764	231,494
Albemarle Corp	1,058,390	95,196
Ameribrom, Inc	584,889	52,607
TriCal, Inc	18,212	1,638

TABLE IIa.—PROPOSED ALLOCATION OF CRITICAL USE ALLOWANCES BASED ON 1,621,702 kg FROM STOCKS—Continued

Company	2007 Critical use allowances for pre-plant uses* (kilograms)	2007 Critical use allowances for post-harvest uses* (kilograms)
Total	4,235,254	380,935

TABLE IIb.—PROPOSED ALLOCATION OF CRITICAL USE ALLOWANCES BASED ON 1,936,302 kgs FROM STOCKS

Company	2007 Critical use allowances for pre-plant uses* (kilograms)	2007 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp	2,401,699	212,376
Albemarle Corp	987,633	87,334
Ameribrom, Inc	545,787	48,262
TriCal, Inc	16,994	1,503
Total	3,952,114	349,475

* For production or import of class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in Appendix L to 40 CFR Part 82.

Paragraph four of Decision XVII/9 states ''that Parties shall endeavor to license, permit, authorize, or allocate quantities of critical use methyl bromide as listed in tables A and C of the annex to the present decision.'' This is similar to language in Decisions Ex. I/3(4) and Ex. II/1(4) regarding 2005 and 2006 critical uses, respectively. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

In establishing the critical use exemption program, the Agency endeavored to allocate directly on a sector-by-sector basis by analyzing and proposing this option among others in the August 2004 Framework Rule notice (69 FR 52366). EPA solicited comment on both universal and sector-based allocation of critical use allowances. The Agency evaluated the various options based on their economic, environmental and practical effects. After receiving comments, EPA determined in the final Framework Rule (69 FR 76989) that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-specific approach would pose significant administrative and practical difficulties. Although the approach adopted in the Framework Rule does not directly allocate allowances to each category of use, the Agency anticipates that reliance on market mechanisms will achieve similar results indirectly. The TEAP recommendations are based on data submitted by the U.S. which in turn are based on recent historic use data in the current methyl bromide market. In other words, the TEAP recommendations agreed to by the Parties are based on current use and the current use patterns take place in a market where all pre-plant and post-harvest methyl bromide uses compete for a lump sum supply of critical use material. Therefore, the Agency believes that under a system of universal allocations, divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP. These issues were addressed in the previous rule and EPA is not aware of any factors that would alter the analysis performed during the development of the Framework Rule. EPA is not proposing to change the approach adopted in the Framework Rule for the allocation of CUAs but, in an endeavor to address Decision XVII/9(4), EPA will consider additional comment on the Agency's allocation of CUAs in the two groupings (pre-plant and post-harvest) that the Agency has employed in the past. A summary of the options analysis conducted by EPA is available in the docket for this rulemaking.

G. Critical Stock Allowance Allocations and Total Volumes of Critical Use Methyl Bromide

EPA is proposing to allocate critical stock allowances (CSAs) to the entities listed below in Table III for the control period of 2007 in the range of between 1,621,702 kilograms (6.2% of U.S. 1991 baseline) and 1,936,302 kilograms (7.5% of U.S. 1991 baseline). EPA is employing the same methodology and baselines for allocating CSAs as in previous critical use rulemakings (69 FR 76982). If the Agency allocates 1,621,702 kg of CSAs, then it would also allocate 4,616,188 kg of allowances for new production/import, bringing the total volume of critical use methyl bromide to 6,237,890 kg (24.4% of baseline) for 2007 U.S. critical uses. If the Agency allocates 1,936,302 kg of CSAs, then it would also allocate 4,301,588 kg of allowances for new production/import, bringing the total volume of critical use methyl bromide to 6,237,890 kgs (24.4% of baseline) for 2007 U.S. critical uses as well. The Agency is seeking comment on the amount of critical use methyl bromide to come from stocks.

EPA currently possesses information on existing stocks of methyl bromide that has been claimed as confidential. With regard to data for 2003, EPA has determined that the aggregate stock information is not confidential business information but, in accordance with EPA regulations, is withholding that information due to the filing of complaints by affected businesses seeking to enjoin the Agency from its release (40 CFR 2.205). The United States District Court for the District of Columbia recently ruled that EPA has properly withheld the aggregate information in this circumstance. In addition, the court upheld EPA's treatment of the company-specific

information as confidential. NRDC v. Leavitt, 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and is not listed in the table below. EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule. EPA continues to follow its own regulations with respect to the treatment of information claimed as confidential.

TABLE III.—ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company
Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corp.
Harvey Fertilizer & Gas
Helena Chemical Co.
Hendrix & Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corp.
Prosource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
Total—1,621,702 kilograms or 1,936,302 kilograms.

Several companies that receive very small amounts of CSAs from EPA have contacted the Agency and requested that they be permitted to permanently retire their allowances. Some companies receive as few as 3 allowances which allow the holder to sell up to 3 kilograms of methyl bromide to critical uses. Due to the small allocation and because they typically do not sell critical use methyl bromide, they find the allocation of CSAs, and associated recordkeeping and reporting requirements, to be unduly burdensome. In response to this concern, EPA is proposing to allow CSA holders, on a voluntary basis, to permanently relinquish their allowances through written notification to the person indicated in the **ADDRESSES** section of this preamble during the comment period for this rulemaking. Such companies would not receive CSA allocations and would be excluded from future allocations. All allowances forfeited by companies through the written notification process will be reallocated to the remaining companies on a pro-rata basis.

H. Stocks of Methyl Bromide

As discussed above and in the December 23, 2004 Framework Rule, an approved critical user may obtain access to exempted production/import of methyl bromide and to limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of ''critical use methyl bromide'' intended to meet the needs of agreed critical uses.

In developing this proposed action, the Agency notes that Decision XVII/9 (para. 5) contains the following language: ''that each Party which has an agreed critical use renews its commitment to ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and that such procedures take into account available stocks of banked or recycled methyl bromide.'' This language is similar to language in Decision XVI/2 authorizing 2006 critical uses. Language calling on Parties to address stocks also appears in Decision Ex. I/3, which authorized 2005 critical uses.

In the Framework Rule, which established the architecture of the critical use exemption program and set out the exempted levels of critical use for 2005, EPA interpreted paragraph 5 of Decision Ex. I/3 ''as meaning that the U.S. should not authorize critical use exemptions without including provisions addressing drawdown from stocks for critical uses'' (69 FR 76987). The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that stocks were further taken into account through the trading provisions that allow critical use allowances to be converted into CSAs. Under this proposed action, no significant changes would be made to those provisions.

In the February 6, 2006 final rule that determined the amount to come from stocks during the 2006 control period, EPA stated that ''bearing in mind the United States' 'renewed commitment' as stated in Decision Ex II/1, and its experience with the 2005 critical use nomination,'' EPA would exercise its discretion to reduce production/import and authorize and additional amount from inventory (71 FR 5998). For the 2006 control period, EPA authorized 1,136,008 kilograms (5% of baseline) to be supplied from pre-phaseout methyl bromide inventories. EPA noted that ''continued drawdown of inventory for critical uses at the level authorized in the Framework Rule for 2005'' (i.e., 5% of baseline) was an appropriate means, for the 2006 control period, ''of continuing the commitment previously made, in light of our understanding of current inventory and our analysis of the current needs of users.'' In addition, EPA responded to stakeholder concerns that taking 5% of baseline from inventory in 2006 and 6.2% in 2007 would result in shortages. EPA reported that the Agency ''has re-examined the available inventory data and has projected multiple scenarios concerning levels of consumption of existing inventory. Based on these efforts, EPA believes that critical users will continue to be able to meet their needs throughout 2006 and 2007 through the anticipated combination of new production and import and inventory drawdown'' (71 FR 6000).

After EPA published the 2006 final rule, it collected data on holdings of pre-2005 stocks from methyl bromide suppliers as part of its routine reporting under the CUE program. For 2007, EPA is proposing that the amount to come from stocks be either the difference between the agreed U.S. critical-use level (6,749,060 kg) and the amount of allowable new production or import (5,149,060 kg) (the difference between these amounts is 1,600,000 kg, or 6.2% of baseline) or 1,914,600 kgs (7.5% of baseline) as it was for critical uses in 2005, plus an additional amount for the adjustment for amounts for research purposes. Both amounts are larger than the amounts taken from stocks in the preceding year of the exemption program and represent the continued regulatory implementation of U.S. commitments expressed in relevant Decisions of the Parties including Decision XVII/9(5). EPA is also seeking comment on whether some other number in this range would be appropriate.

In light of the possibility that EPA will authorize a lower amount of production/import than allowed in Decision XVII/9 and therefore that the regulated community may have concerns regarding shortages of methyl bromide, the Agency would like to reiterate its commitment to closely monitor CUA and CSA data. Further, as

stated in the final 2006 CUE rule, if an inventory shortage occurs, EPA may consider various options including, but not limited to, promulgating a final version of the petition process proposed on October 27, 2005 (70 FR 62030), taking into account comments received on that proposal; proposing a different administrative mechanism to serve the same purpose; or authorizing conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses.

An alternative means of addressing stocks appeared in a recent **Federal Register** notice relating to the essential use exemption program (71 FR 18264). In that context, the relevant Decision stated that ''Parties shall take into account * * * stocks of controlled substances * * * such that no more than a one-year operational supply is maintained by that manufacturer.'' This Decision refers to another exemption program, one that is analogous but differently structured from the CUE, and operating for different applications and circumstances. EPA seeks comment on whether, in the critical use exemption context, it would be appropriate to adjust the level of new production and import with the goal of maintaining a stockpile of some specified duration and seeks comment on how many months of inventory of methyl bromide may be appropriate to maintain non-disruptive management of this chemical in the supply chain for purposes of determining availability as inventories are reduced over time.

In sections V.F. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

VI. Statutory and Executive Order Reviews

A. Executive Order No. 12866: Regulatory Planning and Review

Under Executive Order No. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this is a ''significant regulatory action'' under Executive Order No. 12866 and EPA has submitted it to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This proposed action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR Part 82, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0564, EPA ICR number 2179.02 and 2179.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Agricultural Production	1112—Vegetable and Melon farming 1113—Fruit and Nut Tree Farming 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops 0172—Grapes 0173—Tree Nuts 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC 0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	$0.75 million.
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning). 311211—Flour Milling	2041—Flour and Other Grain Mill Products. 2044—Rice Milling 4221—Farm Product Warehousing and Storage.	$6 million.
	311212—Rice Milling 493110—General Warehousing and Storage. 493130—Farm Product Warehousing and Storage.	4225—General Warehousing and Storage	$21.5 million.
Distributors and Applicators	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$6 million.
Producers and Importers	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule will only affect entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA received requests from a comparable number of entities for the 2006 control period. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million and $30 million annually. We have therefore concluded that this proposed rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under Section 202, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action is deregulatory and does not impose any new requirements on any entities. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order No. 13132: Federalism

Executive Order No. 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order No. 13132. This proposed rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order No. 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order No. 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order No. 13175. This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order No. 13175 does not apply to this proposed rule.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order No. 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order No. 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order No. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: June 23, 2006.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.8 is amended by revising the table in paragraph (c)(1) and paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2007 Critical use allowances for pre-plant uses* (kilograms)	2007 Critical use allowances for post-harvest uses* (kilograms)
Great Lakes Chemical Corp	2,573,764	231,494
Albemarle Corp	1,058,390	95,196
Ameribrom, Inc	584,889	52,607
TriCal, Inc	18,212	1,638

Company	2007 Critical use allowances for pre-plant uses* (kilograms)	2007 Critical use allowances for post-harvest uses* (kilograms)
Total	4,235,254	380,935

*For production or import of class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2007 on a pro-rata basis in relation to the inventory held by each.

Company
Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corp.
Harvey Fertilizer & Gas
Helena Chemical Co.
Hendrix & Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corp.
Prosource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
Total—1,621,702 kilograms.

3. Appendix L to Subpart A is revised to read as follows:

APPENDIX L TO SUBPART A OF PART 82.—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2007 CONTROL PERIOD

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Pre-Plant Uses:		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne fungal disease infestation. Moderate to severe disease infestation. A need for methyl bromide for research purposes.
	(b) Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe fungal disease infestation. Moderate to severe root knot nematodes. A need for methyl bromide for research purposes.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe fungal disease infestation. Moderate to severe root knot nematodes. A need for methyl bromide for research purposes.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. Moderate to severe disease infestation. Restrictions on alternatives due to karst geology. A need for methyl bromide for research purposes.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. Moderate to severe pythium root, collar, crown and root rot. Moderate to severe disease infestation. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst geology. A need for methyl bromide for research purposes.
	(c) Michigan growers	Moderate to severe soilborne fungal disease infestation. A need for methyl bromide for research purposes.
Forest Nursery Seedlings.	(a) Growers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation.

APPENDIX L TO SUBPART A OF PART 82.—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2007 CONTROL PERIOD—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation.
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematodes. Moderate to severe fungal disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation. Moderate to severe nematodes and worms.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe fungal disease infestation.
	(f) Michigan growers	Moderate to severe disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematodes.
	(g) Michigan herbaceous perennials growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
Orchard Nursery Seedlings.	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's Raspberries and their contract growers in California and Washington).	Moderate to severe nematode infestation Presence of medium to heavy clay soils Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	Moderate to severe nematode infestation. Presence of medium to heavy clay soils. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
	(c) California rose nurseries	Moderate to severe nematode infestation. Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached. A need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	Moderate to severe disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. A need for methyl bromide for research purposes.
	(b) Maryland, North Carolina, and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematodes. Moderate to severe yellow and purple nutsedge infestation. A need for methyl bromide for research purposes.
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Presence of medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) California table and raisin grape growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.

APPENDIX L TO SUBPART A OF PART 82.—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2007 CONTROL PERIOD—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(c) California wine grape growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(d) California walnut growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(e) California almond growers	Moderate to severe nematodes. Moderate to severe fungal disease infestation. Replanted (non-virgin) orchard soils to prevent orchard replant disease. Medium to heavy soils. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
Ornamentals	(a) California growers	Moderate to severe disease infestation. Moderate to severe nematodes. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe disease infestation. Moderate to severe nematodes. Karst topography. A need for methyl bromide for research purposes.
Peppers	(a) California growers	Moderate to severe disease infestation. Moderate to severe nematodes. A prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached. A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes. Moderate to severe pythium root, collar, crown and root rots. Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less. A need for methyl bromide for research purposes.
	(c) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation. Moderate to severe nematodes. Karst topography. A need for methyl bromide for research purposes.
	(d) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. A need for methyl bromide for research purposes.
	(e) Michigan growers	Moderate to severe fungal disease infestation. A need for methyl bromide for research purposes.

APPENDIX L TO SUBPART A OF PART 82.—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2007 CONTROL PERIOD—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematodes. Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached. Time to transition to an alternative. A need for methyl bromide for research purposes.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge. Moderate to severe nematodes. Moderate to severe disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Karst topography and to a lesser extent a need for methyl bromide for research purposes.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge. Moderate to severe nematodes. Moderate to severe black root and crown rot. Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less. A need for methyl bromide for research purposes.
Tomatoes	(a) Michigan growers	Moderate to severe disease infestation. Moderate to severe fungal pathogen infestation. A need for methyl bromide for research purposes.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe disease infestation. Moderate to severe nematodes. Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less. Karst topography. A need for methyl bromide for research purposes.
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI).	Production of industry certified pure sod. Moderate to severe bermudagrass. Moderate to severe nutsedge. Moderate to severe white grub infestation. Control of off-type perennial grass infestation. A need for methyl bromide for research purposes.
Post-Harvest Uses:		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association..	Moderate to severe infestation of beetles, weevils, or moths. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (For this proposed rule, ''pet food'' refers to domestic dog and cat food)..	Moderate to severe infestation or beetles, moths, or cockroaches. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
	(c) Kraft Foods in the U.S.	Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S..	Moderate to severe beetle infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.

APPENDIX L TO SUBPART A OF PART 82.—APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2007 CONTROL PERIOD—Continued

Column A	Column B	Column C
Approved critical uses	Approved critical user and location of use	Limiting critical conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs and spices, dried milk and cheese processing facilities).	Moderate to severe beetle or moth infestation. Older structures that can not be properly sealed to use an alternative to methyl bromide. Presence of sensitive electronic equipment subject to corrosivity. Time to transition to an alternative.
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates (in Riverside county only), and pistachios in California.	Rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives. A need for methyl bromide for research purposes.
Dry Cured Pork Products.	(a) Members of the National Country Ham Association	Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation.
	(b) Members of the American Association of Meat Processors.	Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation.
	(c) Nahunta Pork Center (North Carolina)	Moderate to severe red legged ham beetle infestation. Moderate to severe cheese/ham skipper infestation. Moderate to severe dermested beetle infestation. Ham mite infestation.

[FR Doc. 06–5969 Filed 7–5–06; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[ET Docket No. 06–94; FCC 06–51]

Digital Television Signals Pursuant To the Satellite Home Viewer Extension and Reauthorization Act of 2004

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers. The Commission seeks public comment on the proposed procedures.

DATES: Comments are due on or before August 7, 2006, and reply comments are due on or before August 21, 2006. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before September 5, 2006.

ADDRESSES: You may submit comments, identified by ET Docket No. 06–94 and FCC 06–51 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, via the Internet to *Kristy L. LaLonde@omb.eop.gov,* or via fax at 202–395–5167.

For detailed instructions for submitting comments and additional information on the rule making process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Sturdivant, Technical Analysis Branch, Electromagnetic Compatibility Division, Office of Engineering and Technology, (202) 418–2470, e-mail: *David.Sturdivant@fcc.gov,* TTY (202) 418–1227. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at 202–418–0214, or via the Internet at PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed/modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 5, 2006. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Form No.: N.A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,215.

Estimated Time Per Response: 1.0 hour per written report.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Estimated Total Annual Burden: 280 hours.

Estimated Total Annual Costs: $42,000 per year.

Privacy Act Impact Assessment: No Impact.

Needs and Uses: 47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B signal strength tests will be used to indicate whether consumers are ''unserved'' by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal.

Summary of Notice of Proposed Rulemaking

1. Consistent with the provisions of section 204 of Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) (Pub. L. 108–447, 204, 118 Stat 2809, 3393 3423–24, (2004), codified at 47 U.S.C. 339(c)(1)) and Commission's *Report to Congress (SHVERA Report) (''Study of Digital Television Field Strength Standards and Testing Procedures''* (SHVERA Report), ET Docket No. 05–182, 20 FCC Rcd 19504 (2005)), the Commission proposes to amend the rules to include procedures for measuring the field strength of digital television signals. These new measurement procedures are needed to account for the differences that are inherent between the NTSC (analog) and digital television signals. While the proposed procedures would be generally applicable for measuring digital TV signal strengths, they would specifically be used in determining if a household is served by a digital television signal as part of an evaluation of the household's eligibility to receive a distant digital network signal from a satellite television provider. The proposals set forth were developed based on our recommendations in the *SHVERA Report.*

2. Wherever possible, the proposed procedures rely on existing, proven methods the Commission has established for measuring analog television signal strength at any individual location. The Commission request comment on these proposals. We also note that SHVERA gives subscribers the ability to request and pay for signal strength test if their satellite carrier does not request the test or refuses to do so. The Commission request comment on whether there are ways, such as by choice of equipment or by designation of procedures, to minimize the cost of digital signal strength tests while at the same time ensuring the accuracy and reliability of the results. We also note that SHVERA provides that testing of digital signal strength for this purpose could begin as early as April 30, 2006. We will allow subscribers and satellite carriers to rely on the proposed DTV measurement

procedures for evaluating DTV signal strengths pending our adoption of final rules.

3. *Antenna.* The current analog TV measurement rules allow the use of either a standard half-wave dipole or a directional (gain) antenna for which the antenna factor is known. The Commission request comment on whether we should require that measurements be taken using a calibrated gain antenna with a front-to-back ratio consistent with the DTV planning factors, or follow the approach used with analog TV signals and require that measurements be taken using either a standard half-wave dipole antenna or a gain antenna with a known antenna factor for the channel(s) that are to be tested. Parties addressing this issue should provide information to support their position, including technical merits, effect on the accuracy of measurements, and the practical implications for testing parties, including ease of use and cost. Parties performing measurements in accordance with the proposals set forth in the interim period pending the Commission's adoption of final DTV signal strength measurement procedures are advised that they may use a calibrated gain antenna with a front-to-back ratio consistent with the Commission's DTV planning assumptions, a standard half-wave dipole, or a directional (gain) antenna for which the antenna factor is known.

4. *Measurement procedures.* The current measurement procedures for analog television signals require that at least five measurements be made in a cluster of positions as close as possible to the location of the antenna site being tested. These measurements are taken for the signal strength of the visual carrier of the analog signal, and the median signal strength is reported as representative of the actual field strength of the signal. In addition, the current rules require that the intermediate frequency (''i.f.'') of the measurement equipment be at least 200 kilohertz and no greater than 1 megahertz. The Commission propose to include in the digital signal measurement procedures the requirements that at least five measurements be made in a cluster as close as possible to the location being tested and that the median be reported and used to determine eligibility for distant network signals. To account for the facts that the digital TV signal does not have a visual carrier and that the digital signal tends to be flat across the entire bandwidth, we propose to require digital signal measurements to be conducted by measuring the integrated average power over the signal's entire 6-megahertz bandwidth. To provide testing parties with flexibility in making measurements, we propose to require that the i.f. bandwidth of the measuring instrumentation be not greater than 6 MHz. This will allow testers to choose the measurement instrumentation and settings they believe appropriate, provided only that the equipment must be capable of integrating the measured power in the selected i.f. bandwidth across the 6 MHz TV channel. On this point, we note that in general the average power is measured by taking multiple measurements across the TV channel and integrating the results of those individual measurements. The Commission request comment on these proposals.

5. In addition, the Commission, propose to apply to the testing of digital TV signals the requirements in the analog TV testing rules that the instrumentation be set up with a shielded transmission line between the testing antenna and the field strength meter, that the antenna impedance be matched to the transmission line at all frequencies measured, and that the tester account for transmission line loss for each frequency being measured. Further, whenever an unbalanced line is used, we propose to require that a suitable balun be employed. We seek comment on these proposals.

6. The Commission further proposes, consistent with the analog testing rules, to require that digital television measurements be made with a horizontally polarized antenna. We also would require that the testing antenna be oriented so that its maximum gain (over an isotropic antenna) faces the strongest signal coming from the transmitter under test. If more than one station's signal is being measured, the testing antenna would be required to be oriented separately for each station. This procedure is consistent with the Commission's current analog signal measurement rules as well as with good engineering practice.

7. Finally, the Commission proposes to apply the antenna height requirement, set forth in the existing analog rules, as a required procedure for measuring digital signals. The rules currently require that, for field strength measurements at one-story buildings, the testing antenna be elevated to 6.1 meters (20 feet) above the ground. For field strength measurements at buildings taller than one story, the rules require that the testing antenna be elevated to 9.1 meters (30 feet) above the ground.

8. *Weather.* We propose that the current analog measurement rules with respect to weather conditions be applied to the measurement of digital television signal field strength. Digital signal strength measurements are to be made only when inclement weather or major weather front movements are not present in the measurement area. We seek comment on this proposal.

9. *Data recording.* Our rules require the recording of the measured values of the analog field strength value in units of dBu. In addition, a number of additional factors must be recorded as part of the analog field strength measurement procedure. These factors include a listing of the calibrated equipment used in a field strength survey, the locations of each measurement performed at the site, factors that may affect a measurement reading (such as weather, topography or other obstacles), the time and date of measurements, and the signature of the person making the measurement. The Commission propose to apply these same recording requirements for the reporting of measurements of DTV signal strength. More specifically, we propose to require that a written record of the digital signal measurement process and results be made and that this record include at least the following: (1) A list of calibrated equipment used; (2) detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable; (3) all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features for each spot at the measuring site; (4) a description of where each of the cluster measurements was made; (5) the time and date of the measurements and the signature of the person making the measurements; and (6) a list of the measured value of field strength (in units of dBu after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted for each channel being measured. The Commission seek comment on this proposal.

10. *Tester Availability.* The Commission request comment on whether we can fashion rules that will address the lack of qualified, independent testers to perform signal strength tests. Are there steps that the Commission can take in this proceeding that will facilitate or enhance tester competence and availability? We seek comment on this question.

Initial Regulatory Flexibility Act Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''),[1] the Commission has prepared this Initial Regulatory Flexibility Act Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (''NPRM''). Written public comments are requested on this IRFA. Comments must be identified as response to the IRFA and must be filed by the deadlines for comments on the *NPRM,* provided in paragraph 20 of the item. The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the NPRM (or summaries thereof), including the IRFA, will be published in the **Federal Register**.[3]

A. *Need for and Objectives of the Proposed Rules.* The Commission seek comment on whether the Commission should amend its rules as proposed to include measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by satellite communications providers. This Notice of Proposed Rulemaking begins the process of implementing our recommendations for DTV measurement procedures presented in the Commission's *Report to Congress* (SHVERA Report) pursuant to section 204(b) of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA).[4]

(1) The current rule includes measurement procedures for determining the strength of an analog broadcast television signal at any specific location and is used to determine household eligibility to receive distant analog TV network signals retransmitted by satellite communications providers. In December 2004, however, Congress enacted the Satellite Home Viewer Extension and Reauthorization Act of 2004,[5] pursuant to which, the Commission conducted an *Inquiry*[6] (*SHVERA Inquiry*) and on December 9, 2005, released the *SHVERA Report to Congress.* In relevant part, the *SHVERA Report to Congress* stated that the Commission intended to conduct a rulemaking proceeding to specify procedures for measuring the field strength of digital television signals at individual locations.[7] The report also stated that the digital television measurement procedures should be similar to the current procedures for measuring the field strength of analog television stations in 73.686(d) of the rules, but with certain modifications to address the differences between analog and digital TV signals.[8]

(2) Wherever possible, the proposed digital signal strength measurement procedures rely on the existing, proven methods the Commission has established for measuring analog television signal strength at any individual location.[9] In the *NPRM,* the Commission requests comment on these proposals. We also note that the SHVERA statute provides that testing of digital signal strength for this purpose could begin as early as April 30, 2006.[10] Therefore, the *NPRM* states that the Commission will rely on the proposed DTV measurement procedures for evaluating DTV signal strengths pending the adoption of rules in this regard.

B. *Legal Basis.* The legal basis for the rule changes proposed in the *NPRM* is contained in sections 1, 4(i) and (j), and 339 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), and 339 (including amendments enacted in the Satellite Home Viewer Extension and Reauthorization Act of 2004).

C. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Notice May Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[11] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[12] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[13] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[14]

(1) The proposed rules contained in the *NPRM* set forth procedures to measure the strength of digital television signals at any particular location, as a means of determining whether any particular household is ''unserved'' by a local DTV network station and is therefore eligible to receive a distant DTV network signal retransmitted by a Direct Broadcast Satellite (DBS) service provider. Therefore, DBS providers will be directly and primarily affected by the proposed rules, if adopted. In addition,

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996).

[2] 5 U.S.C. 603(a).

[3] *Id.*

[4] *See* SHVERA, supra n.1.

[5] *See id.*

[6] *See In the Matter Of Technical Standards For Determining Eligibility For Satellite-Delivered Network Signals Pursuant To The Satellite Home Viewer Extension and Reauthorization Act, ET Docket No. 05–182, Notice of Inquiry* (Inquiry), 20 FCC Rcd. 9349 (2005).

[7] *See SHVERA Report, supra* note 4.

[8] *Id.*

[9] *See generally,* 47 CFR 73.686(d).

[10] 47 U.S.C. 339(a)(2)(D)(vii) provides trigger dates for testing. Generally, subscribers in the top 100 television markets will be able to request a digital signal strength test after April 30, 2006 and subscribers in other markets will be able to request a test after July 15, 2007. Only network stations that have received a tentative digital channel designation that is the same as such stations' current digital channel, or that have lost interference protection, are subject to the April 30, 2006 commencement date for signal strength testing. Network stations in the top 100 markets without tentative channel designations on their DTV channels, as well as all network stations not in the top 100 markets, will be subject to signal strength testing beginning July 15, 2007, unless the Commission grants the station a waiver. 47 U.S.C. 339(a)(2)(D)(vii)(AA).

Waiver requests by stations subject to the testing commencement date of April 30, 2006 were required to be submitted by November 30 2005. To be grantable, waiver requests must provide ''clear and convincing evidence that the station's digital signal coverage is limited due to the unremediable presence of one or more of the following: 1) the need for international coordination or approvals; 2) clear zoning or environmental legal impediments; 3) force majeure; 4) the station experiences a substantial decrease in its digital signal coverage area due to the necessity of using a side-mounted antenna; 5) substantial technical problems that result in a station experiencing a substantial decrease in its coverage area solely due to actions to avoid interference with emergency response providers; or 6) no satellite carrier is providing the retransmission of the analog signals of local network stations under section 338 in the local market.'' The Act further provides that ''under no circumstances may such a waiver be based upon financial exigency.'' Waiver requests by stations subject to the testing commencement date of July 15, 2007 must be submitted to the Commission no later than February 15, 2007. See Public Notice DA No. 05–2979 (released Nov. 17, 2005). *See generally,* 47 U.S.C. 339(a)(2)(D)(vii)–(viii).

[11] 5 U.S.C. 603(b) (3), 604(a) (3).

[12] *Id.,* 601(6).

[13] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.''

[14] 15 U.S.C. 632.

the proposed rules, if adopted, will also directly affect those local digital television stations that broadcast network programming. Therefore, in this IRFA, we consider, and invite comment on, the impact of the proposed rules on small digital television broadcast stations, small DBS providers, and other small entities. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

(2) *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution.[15] This definition provides that a small entity is one with $13.5 million or less in annual receipts.[16] Currently, only three operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All three currently offer subscription services. Two of these three DBS operators, DirecTV [17] and EchoStar Communications Corporation (''EchoStar''),[18] report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion Video Satellite, Inc. (''Dominion''), offers religious (Christian) programming and does not report its annual receipts.[19] The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

(3) *Television Broadcast Stations.* The proposed rules and policies apply to digital television broadcast licensees, and potential licensees of digital television service. The SBA defines a television broadcast station as a small business if such station has no more than $13 million in annual receipts.[20] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [21] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations [22] (or approximately 67 percent) have revenues of $13 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, the controlling affiliation(s) [23] must be considered. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

(4) In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of the number of small businesses to which the proposed rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may also be over-inclusive to this extent. Finally, because only those digital television stations that are affiliated with a network would be subject to the proposed rules, our estimate of potentially affected small businesses is over-inclusive for this reason as well.

(5) *Class A TV, LPTV, and TV translator stations.* The proposed rules and policies could also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13 million in annual receipts.[24]

(6) Currently, there are approximately 592 licensed Class A stations, 2,145 licensed LPTV stations, 4,491 licensed TV translators and 11 TV booster stations.[25] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered. Finally, our estimate overstates the number of affected entities because these stations could be affected only if they both

[15] 13 CFR 121.201, NAICS code 517510.

[16] *Id.*

[17] DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 13.04 million subscribers nationwide; See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Twelfth Annual Report, FCC 05–255, ¶ 73 (rel. March 3, 2006) (''2006 Cable Competition Report'').

[18] EchoStar, which provides service under the brand name Dish Network, is the third largest MVPD, serving an estimated 11.45 million subscribers nationwide. *Id.*

[19] Dominion, which provides service under the brand name Sky Angel, serves fewer than one million subscribers. *Id.*

[20] See 13 CFR 121.201, NAICS Code 515120.

[21] *Id.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[22] Although we are using BIA's estimate for purposes of this revenue comparison, the Commission has estimated the number of licensed commercial television stations to be 1,368. See News Release, ''Broadcast Station Totals as of June 30, 2005'' (dated Aug. 29, 2005); see *http://www.fcc.gov/mb/audio/totals/bt050630.html.*

[23] ''[Business concerns] are affiliates of each other when one [concern] controls or has the power to control the other or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[24] See 13 CFR 121.201, NAICS Code 515120.

[25] News Release, ''Broadcast Station Totals as of December 31, 2005'' (dated Feb. 23, 2006); see *http://www.fcc.gov/mb/audio/totals/bt051231.html*

broadcast a digital signal and are affiliated with a network.

D. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The rules proposed in this *NPRM* would establish procedures for measuring digital television signal strength at any specific location. These measurement procedures would be used as a means of determining whether households are eligible to receive distant DTV network signals retransmitted by DBS providers. These procedures are similar to the ones used for measuring analog television signal strength for like purposes, with only those revisions necessary to account for the difference between digital and analog signals. Section 339(a)(2)(D)(vi) of the Communications Act (47 U.S.C. 339(a)(2)(D)(vi)) delineates when measurements are necessary and when the satellite communications provider, the digital television broadcast station, or the consumer is responsible for bearing their cost. No reporting requirement is proposed. In this IFRA, we seek comment on the types of burdens direct broadcast satellite service providers and digital television broadcast stations will face in complying with the proposed requirements. Entities, especially small businesses and, more generally, small entities are encouraged to quantify the costs and benefits of the proposed reporting requirements.

E. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* Since the adoption of analog television signal strength procedures in 1999, the number of analog TV signal strength measurements taken in order to determine household eligibility to receive distant analog TV network signals have been infrequent. For example, DIRECTV, in comments filed in ET Docket No. 05–182, *Notice of Inquiry on Technical Standards for Determining Eligibility for Satellite-Delivered Network Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization* Act, 20 FCC Rcd 9349 (2005), stated that in the last five years only 1400 DIRECTV subscribers received onsite tests to determine eligibility to receive distant network television signals. In that proceeding, both DIRECTV and EchoStar indicated that they generally declined to perform or arrange for a test and instead refused to offer distant signals when subscribers were predicted to be ''served'' and the relevant network stations refused to grant a waiver. DIRECTV cited high costs both monetary and in time involved as reasons that tests have not been performed.

(1) As TV stations transition from analog transmissions to DTV, we anticipate that the combined number of analog and digital measurements will not increase substantially. This is so because, as part of the DTV transition, television stations will be ceasing the transmission of analog signals and households seeking to receive retransmitted DTV network signals will not be seeking to receive analog signals. In other words, digital measurements will replace analog measurements. Also, as direct broadcast stations increasingly offer local-to-local service to households pursuant to *SHVERA*, those households will not be eligible to receive retransmitted distant signals and therefore DTV signal strength measurements for this purpose will not be necessary.

(2) In addition, the *NPRM* requests comment on what measures the Commission can take, consistent with the SHVERA statute, that would reduce the cost to subscribers of digital signal testing without reducing the accuracy and reliability of the tests. We also note that SHVERA provides that testing of digital signal strength for this purpose could begin as early as April 30, 2006. We will rely on the proposed DTV measurement procedures as interim rules for evaluating DTV signal strengths pending our adoption of final rules.

(3) Finally, the *NPRM* proposes, as is now the case with analog signal strength measurements, to allow measurements to be taken using either a standard half-wave dipole antenna or a gain antenna with a known antenna factor for the channel(s) that are to be tested. For digital measurements, this approach would allow the tester flexibility in performing the test while still providing for accurate results. The NPRM requests comment on this proposal and, alternatively, on whether we should require the use of a gain antenna only. Commenters are also asked to provide information regarding differences in ease of use of gain antennas as compared to the use of half-wave dipole antennas. Finally, to assure that we explore this issue in depth and develop a complete record on this issue, the NPRM seeks comment on what rules we should propose, if any, that would address the apparent lack of qualified, independent testers to perform signal strength tests. Commenters are asked to submit information related to the cost of testing and the number of qualified testers available. The NPRM states that we seek to determine if there are alternative methods that would reduce the cost of performing a test while retaining or improving on the accuracy of the proposed method.

F. *Federal Rules that Might Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

List of Subjects in 47 CFR Part 73

Communications equipment, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73, as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Section 73.686 is amended by revising the heading to paragraph (d) and revising paragraph (d)(1)(i) and by adding a new paragraph (e) to read as follows:

§ 73.686 Field strength measurements.

* * * * *

(d) *NTSC—Collection of field strength data to determine NTSC television signal intensity at an individual location—cluster measurements—(1)* * *(i) Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the visual carrier frequency of the channel being measured or a gain antenna, provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

* * * * *

(e) *DTV—Collection of field strength data to determine DTV television signal intensity at an individual location—cluster measurements—(1) Preparation for measurements— (i) Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the center frequency of the channel being tested or a gain antenna provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

(ii) *Testing locations*—At the test site, choose a minimum of five locations as close as possible to the specific site where the site's receiving antenna is located. If there is no receiving antenna at the site, choose a minimum of five

locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBu) and report it as the measurement.

(iii) *Multiple signals*—If more than one signal is being measured (*i.e.*, signals from different transmitters), use the same locations to measure each signal.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of the rules. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Perform an on-site calibration of the test instrument in accordance with the manufacturer's specifications. Tune a calibrated instrument to the center of the channel being tested. Measure the integrated average power over the full 6 megahertz bandwidth of the television signal. The intermediate frequency (''i.f.'') of the instrument must be less than or equal to 6 megahertz and the instrument must be capable of integrating over the selected i.f. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an un-balanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBu after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

[FR Doc. E6–10483 Filed 7–5–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060621176–6176–01; I.D. 052306A]

RIN 0648–AU50

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Great South Channel Scallop Dredge Exemption Area

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to modify the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit, when not fishing under a scallop days-at-sea (DAS) limitation, to fish for scallops with small dredges (combined width not to exceed 10.5 ft (3.2 m)) within the Great South Channel Scallop Dredge Exemption Area. This proposed rule responds to a request from the fishing industry to add this area to the list of exempted fisheries. The intent of this action is to allow small scallop dredge vessels to harvest scallops in a manner that is consistent with the bycatch reduction objectives of the FMP.

DATES: Comments must be received no later than 5 p.m., eastern daylight time, on July 21, 2006.

ADDRESSES: Comments may be submitted by any of the following methods:

• E-mail: *GSC521@NOAA.gov*. Include in the subject line the following: ''Comments on General Category Scallop Dredge Exemption.''

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

• Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on General Category Scallop Dredge Exemption.''

• Fax: (978) 281–9135.

Copies of supporting documents, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) prepared for this action are available from Patricia A. Kurkul, Regional Administrator, NMFS, at the above address. A summary of the IRFA is provided in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Tobey H. Curtis, Fishery Management Specialist, 978–281–9273, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

Current regulations, implemented under Framework Adjustment 9 and expanded under Amendment 7 to the FMP, contain a multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and Southern New England (SNE) Exemption Areas. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop day-at-sea (DAS) allocation, is fishing with exempted gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in 50 CFR part 648.80. A fishery may be exempted by the Regional Administrator (RA), after consultation with the New England

Fishery Management Council (Council), if the RA determines, based on available data or information, that the bycatch of regulated species is, or can be reduced to, less than 5 percent by weight of the total catch and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

On October 25, 2005, a request was submitted on behalf of the General Category scallop fleet to establish an additional exempted scallop dredge fishery in the GOM/GB Exemption Area, particularly in Statistical Areas 521 and 526, in the vicinity of traditional scalloping grounds within the area known as the Great South Channel, off Cape Cod, MA. Neither the GOM Scallop Dredge Exemption Area, established in Framework 21 to the FMP (February 1997), nor the SNE Scallop Dredge Exemption Area, established in Amendment 13 to the FMP (April 2004), include these statistical areas within their exemption programs. Therefore, a new exempted fishery is needed to allow General Category scallop vessels to fish in statistical areas 521 and 526, provided the fishery does not jeopardize the fishing mortality objectives of the FMP. During its November 2005 meeting, the Council voted to concur with the RA's determination regarding the exemption request, and to approve it if it was found to be consistent with the regulations and FMP objectives.

The data analyzed for this industry request consisted of observer data from both General Category and limited access scallop dredge trips in the GOM/GB Exemption Area from 2000 to 2005. A total of 31 General Category trips and 91 limited access trips were observed during that period. Because observer data were sparse outside of statistical areas 521 and 526, the analyses focused on these two areas. Bycatch rates were calculated on a trip-by-trip basis by adding up the total weights (lb) of multispecies, scallops (in-shell weight), and all other catch on each observed trip, and then calculating the percentage of the total catch represented by regulated multispecies. The percent bycatch of regulated multispecies in statistical areas 521 and 526 ranged from 0 to 0.4 percent in General Category trips (N=5), and 0 to 3.7 percent in limited access trips (N=37). No observed scallop dredge trips in statistical areas 521 or 526 exceeded 5 percent. The mean percent bycatch of regulated species by weight of the total catch across all areas in the General Category and limited access fisheries was less than 5 percent. From a total of five observed General Category trips into statistical areas 521 and 526, the mean percent bycatch was 0.1 percent of the total catch. From the 37 observed limited access scallop dredge trips into those same areas, the mean percent bycatch was estimated to be 0.9 percent of the total catch. Even though the analyses were conducted at the statistical area scale, when spatially plotted, the vast majority of the observed trips occurred within a discrete portion of the statistical areas, primarily in the Great South Channel. Based on this information, the proposed exemption area is constrained to the area from which the most data were available.

The primary groundfish species of concern with this proposed action is yellowtail flounder, which is currently overfished and not yet meeting its required rebuilding schedule as mandated by Amendment 13 to the FMP. Fishing Year (FY) 2006 total allowable catch (TAC) is, therefore, very low for SNE and Cape Cod (CC)/GOM stocks, and any additional sources of mortality must be carefully considered. Although overall regulated species bycatch rates were very low, yellowtail and winter flounders were the primary bycatch species on the observed trips in the Great South Channel area. Based on the observed bycatch rates of yellowtail flounder in scallop dredges in this area, and projections of the annual number of General Category scallop dredge trips to this area, however, the total catch of yellowtail flounder in this exemption program would likely represent less than 0.5 percent of the FY 2006 TACs for SNE and CC/GOM stocks. Additionally, the opening of the Great South Channel to General Category scallop vessels may redistribute the effort in this fishery away from other areas that have higher bycatch rates of yellowtail flounder. The proposed exemption is therefore expected to meet both the bycatch and the fishing mortality requirements of the regulations.

Proposed Measures

Great South Channel Scallop Dredge Exemption Area

Based on the analysis of available data, the bycatch of regulated species by scallop dredge vessels is less than 5 percent, by weight, of the total catch in the Great South Channel. Therefore, the RA has determined that an exempted scallop dredge fishery in a specifically defined portion of the Great South Channel meets the exemption requirements specified in § 648.80(a)(8). At this time, there are not sufficient data to determine if a scallop dredge fishery in any other area would also meet the exemption requirements.

Therefore, this rule proposes to implement an exempted fishery for vessels fishing with General Category scallop permits, or limited access scallop permits not fishing under a DAS allocation, to use small dredges with a combined width not greater than 10.5 ft (3.2 m) in portions of the Great South Channel (see area definition below). This area would be referred to as the Great South Channel Scallop Dredge Exemption Area (GSC Area). Portions of the GSC Area would be seasonally closed to protect SNE, GB, and Cape Cod (CC)/GOM yellowtail flounder during their peak spawning periods. Peak spawning periods are defined in the EA prepared for Framework Action 40–B to the FMP. The portion of the GSC Area that lies within statistical areas 525 and 526 (SNE and GB yellowtail flounder stock areas) would be closed from April 1 through June 30. The portion of the GSC that lies within statistical area 521 (CC/GOM yellowtail flounder stock area) would be closed from June 1 through June 30.

Vessels fishing in this exemption that wish to land more than 40 lb (18.1 kg) of shucked (5 bu (1.76 hL) unshucked) scallops would be required to have a Category 1B General Category scallop permit, an operational Vessel Monitoring System (VMS), and would be allowed to land a maximum of 400 lb (181.4 kg) of shucked (50 bu (17.62 hL) unshucked) scallops per trip. Vessels with a limited access scallop permit would also be allowed to participate in the exemption when not fishing under a scallop DAS, and would be restricted to the Category 1B General Category scallop permit regulations. These vessels would not be allowed to fish for, possess on board, or land any fish species other than scallops. Other than the seasonal closures between April and June, these regulations are consistent with those of the existing scallop dredge exemption areas defined at § 648.80(a)(11) and (b)(11). Regulations governing the scallop fishery can be found at 50 CFR 648, subpart D.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed

rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble to this proposed rule. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule. This action proposes to create a new scallop dredge exemption area for General Category scallop vessels in the GOM/GB Exemption Area. This action was compared to three different alternatives for the boundaries of the exemption area. Alternatives to the proposed exemption area included exempting all of statistical areas 521 and 526, exempting the entirety of the GOM/GB Exemption Area, and a No Action alternative, which would continue to prohibit General Category scallop dredge vessels from fishing outside of the existing scallop dredge exemption areas.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding $4 million. As of March 2006, a total of 2,814 vessels had been issued open access General Category scallop permits in the NE region. Approximately 30 percent of these were issued the Category 1B permit, which allows up to 400 lb (181.4 kg) of scallop meats per trip, and are considered to be vessels that primarily rely on scallops for the bulk of their revenues. Any of these permitted vessels would be allowed to participate in this exemption program, but the area proposed to be exempt has traditionally been mostly fished by vessels from Massachusetts and Maine. Average 2005 scallop revenues for General Category scallop vessels was $87,369 per vessel, though there was great variation from vessel to vessel, ranging from less than $7,000 to over $160,000 per vessel. The majority of these vessels also receive additional revenues from a variety of other species. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities would fall under the SBA size standard for small commercial fishing entities. Therefore, there is no differential impact between large and small entities. A more complete description of the General Category fishery can be found in Framework Adjustment 18 to the Atlantic Sea Scallop FMP, available from the Council (*www.nefmc.org*).

Economic Impacts of This Proposed Action

The economic impacts of the proposed action are expected to be positive. This action would open a valuable scallop fishing ground to the General Category scallop fleet, and would allow the fleet to utilize these resources in a manner consistent with the bycatch and mortality objectives of the FMP. The demand for scallops has increased significantly in recent years, and revenues for General Category vessels are also expected to increase if the exemption area is approved. There is evidence that some General Category vessels have been fishing in this area for years, despite the fact that it is outside of the existing Scallop Dredge Exemption Areas. Their profits from scallop fishing have declined since access to this area was prohibited and enforced. The ports in Cape Cod and southern Massachusetts will be the most impacted, due to their proximity to the proposed exemption area.

Economic Impacts of Alternatives to the Proposed Action

Three alternatives other than the preferred alternative were considered. The alternative that proposed to exempt the entirety of statistical areas 521 and 526 throughout the year to General Category scallop vessels, and the alternative that proposed to exempt the much larger area of the GOM/GB Exemption Area year-round would also have positive economic impacts; possibly slightly more positive than the preferred alternative due to the larger exempted area and the lack of a closure period. These alternatives were rejected, however, due primarily to the lack of observer data needed to estimate the bycatch rates of regulated multispecies throughout these areas. Potentially negative economic impacts would result if this action was delayed for the time period that would be necessary to collect the required observer data. The No Action alternative was the only alternative that could pose negative economic impacts by continuing to prohibit General Category scallop vessels from fishing in the Great South Channel.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (a)(43) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a) * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5); the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

3. In § 648.80, paragraphs (a)(3)(viii) and (a)(7)(ii) are revised, and paragraph (a)(18) is added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(viii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (16), (a)(18), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear

permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(7) * * *

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Areas defined in paragraphs (a)(11) and (18) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

* * * * *

(18) *Great South Channel Scallop Dredge Exemption Area.* Vessels issued a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the Great South Channel Scallop Dredge Exemption Area as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (a)(18)(ii) of this section.

(i) *Area Definition.* The Great South Channel Scallop Dredge Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

GREAT SOUTH CHANNEL SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
GSC 1	41°50.52′	69°40′
GSC 2	40°50′	68°49.2′
GSC 3	40°50′	69°29.46′
GSC 4	41°10′	69°50′
GSC 5	41°10′	70°00′
GSC 6	41°35′	70°00′
GSC 7	41°35′	69°40′

(ii) *Requirements.* (A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the Great South Channel Scallop Dredge Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) *GSC SNE/GB Yellowtail Flounder Peak Spawning Closure.* No vessel that qualifies under this exemption, as defined in this paragraph (a)(18), may fish for Atlantic sea scallops in the Great South Channel Scallop Dredge Exemption Area that lies within the SNE and GB yellowtail flounder stock areas (statistical areas 525 and 526) between April 1 and June 30, as defined by the straight lines connecting the following points in the order stated below.

GSC SNE/GB YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTA 1	41°20′	70°00′
YTA 2	41°20′	69°50′
YTA 3	41°10′	69°50′
YTA 4	41°10′	69°30′
YTA 5	41°00′	69°30′
YTA 6	41°00′	68°57.58′
YTA 7	40°50′	68°49.20′
YTA 8	40°50′	69°29.46′
YTA 9	41°10′	69°50′
YTA 10	41°10′	70°00′
YTA 11	\(1)\	70°00′

\(1)\ Intersection of south-facing coastline of Nantucket, MA, and 70°00 [min] W. Long.

(D) *GSC CC/GOM Yellowtail Flounder Peak Spawning Closure.* No vessel that qualifies under this exemption, as defined in this paragraph (a)(18), may fish for Atlantic sea scallops in the Great South Channel Scallop Dredge Exemption Area that lies within the CC/GOM yellowtail flounder stock area (statistical area 521) between June 1 and June 30 of each year, as defined by the straight lines connecting the following points in the order stated below.

GSC CC/GOM YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTB 1	41°33.05′	70°00′
YTB 2	41°20′	70°00′
YTB 3	41°20′	69°50′
YTB 4	41°10′	69°50′
YTB 5	41°10′	69°30′
YTB 6	41°00′	69°30′
YTB 7	41°00′	68°57.58′
YTB 8	41°50.52′	69°40′
YTB 9	41°35′	69°40′
YTB 10	41°35′	70°00′

* * * * *

4. § 648.81, paragraph (g)(2)(iii) is revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(g) * * *

(2) * * *

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS, and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h); or when lawfully fishing in the Scallop Dredge Fishery Exemption Areas, as described in paragraphs (a)(11) and (18) of this section.

* * * * *

[FR Doc. 06–6016 Filed 6–30–06; 1:19 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 129
Thursday, July 6, 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

Submission for OMB Review; Comment Request

June 29, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Power of Attorney.

OMB Control Number: 0560–0190.

Summary of Collection: Individuals or authorized representatives of entities wanting to appoint another to act as their attorney-in-fact in connection with certain Farm Service Agency (FSA), Commodity Credit Corporation (CCC), and Risk Management Agency (RMA) programs and related actions must complete a Power of Attorney form and Extension Sheet to accommodate additional signatures (FSA–211/211A). The FSA–211/211A serves as evidence that the grantor has appointed another to act on their behalf for certain FSA, CCC, and RMA programs and related actions giving the appointee legal authority to enter into binding agreements on the grantor's behalf.

Need and Use of the Information: FSA will collect information to verify an individual's authority to sign and act for another in the event of errors or fraud that requires legal remedies. The information collected on the FSA–211/211A is limited to the grantor's name, signature, and identification number, the grantee's name, address, and the applicable FSA, CCC, and RMA programs. Failure to collect and maintain the data collected on the form will limit or eliminate USDA's ability to accept an individual's signature on behalf of another individual or entity.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 176,296.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 44,956.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–10490 Filed 7–5–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0013]

Notice of Request for a New Information Collection (Electronic Animal Disease and Reporting System)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a new information collection regarding data on meat, poultry, exotic animal, and rabbit slaughter for the Agency's electronic Animal Disease Reporting System.

DATES: Comments on this notice must be received on or before September 5, 2006.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection request. Comments may be submitted by mail, including floppy disks or CD-ROM's, and hand- or courier-delivered items. Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250. All submissions received must include the Agency name and docket number FSIS–2006–0013.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2006_Notices_Index/index.asp*.

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW, Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Electronic Animal Disease Reporting System.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS also inspects exotic animals and rabbits under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C 1621 *et seq.*).

FSIS is requesting a new information collection addressing paperwork requirements regarding the collection of information concerning meat and poultry slaughter for the Agency's electronic Animal Disease Reporting System (eADRS).

In accordance with 9 CFR part 320, 381.175, 381.180, 303.1 (b)(3), 352.15, and 354.91, establishments that slaughter meat, poultry, exotic animals, and rabbits are required to maintain certain records regarding their business operations and to report this information to the Agency as required.

For eADRS, establishments will report (by shift) slaughter totals in number of heads and weight by animal category.

FSIS will use this information to plan inspection activities, to develop sampling plans for testing, to target establishments for testing, for Agency budget planning, and in its reports to Congress. FSIS will also provide this data to other USDA agencies—the National Agricultural Statistics Service (NASS), the Animal and Plant Health Inspection Service (APHIS), the Agricultural Marketing Service (AMS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA), for their publications and other functions.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take an average of 20 hours per annum to collect and submit this information to FSIS.

Respondents: Establishments.

Estimated No. of Respondents: 1,159.

Estimated No. of Annual Responses per Respondent: 600.

Estimated Total Annual Burden on Respondents: 23,180 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202)720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/index.asp.* FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on June 29, 2006.

Barbara J. Masters,

Administrator.

[FR Doc. E6–10475 Filed 7–5–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Feed Peas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final notice.

SUMMARY: We are establishing U.S. standards for Feed Peas under the authority of the U.S. Agricultural Marketing Act of 1946, as amended (AMA). Current U.S. standards for Whole Dry Peas and Split Peas reflect the needs of the edible dry pea market. The quality and standards established for the edible dry pea market greatly differ from the feed pea market. Consequently, the current standards for edible dry peas do not reflect the current needs of the feed pea market. This action provides uniform standards and facilitates the marketing of feed peas.

DATES: *Effective Date:* July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Marianne Plaus at GIPSA, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–3630; Telephone (202) 690–3460; Fax Number (202) 720–1015; or e-mail to: *Marianne.Plaus@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The AMA directs and authorizes the Secretary of Agriculture to develop and improve standards for agricultural products (7 U.S.C. 1622). These are standards of quality, condition, quantity, grade, and packaging. The intent of such standards is to encourage uniformity and consistency in commercial practices.

The United States Dry Pea and Lentil Council and other dry pea industry representatives requested that GIPSA establish standards for dry peas used as feed for animals (feed peas). The pea

industry indicated the need to establish separate standards for marketing peas as a feed product due to an increasing demand for peas used in animal feed. The quality and standards established for the edible dry pea market differ from the feed pea market.

GIPSA worked with the United States Dry Pea and Lentil Council and others in the pea industry to develop the standards for feed peas.

The standards include definitions, the basic principles governing application of standards, such as the type of sample used for a particular quality analysis, reporting requirements for analytical results, the actual quality grade specifications, and the format for the grade for certification purposes. The standards include specifications for both U.S. Grade No. 1 Feed Peas and for U.S. Sample Grade Feed Peas. Feed peas that do not meet the requirements for U.S. Grade No. 1 Feed Peas are to be classified as U.S. Sample Grade Feed Peas.

In the May 12, 2006, **Federal Register** (71 FR 27672–27674) we invited comments on the U.S. Standards for Feed Peas. We received no comments during the 30-day comment period. Therefore, we are establishing U.S. Standards for Feed Peas as proposed.

The U.S. Standards for Peas, including the new Standards for Feed Peas, do not appear in the Code of Federal Regulations; the U.S. Department of Agriculture maintains the standards. The process for developing these standards are specified in the regulations in 7 CFR 868.102, Procedures for establishing and revising grade standards.

You may view or print the U.S. Standards for Feed Peas from the GIPSA Web site at *http://www.gipsa.usda.gov* or by contacting us by phone, fax, or e-mail using the information provided above under **FOR FURTHER INFORMATION CONTACT**. We expect requests for service this season beginning in mid-July. Accordingly, the standards are effective one day after publication of this final notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627; 7 CFR 868.103.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–10550 Filed 7–5–06; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding for the Rural Housing Demonstration Program

AGENCY: Rural Housing Service, United States Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) an Agency under USDA Rural Development, announces the availability of housing funds for Fiscal Year (FY) 2006 for the Rural Housing Demonstration Program. For FY 2006, USDA Rural Development has set aside $1 million for the Innovative Demonstration Initiatives and is soliciting proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949. Under section 506(b), USDA Rural Development may provide loans to low income borrowers to purchase innovative housing units and systems that do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable Rural Housing (RH) for low-income families through innovative designs and systems.

EFFECTIVE DATE: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave., SW., Washington, DC 20250–0783, Telephone (202) 720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient income to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949, 42 U.S.C. 1476, authorizes a housing demonstration program that could result in housing that these families can afford. Section 506(b) imposes two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) That the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year.

Rural Development State Directors are authorized in FY 2006 to accept demonstration concept proposals from individuals.

The objective of the demonstration programs is to test new approaches to constructing housing under the statutory authority granted to the Secretary of Agriculture. Rural Development will review each application for completeness and accuracy. Some demonstration proposals may not be consistent with some of the provisions of our 7 CFR part 3550—Direct Single Family Housing Loans and Grants regulation. Under section 506(b) of the Housing Act of 1949, the Agency may provide loans for innovative housing design units and systems which do not meet existing published standards, rules, regulations, or policies.

The Equal Credit Opportunity Act and Title VIII of the Civil Rights Act of 1968 provide that a program such as this be administered affirmatively so that individuals of similar low-income levels in the housing market area have housing choices available to them regardless of their race, color, religion, sex, national origin, familial status, and disability. Under Section 504 of the Rehabilitation Act of 1973, Rural Development makes reasonable accommodations to permit persons with disabilities to apply for agency programs. Executive Order 12898 requires the Agency to conduct a Civil Rights Impact Analysis on each project prior to loan approval. Also, the requirements of Executive Order 11246 are applicable regarding equal employment opportunity when the proposed contract exceeds $10,000.

Completed applications that have been determined to carry out the objectives of the program will be considered on a first come, first served basis based on the date a completed application was submitted. An application is considered complete only if the ''Application for Approval of Housing Innovation'' is complete in content, contains information related to the criteria and all applicable additional information required by the application form has been provided. All application packages must be in accordance with the technical management requirements and address the criteria in the Proposal Content. The application, technical management requirements, Proposal Content and Criteria, and further information may be obtained from the Rural Development State office in each state. (See the State Office address list at the end of this notice or access the Web site at *http://www.rurdev.usda.gov/recd_map.html*.) A submitter of an incomplete application will be advised in writing of additional information needed for continued processing.

The following evaluation factors will not be weighted and are non-competitive. Rural Development, in its analysis of the proposals received, will consider whether the proposals will carry out the objectives of this

demonstration effort in accordance with the following criteria:

A. Housing Unit Concept

1. A proposal must be well beyond the ''idea'' state. Sufficient testing must have been completed to demonstrate its feasibility. The proposal must be judged ready for full scale field testing in a rural setting.

2. Ability of the housing unit to provide for the protection of life, property, and for the safety and welfare of the consumer, general public, and occupants through the design, construction, quality of materials, use, and maintenance of the housing unit.

3. Flexibility of the housing units in relation to varying types of housing and varying site considerations.

4. Flexibility of the housing unit concept, insofar as it provides the ability to adjust or modify unit size and arrangements, either during design or after construction.

5. Efficiency in the use of materials and labor, with respect to cost in place, conservation of materials, and the effective use of labor skills. Potential for use in the Mutual Self-Help Housing program will be considered.

6. Selection of materials for durability and ease of maintenance.

7. Concepts for the effective use of land and development.

B. Organization Capabilities

1. The experience and ''know-how'' of the proposed organization or individual to implement construction of the housing unit concept in relation to the requirements of Rural Development's housing programs.

2. The management structure and organization of the proposer.

3. The quality and diversity of management and professional talent proposed as ''key individuals.''

4. The management plan of how this effort will be conducted.

C. Cost and Price Analysis

1. The level of costs which are proposed, as they may compare with other proposals and be considered realistic for the efforts planned. Also, the quantity and level of detail in the information supplied.

2. Projected cost of ''housing in place,'' with particular reference to housing for very low and low-income families.

An acceptable proposal will be sent by the State Director to the National Office for concurrence by the Rural Development Administrator before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant in writing, giving specific reasons why the proposal was not selected. The funds for the RH Demonstration program are section 502 single family housing funds and are available to housing applicants who wish to purchase an approved demonstration dwelling. Funds cannot be reserved or guaranteed under the demonstration housing concept. There is no guarantee that a market exists for demonstration dwellings, and this does not ensure that an eligible loan applicant will be available for such a section 502 RH dwelling. If there is no available Rural Development eligible loan applicant, the RH demonstration program applicant will have to advance funds to complete the construction of the demonstration housing, with the risk that there may be no Rural Development applicant or other purchaser from which the builder will recover his or her development and construction costs.

This program or activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons contained in 7 CFR part 3015, subpart V, and RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' this program or activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package to the State Director in the State in which the proposal will be submitted; Rural Development will not be liable for any expenses incurred by respondents in the development and submission of applications.

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0172.

Dated: June 26, 2006.

David J. Villano,

Acting Administrator, Rural Housing Service.

The following is an address list of Rural Development State Offices across the nation:

ALABAMA

Sterling Centre, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495

ALASKA

Suite 201, 800 W. Evergreen, Palmer, AK 99645–6539, (907) 761–7705, TDD (907) 761–7786

ARIZONA

230 North 1st Avenue, Suite 206, Phoenix, AZ 85012–2906, (602) 280–8701, TDD (602) 280–8705

ARKANSAS

Room 3416, 700 W. Capitol, Little Rock, AR 72201–3225, (501) 301–3200, TDD (501) 301–3279

CALIFORNIA

430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800, TDD (530) 792–5848

COLORADO

Room E100, 655 Parfet Street, Lakewood, CO 80215, (720) 544–2904, TDD—No phone number

DELAWARE & MARYLAND

1221 College Park Drive, Suite 200, Dover, Delaware 19904, (302) 857–3601, TDD (302) 857–3585)

FLORIDA & VIRGIN ISLANDS

4440 NW 25th Place, Gainesville, FL 32606–6563, (352) 338–3435, TDD (800) 438–1832

GEORGIA

Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162, TDD (706) 546–2034

HAWAII

Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8302, TDD (808) 933–8321

IDAHO

Suite A1, 9173 W. Barnes Drive, Boise, ID 83709, (208) 378–5600, TDD 208 378–5644

ILLINOIS

2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6222, TDD (217) 403–6240

INDIANA

5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100, TDD (317) 290–3343

IOWA

Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858

KANSAS

1303 First American Place, Suite 100, Topeka, KS 66604, (785) 271–2700, TDD (785) 271–2767

KENTUCKY

Suite 200, 771 Corporate Drive, Lexington, KY 40503, (859) 224–7300, TDD (859) 224–7422

LOUISIANA

3727 Government Street, Alexandria, LA 71302, (318) 473–7920, TDD (318) 473–7655

MAINE

PO Box 405, 967 Illinois Avenue, Suite 4, Bangor, ME 04402–0405, (207) 990–9106, TDD (207) 942–7331

MASSACHUSETTS, CONNECTICUT, RHODE ISLAND

451 West Street, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–4590

MICHIGAN

Suite 200, 3001 Coolidge Road, East Lansing, MI 48823, (517) 324–5100, TDD (517) 324–5169

MINNESOTA

Suite 410, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7835, TDD (651) 602–7830

MISSISSIPPI

Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316, TDD—No phone number

MISSOURI

Parkade Center, Suite 235, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0976, TDD (573) 876–9480

MONTANA

Unit 1, Suite B, 900 Technology Boulevard, Bozeman, MT 59715, (406) 585–2580, TDD (406) 585–2562

NEBRASKA

Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5550, TDD (402) 437–5093

NEVADA

1390 S. Curry Street, Carson City, NV 89703–9910, (775) 887–1222, TDD (775) 885–0633

NEW JERSEY

5TH Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7700, TDD (856) 787–7784

NEW MEXICO

Room 255, 6200 Jefferson Street, NE, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938

NEW YORK

The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447

NORTH CAROLINA

4405 Bland Road, Raleigh, NC 27609, (919) 873–2000, TDD (919) 873–2003

NORTH DAKOTA

Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502–1737, (701) 530–2044, TDD (701) 366–6889

OHIO

Federal Building, Room 507, 200 N. High Street, Columbus, OH 43215–2418, (614) 255–2400, TDD (614) 255–2554

OKLAHOMA

Suite 108, 100 USDA, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007

OREGON

Suite 1410, 101 SW Main, Portland, OR 97204–3222, (503) 414–3300, TDD (503) 414–3387

PENNSYLVANIA

Suite 330, One Credit Union Place, Harrisburg, PA 17110–2996, (717) 237–2299, TDD (717) 237–2261

PUERTO RICO

IBM Building—Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106, (787) 766–5095, TDD (787) 766–5332,

SOUTH CAROLINA

Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163, TDD (803) 765–5697

SOUTH DAKOTA

Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147

TENNESSEE

Suite 300, 3322 W. End Avenue, Nashville, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397

TEXAS

Federal Building, Suite 102, 101 S. Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712

UTAH

Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4320, TDD (801) 524–3309

VERMONT & NEW HAMPSHIRE

City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000, TDD (802) 223–6365

VIRGINIA

Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, TDD (804) 287–1753

WASHINGTON

Suite B, 1835 Black Lake Blvd., SW., Olympia, WA 98512–5715, (360) 704–7740, TDD (360) 704–7772 (Westside), TDD (509) 664–0205 (Eastside)

WEST VIRGINIA

Federal Building, Room 320, 75 High Street, Morgantown, WV 26505–7500, (304) 284–4860, TDD (304) 284–4836

WISCONSIN

4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614

WYOMING

P.O. Box 11005, Federal Building, Room 1005, 100 East B, Casper, WY 82602, (307) 261–6300, TDD (307) 233–6733

[FR Doc. E6–10482 Filed 7–5–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office for Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Advocacy Questionnaire.

OMB Approval Number: 0625–0220.

Agency Form Number: ITA–4133P.

Type of Request: Regular submission.

Burden Hours: 205.

Number of Respondents: 200.

Average Hours per Response: 30 minutes.

Needs and Uses: The International Trade Administration's (ITA) Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The Advocacy Center works closely with the Trade Promotion Coordination Committee, which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion.

Advocacy assistance is wide and varied, but most often is employed to assist U.S. commercial interests that must deal with foreign governments or government-owned corporations to win or maintain business transactions in foreign markets. The Advocacy Center is at the core of the President's National Export Strategy and its goal to ensure opportunities for American companies in the international marketplace.

The purpose of the Advocacy Questionnaire is to collect the information necessary to evaluate whether it would be appropriate to provide the U.S. Government (USG) advocacy assistance on a given transaction. The Advocacy Center, appropriate ITA officials, officers at U.S. Embassies/Consulates worldwide, and other federal government agencies that provide advocacy support (the Advocacy Network) to U.S. firms, request firms seeking USG advocacy support to complete the questionnaire. The information derived from a completed questionnaire is critical in helping the Advocacy Center determine whether it is in the U.S. national interest to advocate on a specific transaction.

Affected Public: Business or other for-profit organization.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230; E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, at *David_Rostker@omb.eop.gov* or fax (202) 395–7285, within 30 days of the publication of this notice in the **Federal Register**.

Dated: June 29, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10497 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Generic Clearance for Usability Data Collections.

Form Number(s): None.

OMB Approval Number: 0693–0043.

Type of Review: Regular Submission.

Burden Hours: 1,000.

Number of Respondents: 2,000.

Average Hours per Response: 30 minutes.

Needs and Uses: NIST will conduct information collections of usability data involving usage of technological devices (such as Web sites, handheld computers, cell phones, and robots). This information will enable NIST researchers to study human-computer interactions and help establish guidelines and standards for more effective and efficient interactions.

Affected Public: Individuals or households; State, local, or tribal government; Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: June 28, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10499 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Generic Clearance for Program Evaluation Data Collections.

Form Number(s): None.

OMB Approval Number: 0693–0033.

Type of Review: Regular submission.

Burden Hours: 3,022.

Number of Respondents: 4,000.

Average Hours per Response: Varied dependent upon data collection. Average time is expected to be 30 minutes.

Needs and Uses: NIST proposes to conduct surveys designed to evaluate current programs from a customer perspective. The use of these types of data collections will present NIST with a measure of the economic impact of products, services, or assistance provided by NIST and will give NIST customers a mechanism to suggest how programs may be improved and then to provide valuable strategic input on enhancing the future direction of NIST programs.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; individuals or households; Federal government, State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: June 28, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10500 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 060615168–6168–01]

Privacy Act of 1974: System of Records

AGENCY: Department of Commerce

ACTION: Notice of Amendment of Privacy Act System of Records: COMMERCE/DEPARTMENT–18, Employees Personnel Files Not Covered by Notices of Other Agencies.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4) and (11), the Department of Commerce is issuing notice of intent to amend the system of records under COMMERCE/DEPARTMENT–18, Employees Personnel Files Not Covered by Notices of Other Agencies. This amendment adds to this system those records compiled in conjunction with the Department of Commerce's Student Loan Repayment Program (SLRP), Continuity of Operations Plan (COOP), Automated Notification System, and the Employee Emergency Call Center. We invite public comment on the proposed changes in this publication.

DATES: To be considered, written comments must be submitted on or before August 7, 2006. Unless comments are received, the amendments to the system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Brenda Dolan, Departmental Freedom of

Information and Privacy Act Officer, U.S. Department of Commerce, Washington, DC 20230, 202–482–3258.

ADDRESSES: Comments may be mailed to Brenda Dolan, Departmental Freedom of Information and Privacy Act Officer, Office of Management and Organization, Room 5327, 1401 Constitution Avenue, NW., Washington, DC 20230. Comments may be submitted electronically to the following electronic mail address: *bdolan1@doc.gov.*

SUPPLEMENTARY INFORMATION: This amendment adds to the subject system those files containing records compiled in accordance with 5 U.S.C. 5379; 5 CFR Part 537; DAO 202–957.

COMMERCE/DEPARTMENT–18

SYSTEM NAME: *

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

After 'n. For any records regarding the Workforce Assessment Database: The Office of Acquisition Management, U.S. Department of Commerce, Room 6422, Washington, DC 20230.' add 'o. For any emergency notification system records: The Office of Security, U.S. Department of Commerce, Room 1069, Washington, DC 20230.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

After 'Applicants, current and former employees.' add 'Volunteers, grantees, contract employees, and occupants of Commerce facilities, on whom the agency maintains records, may also be covered by this system.'

CATEGORIES OF RECORDS IN THE SYSTEM:

After 'employee certifications, warrants, education and contact for Workforce Assessment Tool Database.' add '; Student Loan Repayment Program (SLRP) records; Continuity of Operations Plan (COOP) records; Automated Notification System records, and Employee Emergency Call Center records.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

After '41 U.S.C. 433(d)' add '; 5 U.S.C. 5379; 5 CFR Part 537; DAO 202–957; E.O. 12656; Federal Preparedness Circular (FPC) 65, July 26, 1999; DAO 210–110'

PURPOSE(S): *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: *

DISCLOSURE TO CONSUMER REPORTING AGENCIES: *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: *

STORAGE: *

RETRIEVABILITY: *

SAFEGUARDS: *

RETENTION AND DISPOSAL: *

SYSTEM MANAGER(S) AND ADDRESS: *

NOTIFICATION PROCEDURE:

Delete 'For records at location m and n,' add 'For records at location m, n and o,'

RECORD ACCESS PROCEDURES: *

CONTESTING RECORD PROCEDURES: *

RECORD SOURCE CATEGORIES: *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* Indicates that there are no changes to that paragraph of the notice.

Dated: June 16, 2006.

Brenda Dolan,

Departmental Freedom of Information and Privacy Act Officer.

[FR Doc. E6–10543 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 43–2005]

Review of Foreign–Trade Zone Activity, Foreign–Trade Subzone 43D, Perrigo Company, Battle Creek, Michigan Area (Ibuprofen–Pharmaceutical Products)

Pursuant to its review of activity related to certain merchandise at Foreign–Trade Subzone 43D, at the pharmaceutical products manufacturing facilities of the Perrigo Company, in the Battle Creek, Michigan, area (FTZ Doc. 43–2005, 70 FR 54521, 9/15/05), the FTZ staff has issued a report containing its preliminary findings.

A copy of the report will be available for public inspection at the following location: Office of the Executive Secretary, Foreign–Trade Zones Board, U.S. Department of Commerce, Room 1115, 1401 Constitution Ave. NW., Washington, DC 20230.

Public comment is invited from interested parties. Information submitted for the record generally should be in a non–proprietary format. If there is a need to submit business proprietary information, it should be appropriately marked and accompanied by a public version. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address above.

The closing period for their receipt is August 7, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period to August 21, 2006.

Dated: June 29, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–10569 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Terry Tengfang Li

In the Matter of: Terry Tengfang Li, 1132 Seagull Lane, Cherry Hill, NJ 08054, Respondent.

Order Relating to Terry Tengfang Li (AKA ''Terry Li'')

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS'') has notified Terry Tengfang Li (hereinafter referred to as ''Terry Li'') of its intention to initiate an administrative proceeding against Terry Li, President of Universal Technology, Inc., in his individual capacity, pursuant to section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2006)) (''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act'')[2] by issuing a proposed

[1] The violations charged are alleged to have occurred from 2000 through 2004. The Regulations governing the violations at issue are found in the 2000–2004 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2000–2004)). The 2006 Regulations set forth the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

charging letter to Terry Li that alleged that Terry Li committed 49 violations of the Regulations. Specifically, the charges are:

1. *17 Violations of 15 CFR 764.2(a)—Exporting Electronic Components to the People's Republic of China Without the Required Licenses:* On 17 occasions, between on or about July 21, 2000 and on or about April 21, 2004, Terry Li engaged in conduct prohibited by the Regulations by exporting or causing to be exported electronic components classified under Export Control Classification Number (''ECCN'') 3A001 to the People's Republic of China (''PRC'') without the Department of Commerce (the ''Department'') licenses required by Section 742.4 of the Regulations.

2. *17 Violations of 15 CFR 764.2(e)—Exporting Electronic Components to the People's Republic of China With Knowledge That Violations Would Occur:* In connection with he transactions described above, Terry Li caused the export of electronic components to the PRC with knowledge that violations of the Regulations would occur. Specifically, Terry Li had knowledge that Department of Commerce licenses were required to export the electronic components from the United States to the PRC and Terry Li caused the export of the items with knowledge that such licenses would not be obtained.

3. *15 Violations of 15 CFR 764.2(e)—False Statement on Shipper's Export Declarations Concerning Authority to Export:* In connection with 15 exports of electronic components subject to the regulations to the PRC described above, Terry Li made false statements to the U.S. Government in connection with the submission of export control documents. Specifically Terry Li filed or caused to be filed with the U.S. Government Shipper's Export Declarations stating that the exports did not require Department of Commerce licenses (''NLR'' or ''No License Required''). These statements were false because licenses were required to export these items.

Whereas, BIS and Terry Li have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *It is therefore ordered:*

First, that for a period of 20 years from the date of entry of this Order, Terry Tengfang Li (aka ''Terry Li''), 1132 Seagull Lane, Cherry Hill, NJ 08054, and when acting for or on behalf of Terry Li, his representatives, agents, assigns or employees (''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Terry Li by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Sixth, that this Order shall be served on the Denied Person, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 23rd day of June 2006.

Darryl Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 06–5999 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Nei-Chien Chu (AKA ''Pearl Li'')

In the Matter of: Nei-Chien Chu (aka ''Pearl Li''), 1132 Seagull Lane, Cherry Hill, NJ 08054, Respondent.

Order Relating to Nei-Chien Chu (AKA ''Pearl Li'')

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS'' has notified Nei-Chien Chu (also known as and hereinafter referred to as ''Pearl Li'') of its intention to initiate an administrative proceeding against Pearl Li, Chief Executive Officer of Universal Technology, Inc., in her individual capacity, pursuant to section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2006)) (''Regulations''),[1] and

[1] The violations charged are alleged to have occurred from 2000 through 2004. The Regulations

Continued

section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (''Act''),[2] by issuing a proposed charging letter to Pearl Li that alleged that Pearl Li committed 49 violations of the Regulations. Specifically, the charges are:

1. *17 Violations of 15 CFR 764.2(a)—Exporting Electronic Components to the People's Republic of China Without the Required Licenses:* On 17 occasions, between on or about July 21, 2000 and on or about April 21, 2004, Pearl Li engaged in conduct prohibited by the Regulations by exporting or causing to be exported electronic components classified under Export Control Classification Number (''ECCN'') 3A001 to the People's Republic of China (''PRC'') without the Department of Commerce (the ''Department'') licenses required by § 742.4 of the Regulations.

2. *17 Violations of 15 CFR 764.2(e)—Exporting Electronic Components to the People's Republic of China With Knowledge That Violations Would Occur:* In connection with the transactions described above, Pearl Li caused the export of electronic components to the PRC with knowledge that violations of the Regulations would occur. Specifically, Pearl Li had knowledge that Department of Commerce licenses were required to export the electronic components from the United States to the PRC and Pearl Li caused the export of the items with knowledge that such licenses would not be obtained.

3. *15 Violations of 15 CFR 764.2(e)—False Statement on Shipper's Export Declarations Concerning Authority to Export:* In connection with 15 exports of electronic components subject to the Regulations to the PRC described above, Pearl Li made false statements to the U.S. Government in connection with the submission of export control documents. Specifically, Pearl Li filed or caused to be filed with the U.S. Government Shipper's Export Declarations stating that the exports did not require Department of Commerce licenses (''NLR'' or ''No License Required''). These statements were false because licenses were required to export these items.

Whereas, BIS and Pearl Li have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *It is therefore ordered:*

First, that for a period of 20 years from the date of entry of this Order, Nei-Chien Chu (aka ''Pearl Li''), 1132 Seagull Lane, Cherry Hill, NJ 08054, and, when acting for or on behalf of Pearl Li, her representatives, agents, assigns or employees (''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Pearl Li by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Fifth, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Sixth, that this Order shall be served on the Denied Person, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 23rd day of June 2006.

Darryl Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 06–6001 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–DT–M

governing the violations at issue are found in the 2000–2004 versions of the Code of Federal Regulations (15 CFR parts 730–774 (2000–2004)). The 2006 Regulations set forth the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Universal Technology, Inc.

In the Matter of: Universal Technology, Inc., 125 Gaither Drive, Mount Laurel, NJ 08054, Respondent.

Order Relating to Universal Technology, Inc.

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS'') has notified Universal Technology, Inc. (hereinafter referred to as ''UTI''), of its intention to initiate an administrative proceeding against UTI pursuant to section 766.3 of the Export Administration Regulations (currently codified at 15 CFR parts 730–774 (2006)) (''Regulations''),[1] and section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app 2401–2420 (2000)) (''Act''),[2] by issuing a proposed charging letter to UTI that alleged that UTI committed 49 violations of the Regulations. Specifically, the charges are:

1. *17 Violations of 15 CFR 764.2(a)—Exporting electronic Components to the People's Republic of China without the Required Licenses:* On 17 occasions, between on or about July 21, 2000 and on or about April 21, 2004, UTI engaged in conduct prohibited by the Regulations by exporting or causing to be exported electronic components classified under Export Control Classification Number (''ECCN'') 3A001 to the People's Republic of China (''PRC'') without the Department of Commerce (the ''Department'') licenses required by Section 742.4 of the Regulations.

2. *17 Violations of 15 CFR 764.2(e)—Exporting Electronic Components to the People's Republic of China With Knowledge That Violations Would Occur:* In connection with the transactions described above, UTI caused the export of electronic components to the PRC with knowledge that violations of the Regulations would occur. Specifically, UTI had knowledge that Department of Commerce licenses were required to export the electronic components from the United States to the PRC and UTI caused the export of the items with knowledge that such licenses would not be obtained.

3. *15 Violations of 15 CFR 764.2(e)—False Statement on Shipper's Export Declarations Concerning Authority to Export:* In connection with 15 exports of electronic components subject to the Regulations to the PRC described above, UTI made false statements to the U.S. Government in connection with the submission of export control documents. Specifically UTI filed or caused to be filed with the U.S. Government Shipper's Export Declarations stating that the exports did not require Department of Commerce licenses (''NLR'' or ''No License Required''). These statements were false because licenses were required to export these items.

Whereas, BIS and UTI have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

Whereas, I have approved of the terms of such Settlement Agreement; *It is therefore ordered:*

First, that a civil penalty of $170,000 is assessed against Universal Technology, Inc., which shall be paid to the U.S. Department of Commerce upon entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, UTI will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that failure to make timely payment of the civil penalty set forth above shall be deemed to be a breach of this Order, and the Department of Commerce preserves its right in the event of such a breach to pursue whatever remedies are available to it by law, including but not limited to its ability to pursue administrative sanctions based on the 49 violations set forth herein and any other pertinent violations. The payment of the civil penalty is guaranteed by Mr. Terry Tengfang Li (also known as ''Terry Li''), in his individual capacity, and Ms. Nei-Chien CHu (also known as ''Pearl Li''), in her individual capacity, and Mr. Terry Tengfan Li, Ms. Nei-Chien Chu and UTI are jointly and severally liable for the payment of the penalty.

Fourth, for a period of 20 years from the date of entry of the Order, Universal Technology, Inc., 125 Gaither Drive, Mount Laurel, NJ 08054, its successors or assigns, and when acting for or on behalf of UTI, its representatives, agents, officers or employees (''Denied Person'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fifth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

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[1] The violations charged are alleged to have occurred from 2000 through 2004. The Regulations governing the violations at issue are found in the 2000–2004 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2000–2004)). The 2006 Regulations set forth the procedures that apply to this matter.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005 (70 FR 45273 (August 5, 2005)), has continued the Regulations in effect under the IEEPA.

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Sixth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to UTI by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Seventh, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Eight, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

Ninth, that this Order shall be served on the Denied Person, and shall be published in the **Federal Register.**

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this 23rd day of June 2006.

Darryl Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 06–6000 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On December 28, 2005, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results and intent to rescind in part the 2003–2004 administrative review of the antidumping duty order on certain cased pencils (pencils) from the People's Republic of China (PRC). *See Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755 (December 28, 2005) (''*Preliminary Results*''). The period of review (POR) is December 1, 2003, through November 30, 2004. We have now completed the 2003–2004 administrative review of the order. Based on comments received, we have made changes in the dumping margin calculations. Therefore, the final results differ from the preliminary results. For details regarding these changes, see the section of this notice entitled ''Changes Since the Preliminary Results.'' The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–4474 and (202) 482–0650, respectively.

Background

On December 28, 2005, the Department published the preliminary results of this review. *See Preliminary Results*. The POR is December 1, 2003, through November 30, 2004. On January 20, 2006, we extended the deadline for submission of case briefs and rebuttal briefs to February 24, 2006, and March 1, 2006, respectively. We also extended the deadline for submission of surrogate value information until February 14, 2006. On February 14, 2006, Sanford LP, Rose Moon, Inc., General Pencil Company, Inc., and Musgrave Pencil Company (the domestic interested parties) submitted surrogate value information.[1] On February 24, 2006, we received case briefs from respondents China First Pencil Co., Ltd. (CFP)/Three Star Stationery Industry Corp. (Three Star)(CFP/Three Star),[2] Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC), and Shandong Rongxin Import & Export Co. Ltd. (Rongxin), and from the domestic interested parties. We received rebuttal briefs from CFP/Three Star, SFTC, Rongxin, and the domestic interested parties on March 1, 2006.

On April 27, 2006, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the time limit for the final results of this review until June 26, 2006. *See Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 71 FR 24839 (April 27, 2006).

Due to the unexpected emergency closure of the main Commerce building on Monday, June 26, 2006, the Department is issuing these final results on June 27, 2006, the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether

[1] Domestic interested parties submitted a revised translation of certain documents included in this submission on February 16, 2006.

[2] The Department initiated separate reviews of China First Pencil Company, Ltd. (CFP) and Shanghai Three Star Stationery Industry Corp. (Three Star) based on timely requests from interested parties. In the final results of the 2001-2002 administrative review the Department collapsed CFP and Three Star for purposes of its antidumping analysis. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29266 (May 21, 2004), and the accompanying Issues and Decision Memorandum at Comment 6. The Department continued to collapse CFP and Three Star in the final results of the 2002-2003 administrative review. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42301 (July 22, 2005) (Pencils 02/03), and the accompanying Issues and Decision Memorandum at Comment 1. For this review, the Department continues to consider CFP and Three Star (hereinafter referred to as CFP/Three Star) to be a single entity.

or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three–and-one eighth inches in circumference, composed of turned wood encasing one–and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Partial Rescission

The Department is rescinding this review with respect to Tianjin Custom Wood Processing Co., Ltd. (TCW) because TCW reported it did not export subject merchandise to the United States during the POR. *See the Preliminary Results*, 70 FR at 76756; *see also* TCW's February 22, 2005, response to the Department's questionnaire. We reviewed U.S. Customs and Border Protection (CBP) data and found no evidence that TCW made shipments of subject merchandise to the United States during the POR. Moreover, there is no evidence on the record of this segment of the proceeding indicating that TCW exported subject merchandise during the POR. Therefore, we are rescinding this review with respect to TCW.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 26, 2006, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on Import Administration's Web site at http://.ia.ita.doc.gov/frn. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made changes in the margin calculations for CFP/Three Star, SFTC and Rongxin. The specific calculation changes can be found in the company–specific calculation memoranda dated June 26, 2006. These changes are listed below.

As discussed fully in the Decision Memorandum, the Department corrected the calculation of the surrogate value for pencil slats to account for wood lost when pencil slats are produced from lumber for use in pencil production for CFP/Three Star, SFTC, and Rongxin. In addition, we corrected the calculation of Rongxin's slat surrogate value with respect to the percentage of wood lost when pencils are made from slats. Furthermore, using updated contemporaneous data obtained after publication of the *Preliminary Results*, we re–calculated the slat surrogate value used for producers that produced slats from timber.[3] Finally, we corrected a ministerial error made in CFP/Three Star's preliminary margin calculation program with respect to the calculation of the value of coal included in the normal value.

Final Results of Review

We determine that the following weighted–average, ad valorem, percentage margins exist for the period December 1, 2003, through November 30, 2004:

Exporter/Manufacturer	Margin (percent)
CFP/Three Star/First/ Great Wall/Fang Zheng	26.62
SFTC	25.70
Rongxin	12.37
PRC Wide–Rate	114.90

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, that have separate rates, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 114.90 percent; and 4) the cash deposit rate for non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and CBP will assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. We have calculated customer–specific antidumping duty assessment amounts for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. We calculated these assessment amounts because there is no information on the record which identifies entered values or the importers of record. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

[3] We stated in the *Preliminary Results* that we would attempt to obtain timber prices contemporaneous with the POR for use in the final results. *See* the *Preliminary Results*, 70 FR at 76759.

subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

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

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: June 27, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix Issues in Decision Memorandum

Comments

Comment 1: Whether the Department properly valued pencil cores.
Comment 2: Whether the Department should use one or more respondents' market–economy purchase prices of cores, erasers and lacquer to value these factors for respondents that did not purchase these items from a market–economy supplier.
Comment 3: Whether the Department excluded small quantity/high value import transactions from its calculation of surrogate values.
Comment 4: Whether the Department used the wrong HTS category to calculate a surrogate value for Rongxin's kaolin clay.
Comment 5: Whether the Department should continue to apply partial adverse facts available to SFTC.
Comment 6: Whether the surrogate value for labor is correct.
Comment 7: Whether to continue to treat CFP and Three Star as a single entity.

Comment 8: Whether the Department properly accounted for wood loss in its calculation of a surrogate value for slats.
Comment 9: Whether the Department used the correct lumber dimensions to calculate a surrogate value for slats.
Comment 10: Whether to continue to apply total adverse facts available to Guangdong Stationery & Sporting Goods Import & Export Corp.

[FR Doc. E6–10568 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce (''the Department'') is currently conducting a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China (''PRC'') covering the period July 16, 2004, through July 31, 2005. The Department preliminarily determines that sales have not been made below normal value (''NV'') with respect to Zhanjiang Regal Integrated Marine Resources Co., Ltd. (''Zhanjiang Regal''), which participated fully and is entitled to a separate rate in this review. If these preliminary results are adopted in its final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer–specific assessment rates are above de minimis.

EFFECTIVE DATE: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Case History

General

On February 1, 2005, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain frozen warmwater shrimp from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 05149 (February 1, 2005). On August 26, 2005, the Department received a new shipper review request from Zhanjiang Regal. On September 16, 2005, the Department requested that Zhanjiang Regal correct certain filing deficiencies. *See* the Department's letter dated September 16, 2005. On September 20, 2005, Zhanjiang Regal resubmitted their new shipper review request in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and section 351.214(c) of the Department's regulations. On September 30, 2005, the Department initiated a new shipper review with respect to Zhanjiang Regal. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Initiation of New Shipper Review*, 70 FR 58679 (October 7, 2005) (''*Initiation Notice*'').

On February 16, 2006, the Department placed the entry package it received from CBP for Zhanjiang Regal's new shipper sale on the record of this review. *See Memorandum from Javier Barrientos, AD/CVD Financial Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to the File: Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Placing Entry Packages on the Record*, dated February 9, 2006.

Questionnaires and Responses

On October 21, 2005, the Department issued sections A, C, and D of the general antidumping duty questionnaire to Zhanjiang Regal, along with the standard importer questionnaire for new shipper reviews. Zhanjiang Regal submitted its response to section A of the questionnaire on November 21, 2005, and subsequently submitted its response to sections C and D, and the importer questionnaire, on December 9, 2005. On December 22, 2005, the Department issued its first supplemental questionnaire for sections A, C and D. Zhanjiang Regal filed its response to this supplemental questionnaire on January 17, 2006. On March 13, 2006, the Department issued its second supplemental questionnaire for sections A, C, and D to Zhanjiang Regal and its importer. Zhanjiang Regal filed its response to the Department's second sections A, C, and D supplemental questionnaires on April 3, 2006, and to the importer's questionnaire on April 7, 2006.

Surrogate Country and Values

On November 2, 2005, the team requested from the Office of Policy a memorandum listing surrogate countries. The Department received a list of surrogate countries on November 7, 2005. On March 2, 2006, the Department notified parties of the opportunity to submit comments on surrogate country selection and surrogate values. No party submitted surrogate country selection comments, although Zhanjiang Regal submitted

surrogate value comments. On May 22, 2006, the Department issued its surrogate country selection memorandum. *See Memorandum from Javier Barrientos, AD/CVD Financial Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, and Jim Doyle, Director, Office 9, to the File: Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of a Surrogate Country*, dated May 22, 2006 (''*Surrogate Country Memo*'').

Period of Review

The POR covers July 16, 2004, through July 31, 2005.

Scope of the Order

The scope of this order includes certain warmwater shrimp and prawns, whether frozen, wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off (including the telson and the uropods), deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *penaeidae* family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, whiteleg shrimp (*penaeus vannemei*), banana prawn (*penaeus merguiensis*), fleshy prawn (*penaeus chinensis*), giant river prawn (*macrobrachium rosenbergii*), giant tiger prawn (*penaeus monodon*), redspotted shrimp (*penaeus brasiliensis*), southern brown shrimp (*penaeus subtilis*), southern pink shrimp (penaeus notialis), southern rough shrimp (*trachypenaeus curvirostris*), southern white shrimp (*penaeus schmitti*), blue shrimp (*penaeus stylirostris*), western white shrimp (*penaeus occidentalis*), and indian white prawn (*penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell–on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; 6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp–based product: (1) that is produced from fresh (or thawed–from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non–shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for Customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Verification

On March 30, 2006, the Department issued the verification outline to Zhanjiang Regal. The Department conducted verification of the questionnaire responses submitted by Zhanjiang Regal at its office in Zhanjiang, PRC from April 10 -14, 2006. The Department used standard verification procedures, including on–site inspection of the facilities, and examination of relevant sales and financial records. The Department's verification results are outlined in the verification report, which is being issued concurrently with this notice. For further discussion, *see Memorandum from Javier Barrientos, AD/CVD Financial Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to the File: Verification of the Sales and Factors Response of Zhanjiang Regal Trading Co., Ltd. (''Zhanjiang Regal'') in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China*, dated June 27, 2006, (''*Zhanjiang Regal Verification Report*'').

New Shipper Status

Consistent with the Department's practice, the Department investigated the *bona fide bona fide* nature of the sale made by Zhanjiang Regal for this new shipper review. The Department found the sale in question was made on a *bona fide* basis. Based on the Department's investigation into the *bona fide* nature of the sale, the questionnaire responses submitted by Zhanjiang Regal, and the Department's verification thereof, as well as Zhanjiang Regal's eligibility for a separate rate (*see* below), and the Department's preliminarily determination that Zhanjiang Regal was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States, we preliminarily determine that the respondent has met the requirements to qualify as a new shipper during the POR. Therefore, for purposes of these preliminary results of the review, the Department is treating Zhanjiang Regal's sale of subject merchandise to the United States as an appropriate transaction for this new shipper review. *See Memorandum from Javier Barrientos, AD/CVD Financial Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to James C. Doyle, Office Director, Office 9: Bona Fide Nature of the Sale in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp: Zhanjiang Regal Trading Co., Ltd.*, dated June 27, 2006.

Separate Rates

The Department has treated the PRC as a non–market economy (''NME'') country in all previous antidumping cases. *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006).In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is

an NME country shall remain in effect until revoked by the administering authority. The Department has no evidence suggesting that this determination should be changed. Therefore, the Department treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production (''FOP'') in a surrogate country. It is the Department's policy to assign all exporters of the merchandise subject to review that are located in NME countries a single antidumping duty rate unless an exporter can demonstrate an absence of governmental control, both in law (*de jure*) de facto and in fact (*de facto*), with respect to its export activities. To establish whether an exporter is sufficiently independent of governmental control to be entitled to a separate rate, the Department analyzes the exporter using the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as adopted and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria established in these cases, the Department assigns separate rates to NME exporters only if they can demonstrate the absence of both *de jure* and *de facto* governmental control over their export activities.

Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589.

In the instant review, Zhanjiang Regal submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in the instant review by Zhanjiang Regal includes government laws and regulations on corporate ownership and control, business licences, and narrative information regarding the company's operations and selection of management. *See Zhanjiang Regal Verification Report* at Exhibits 2 and 6. The evidence provided by Zhanjiang Regal supports a finding of an absence of *de jure* governmental control over its export activities because it indicates that: (1) there are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; and (2) the subject merchandise does not appear on any government list regarding export provisions or export licensing.

Absence of *De Facto* Control

The absence of *de facto* governmental control over exports is based on whether the respondent: (1) sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide* at 22587; *Sparklers* at 20589; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

In its questionnaire responses, Zhanjiang Regal submitted evidence demonstrating an absence of *de facto* governmental control over its export activities. Specifically, this evidence indicates that: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors, and the general manager appoints the deputy managers and the manager of each department; and (5) there is no restriction on the company's use of export revenues. Therefore, the Department has preliminarily found that Zhanjiang Regal qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Use of Facts Available

Section 776(a)(2) of the Act, provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In the instant review, the Department discovered that Zhanjiang Regal included part of its factory electricity usage under selling, general, and administrative (SG&A) electricity usage. Specifically, the company included the electricity used to run the chill compressors in the processing plant under the meter used for SG&A. *See Zhanjiang Regal Verification Report* at 2. Furthermore, the company could not determine how much of the SG&A electricity reading was from the chill compressors, thus preventing the Department from verifying this information. *Id.* at 31. However, the plant engineer estimated (based on his experience) the percentage of the SG&A meter reading that was attributable to the compressors. *Id.* Therefore, as facts otherwise available, pursuant to section 776(a)(2)(D) of the Act, the Department is assigning this estimate of the SG&A electricity meter readings to factory electricity. *See Memorandum from Javier Barrientos, AD/CVD Financial Analyst, Office 9, through Alex Villanueva, Program Manager, Office 9, to the File: Analysis of Zhanjiang Regal Trading Co., Ltd. for the Preliminary Results in the Antidumping Duty New Shipper Review of Certain Frozen Warmwater Shrimp from the PRC*, dated June 27, 2006.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (''NV''), in most circumstances, on the NME producer's factors of production, valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values the Department used in this review are discussed under the ''Normal Value'' section below.

The Department determined that India, Sri Lanka, Indonesia, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen, Director, Office of Policy, to Alex*

Villanueva, Program Manager, Office 9; New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (PRC): Request for a List of Surrogate Countries, dated November, 2005. Because of India's and Indonesia's relative levels of shrimp production, which is consistent with worldwide characteristics of frozen shrimp production, these two countries were selected as significant producers of comparable merchandise. *See Surrogate Country Memo* at 4. The Department select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non–Market Economy Surrogate Country Selection Process* (''*Policy Bulletin*''), dated March 1, 2004. In this case, the Department found that India is a significant producer of comparable merchandise, is at a similar level of economic development pursuant to section 773(c)(4) of the Act, and has publicly available and reliable data. *See Surrogate Country Memo*.

U.S. Price

In accordance with section 772(a) of the Act, the Department calculated the export price (''EP'') for sales to the United States for Zhanjiang Regal because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. The Department calculated EP based on the price to unaffiliated purchasers in the United States. Consistent with section 772(c) of the Act, as appropriate, the Department deducted from the starting price to the unaffiliated purchaser: foreign inland freight; brokerage and handling; and international freight. For Zhanjiang Regal, foreign inland freight and brokerage and handling were provided by an NME vendor or paid for using an NME currency. Thus, the Department based the deduction of these movement charges on surrogate values. *See Memorandum from Javier Barrientos, AD/CVD Financial Analyst, through Alex Villanueva, Program Manager, Office 9, to the File; New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Values for the Preliminary Results*, dated June 27, 2006 (''*Surrogate Values Memo*'') for details regarding the surrogate values for movement expenses. For international freight, provided by a non–market economy provider, but paid for in U.S. dollars, the Department based the deduction on a surrogate value.

Normal Value

In accordance with section 773(c) of the Act, the Department calculated NV based on factors of production (''FOP'') reported by the respondents for the POR. To calculate NV, the Department valued the reported FOP by multiplying the per–unit factor quantities by publicly available Indian surrogate values. In selecting surrogate values, the Department considered the quality, specificity, and contemporaneity of the available values. As appropriate, the Department adjusted the value of material inputs to account for delivery costs. Where appropriate, the Department increased Indian surrogate values by surrogate inland freight costs. The Department calculated these inland freight costs using the shorter of the reported distances from the PRC port to the PRC factory, or from the domestic supplier to the factory. This adjustment is in accordance with the United States Court of Appeals for the Federal Circuit's (''CAFC'') decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–1408 (Fed.Cir. 1997). For those values not contemporaneous with the POR, the Department adjusted for inflation or deflation using data published in the IMF's *International Financial Statistics*. The Department excluded from the surrogate country import data used in the Department's calculations imports from Korea, Thailand, and Indonesia due to generally available export subsidies. *See China Nat'l Mach. Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and *Certain Cut–to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decision Memorandum at Comment 4. Furthermore, the Department disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME or a country with general export subsidies. Finally, the Department converted the surrogate values to U.S. dollars as appropriate, using the official exchange rate recorded on the date of sale of subject merchandise in this case, obtained from Import Administration's website at http://www.ia.ita.doc.gov/exchange/index.html. For further detail, *see* the *Surrogate Values Memo*.

Changes from Verification

For electricity, the Department is assigning the plant engineer's estimate of the SG&A electricity meter readings to factory electricity. *See* Facts Available section above.

For direct labor, the Department discovered at verification that Zhanjiang Regal made a clerical/transposing error in summing certain fields in their worksheets. *See Zhanjiang Regal Verification Report* at 32. This error affected the direct labor usage rate for both growing and processing direct labor. Therefore, the Department will use its verification findings for direct labor. *See Zhanjiang Regal Analysis Memo*.

For international freight, Zhanjiang Regal provided the actual cost it incurred in U.S. dollars in its sales database. However, at verification the Department found the freight carrier was based in an NME country. *See Zhanjiang Regal Verification Report* at 25. Therefore, the Department used a surrogate value for the international freight expense Zhanjiang Regal incurred on its sale of the subject merchandise.

Preliminary Results of Review

The Department preliminarily determines that the following weight average margin exist during the period July 16, 2004, through July 31, 2005:

CERTAIN FROZEN WARMWATER SHRIMP FROM THE PRC

Exporter/Manufacturer	Weighted–Average Margin (Percent)
Zhanjiang Regal Integrated Marine Resources Co., Ltd.	0.00

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within ten days of the date of announcement of these preliminary results. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the

argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this new shipper review, including the results of the Department's analysis of the issues raised by the parties in their comments, within 120 days of publication of these preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. The Department will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

Upon completion of this review, the Department will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of certain frozen warmwater shrimp from the PRC produced and exported by Zhanjiang Regal that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review. *See* 19 CFR § 351.214(e). The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise from Zhanjiang Regal entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise manufactured and exported by Zhanjiang Regal, the cash deposit rate will be the rate established in the final results of this review, except that no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*; and (2) for subject merchandise exported by Zhanjiang Regal but not manufactured by itself, the cash deposit rate will continue to be the

PRC–wide rate (*i.e.*, 112.81 percent); and (3) for subject merchandise produced by Zhanjiang Regal but not exported by itself, the cash deposit rate will be the rate applicable to the exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h)(i).

Dated: June 27, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–10565 Filed 7–5–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825, A–533–810, A–588–833, A–469–805]

Stainless Steel Bar from Brazil, India, Japan, and Spain; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On March 1, 2006, the Department of Commerce initiated the second sunset reviews of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain pursuant to section 751(c) of the Tariff Act of 1930, as amended. On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and no responses received from respondent interested parties, the Department conducted expedited (120-day) sunset reviews. See section 751(c)(3)(B) of the Act. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed in the ''Final Results of Reviews'' section below.

EFFECTIVE DATE: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Kristin Case, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114 or (202) 482–3174.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2006, the Department of Commerce (the Department) initiated the second sunset reviews of the antidumping duty orders on stainless steel bar (SSB) from Brazil, India, Japan, and Spain pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five-year (''Sunset'') Reviews*, 71 FR 10476 (March 1, 2006). The Department received a notice of intent to participate from Carpenter Technology Corp., Crucible Specialty Metals Division of Crucible Materials Corp., Electralloy Corp., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i) pertaining to sunset reviews. The domestic interested parties claimed interested–party status under section 771(9)(C) of the Act as manufacturers of a domestic like product in the United States. We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted expedited (120-day) sunset reviews of these orders.

Scope of the Orders

Imports covered by these orders are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of

circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes, and sections.

The SSB subject to these orders is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 29, 2006, which is hereby adopted by this notice. The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on SSB from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Brazil.	
Acos Villares, S.A.	19.43 percent *ad valorem*
All Others	19.43 percent *ad valorem*
India.	
Grand Foundry, Ltd.	3.87 percent *ad valorem*
Mukand, Ltd.	21.02 percent *ad valorem*
All Others	12.45 percent *ad valorem*
Japan.	
Aichi Steel Works, Ltd.	61.47 percent *ad valorem*
Daido Steel Co., Ltd.	61.47 percent *ad valorem*
Sanyo Special Steel Co., Ltd.	61.47 percent *ad valorem*
All Others	61.47 percent *ad valorem*
Spain.	
Acenor, S.A. (and all successor companies, including Digeco, S.A. and Clorimax, SRL)	62.85 percent *ad valorem*
Roldan, S.A.	7.72 percent *ad valorem*
All Others	25.77 percent *ad valorem*

This notice also serves as the only 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. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–10479 Filed 7–5–06; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of 2004–2005 Semi–Annual New Shipper Reviews and Notice of Final Rescission of One New Shipper Review

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

SUMMARY: In response to requests from Shenyang Kunyu Wood Industry Co., Ltd. (''Kunyu''), Dongguan Landmark Furniture Products Ltd. (''Landmark''), Meikangchi (Nantong) Furniture Company Ltd. (''Meikangchi''), and WBE Industries (Hui–Yang) Co., Ltd. (''WBE''), the U.S. Department of Commerce (''the Department'') is conducting new shipper reviews of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). The period of review (''POR'') is June 24, 2004, through June 30, 2005.

We have preliminarily determined that sales have been made below normal value (''NV'') by Kunyu and Meikangchi. However, we have also preliminarily determined that sales have not been made below normal value by Landmark. If these preliminary results are adopted in our final results of these reviews, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the POR for which the importer–specific assessment rates are above *de minimis*. Additionally, we have rescinded the new shipper review for WBE.

We invite interested parties to comment on these preliminary results.

Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We will issue the final results no later than 90 days from the date of publication of this notice.

EFFECTIVE DATE: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Holton or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1324 and (202) 482–0414, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on wooden bedroom furniture from the PRC on January 4, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China*, 70 FR 329 (January 4, 2005). On July 8, 2005, we received a timely request for a new shipper review from Kunyu. On July 28, 2005, we received timely requests for new shipper reviews from Landmark and Meikangchi. On August 1, 2005, we received a timely request for a new shipper review from WBE. Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d)(1), we initiated the above–mentioned four new shipper reviews for shipments of wooden bedroom furniture from the PRC.

On September 8, 2005, the Department published a notice of the initiation of the new shipper reviews of Kunyu, Landmark, Meikangchi, and WBE. *See Wooden Bedroom Furniture from the People's Republic of China; Initiation of New Shipper Reviews*, 70 FR 53344 (September 8, 2005).

On September 22, 2005, we issued antidumping duty questionnaires to Kunyu, Landmark, Meikangchi, and WBE. In October and November 2005, we received responses to the questionnaires from Kunyu, Landmark, Meikangchi, and WBE. From November 2005 to April 2006, the Department issued supplemental questionnaires to the respondents and received timely responses.

On December 19, 2005, Petitioners[1] requested that the Department conduct verification of the questionnaire responses submitted by Kunyu, Landmark, Meikangchi, and WBE.

On February 28, 2006, we extended the deadline for the issuance of the preliminary results of these new shipper reviews until June 26, 2006. *See Wooden Bedroom Furniture from the People's Republic of China: Extension of Time Limit for the Preliminary Results of New Shipper Reviews*, 71 FR 10010 (February 28, 2006).

On June 5, 2006, the Department preliminarily determined to rescind the new shipper review of WBE based on evidence that WBE exported subject merchandise during the period of investigation and, therefore, does not meet the requirements for initiation of a new shipper review pursuant to 19 CFR 351.214(a) and (b). *See* Memorandum from Wendy J. Frankel, Director Office 8 to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, *Wooden Bedroom Furniture from The People's Republic of China: Intent to Rescind the New Shipper Review of WBE Industries (Hui–Yang) Co., Ltd. WBE Rescission (''WBE Rescission Memo'')*. On June 6, 2006, we issued a letter to all interested parties requesting parties to provide comments on this issue by June 13, 2006, and rebuttal comments by June 16, 2006. Due to the unexpected emergency closure of the main Commerce building on Monday, June 26, 2006, the Department is issuing these preliminary results on June 27, 2006, the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

Period of Review

The POR is June 24, 2004, through June 30, 2005.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non–wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand–alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe–type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests–on-chests[2], highboys[3], lowboys[4], chests of drawers[5], chests[6], door chests[7], chiffoniers[8], hutches[9], and armoires[10]; (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including

[1] The American Furniture Manufacturers Committee for Legal Trade and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721; UBC Southern Council of Industrial Workers Local Union 2305; United Steel Workers of America Local 193U; Carpenters Industrial Union Local 2093; and Teamsters, Chauffeurs, Warehousemen and Helpers Local 991 (''Petitioners'').

[2] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[3] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[4] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[5] A chest of drawers is typically a case containing drawers for storing clothing.

[6] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[7] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[8] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[9] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[10] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand–up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non–bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate[11]; (9) jewelry armories[12]; (10) cheval mirrors[13] (11) certain metal parts[14] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser–mirror set.

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as ''wooden...beds'' and under statistical category 9403.50.9080 of the HTSUS as ''other...wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under statistical category 9403.50.9040 of the HTSUS as ''parts of wood'' and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as ''glass mirrors...framed.'' This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

[11] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

[12] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24'' in width, 18'' in depth, and 49'' in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door lined with felt or felt-like material, with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, *Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China*, dated August 31, 2004.

[13] Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50'' that is mounted on a floor-standing, hinged base.

[14] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified in subheading 9403.90.7000, HTSUS.

Rescission of Review

On June 5, 2006, the Department preliminarily determined to rescind the new shipper review of WBE based on evidence that WBE exported subject merchandise during the period of investigation and, therefore, does not meet the requirements for initiation of a new shipper review pursuant to 19 CFR 351.214(a) and (b). *See WBE Rescission Memo*. We requested comments on our preliminary rescission. The Department did not receive any comments. Therefore, we are rescinding the new shipper review of WBE based on evidence that WBE exported subject merchandise during the period of investigation and, therefore, does not meet the requirements for initiation of a new shipper review pursuant to our regulations.

New Shipper Status

Consistent with our practice, we investigated whether the sales made by Kunyu, Landmark, and Meikangchi for these new shipper reviews were *bona fide*. *See, e.g., Notice of Rescission of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 70 FR 59031 (October 11, 2005). For Kunyu, Landmark, and Meikangchi, we found no evidence that the sale(s) in question are not bona fide sale(s). In our examination of Kunyu, Landmark, and Meikangchi's sales, we found the sales prices to be within the range of POR sales prices, and that these entities received timely payment for their POR sales. Based on our investigation into the bona fide nature of the sales, the questionnaire responses submitted by Kunyu, Landmark, and Meikangchi, and our verification thereof, we preliminarily determine that Kunyu, Landmark, and Meikangchi have met the requirements to qualify as new shippers during the POR. See Memorandum to Wendy J. Frankel, Office Director, *Antidumping Duty New Shipper Reviews of the Antidumping Duty Order on Wooden Bedroom Furniture from the People's Republic of China: Bona Fide Analysis of Shenyang Kunyu Wood Industry Co., Ltd. (''Kunyu''), Dongguan Landmark Furniture Products Ltd. (''Landmark''), and Meikangchi (Nantong) Furniture Company Ltd. (''Meikangchi'')*, dated June 26, 2006. In addition, we have preliminarily determined that based on the information submitted, Kunyu, Landmark, and Meikangchi each made their first sale and/or shipment of subject merchandise to the United States during the POR, none exported subject merchandise during the period of investigation, and none was affiliated with any exporter or producer that had previously shipped subject merchandise to the United States. Therefore, for purposes of these preliminary results of review, we are treating the respective sales of wooden bedroom furniture to the United States as appropriate transactions to be examined in the context of these new shipper reviews. *See* Section 751 (a)(2)(B) of the Act and 19 CFR 351.214(a); *See also ''Separate Rates''*; section below.

Verification of Responses

As provided in section 782(i) of the Act, we verified information provided by Kunyu, Landmark, and Meikangchi. We used standard verification procedures, including on–site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification results are outlined in the verification reports identified, the public versions of which are on file in the Central Records Unit (''CRU''), Room B–099 of the main Department building. See *Verification of Sales and Factors of Production Reported by Kunyu Wood Industry Co., Ltd. (''Kunyu'') in the Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China*, dated June 26, 2006 (*''Kunyu Verification Report''); Verification of Sales and Factors of Production Reported by Dongguan Landmark Furniture Products Ltd. (''Landmark'') in the Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China*, dated June 26, 2006; *Verification of Sales and Factors of Production Reported by Meikangchi (Nantong) Furniture Company Ltd. (''Meikangchi'') in the Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China*, dated June 26, 2006 (*''Meikangchi Verification Report''*); and *Verification of the Constructed Export Sales Reported by Up Country in the Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China*, dated June 26, 2006 (*''Up Country Verification Report''*).

Surrogate Value Information

On December 7, 2005, Landmark submitted comments on the appropriate surrogate values (''SV'') to be applied to the factors of production (''FOP'') in this review. On April 11, 2006, Petitioners submitted Indian financial statements for determining financial ratios for this review. No other party to the proceeding provided comments on surrogate values or financial ratios during the course of this review.

Non–market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value (''NV'') in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the SVs are discussed under the ''*Normal Value*'' section below and in the Memorandum to the File, *Factors Valuations for the Preliminary Results of the New Shipper Reviews*, dated June 26, 2006 (''Factor Valuation Memorandum''), which is on file in the CRU.

The Department has determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum to the File, New Shipper Reviews of Wooden Bedroom Furniture from the People's Republic of China* (PRC): Request for a List of Surrogate Countries, dated October 14, 2005, which is on file in the CRU.

On November 1, 2005, Meikangchi submitted comments regarding the selection of a surrogate country. Meikangchi argued that India is not an important producer of subject merchandise or comparable merchandise. Meikangchi asserted that India produces primarily furniture in the style indigenous to India. Meikangchi asserts that it is also an importer of wooden bedroom furniture through its U.S. affiliate, Up Country Inc., and, as an importer, it would not consider India as a source for the subject merchandise in this review. Meikangchi argued that India is known for textiles and metal work, and has not demonstrated the ability to manufacture the type of furniture under review. Meikangchi asserts that of the countries chosen by the Department as being at a level of economic development comparable to that of the PRC, Indonesia is the most appropriate choice as a surrogate country. Meikangchi argues that, although it has no evidence to support its choice, in its experience as an importer, only Indonesia is known, in the furniture industry, to produce large amounts of wooden furniture. Therefore, Meikangchi stated that Indonesia is the best choice for a surrogate country.

On November 2, 2005, Petitioners provided comments and information[15] regarding the selection of a surrogate country. Petitioners argue that India is the appropriate surrogate country for the PRC because India is at a level of economic development comparable to that of the PRC and is a significant producer of the subject merchandise. Additionally, Petitioners state that the Department has consistently used India as the surrogate for the PRC. Further, Petitioners argue that the size of the Indian furniture industry, the types of materials used by the Indian furniture industry, and the number of producers in the Indian furniture industry all make India a significant producer of both identical and comparable merchandise. No other party to the proceeding submitted comments or information concerning the selection of a surrogate country.

On February 16, 2006, the Department issued its surrogate country memorandum in which we addressed both interested parties comments. *See* Memorandum to the File, *Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Selection of a Surrogate Country*, dated February 16, 2006 (''*Surrogate Country Memorandum*''), which is on file in the CRU. Thus, the Department has evaluated all parties' concerns and comments and has determined that India is the appropriate surrogate country to use in these new shipper reviews. The Department based its decision on the following facts: 1) India is at a level of economic development comparable to that of the PRC; 2) India is a significant producer of comparable merchandise; and, 3) India provides the best opportunity to use quality, publicly available data to value the FOPs. *See Surrogate Country Memorandum*.

Therefore, we have selected India as the surrogate country and, accordingly, we have calculated NV using Indian prices to value the respondents' FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. *See (''Factor Valuation Memorandum'')*. In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping new shipper review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The three respondents (*i.e.*, Kunyu, Landmark, and Meikangchi) have provided company–specific information and each has stated that it meets the standards for the assignment of a separate rate.

We have considered whether each of the three companies referenced above is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on

[15] *See* Petitioners' submission dated November 2, 2005, ''Antidumping Duty New Shipper Review of Wooden Bedroom Furniture from The Peoples's Republic of China/Comments on Selection of Surrogate Country.''

controls over the investment, pricing, and output decision–making process at the individual firm level. *See, e.g., Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

2. Absence of De Facto Control

Through previous cases, the Department has learned that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

Kunyu

Kunyu placed on the record statements and documents to demonstrate absence of de jure control. In its questionnaire responses, Kunyu reported that it does not have any relationship with the central, provincial, or local governments. *See* Kunyu's October 18, 2005, Section A questionnaire response (''Kunyu AQR''). Kunyu submitted a copy of its business license and stated it is renewed annually and The Bureau of Industry and Commerce examines the license yearly. Kunyu reported that the subject merchandise did not appear on any government list regarding export provisions or export licensing, and the subject merchandise is not subject to export quotas. *See* Kunyu AQR. Kunyu explained that the license imposes no other limitations on Kunyu, nor grants any entitlements to the company by its license. Through the questionnaire responses, we examined each of the related laws and Kunyu's business license and preliminarily determine that they demonstrate the absence of *de jure* control over the export activities and evidence in favor of the absence of government control associated with Kunyu's business license.

In support of an absence of *de facto* control, Kunyu reported the following: (1) During the POR, Kunyu explained that it sold the subject merchandise in the United States directly to unaffiliated U.S. customers. The prices are not subject to review by, or guidance from, any other entity, including any government organization; (2) Kunyu explained that its sales transactions are not subject to the review or approval of any organization outside the company; (3) Kunyu is not required to notify any government authorities of its management selection; and (4) Kunyu is free to spend its export revenues and its profit can be used for any lawful purpose. *See* Kunyu AQR.

The evidence placed on the record of this new shipper review by Kunyu demonstrates an absence of government control, both in law and in fact, with respect to Kunyu's exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company–specific rate to Kunyu, the exporter which shipped the subject merchandise to the United States during the POR.

Landmark

Landmark placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, Landmark reported that it does not have any relationship with the central, provincial, or local governments with respect to ownership, internal management, and daily business operations. *See* Landmark's October 13, 2005, Section A questionnaire response (''Landmark AQR''). Landmark submitted a copy of its business license. Landmark reported that the subject merchandise did not appear on any government list regarding export provisions or export licensing, and the subject merchandise is not subject to export quotas. *See* Landmark AQR. Landmark explained that the license imposes no other limitations on Landmark, nor grants any entitlements to the company by its license. Through the questionnaire responses, we examined the related laws and Landmark's business license and preliminarily determine that they demonstrate the absence of *de jure* control over the export activities and evidence in favor of the absence of government control associated with Landmark's business license.

In support of an absence of *de facto* control, Landmark reported the following: (1) During the POR, Landmark explained that it sold the subject merchandise in the United States directly to unaffiliated U.S. customers; (2) Landmark explained that its sales prices are not subject to the review or approval of any organization outside the company; (3) Landmark is not required to notify any government authorities of its management selection; and (4) Landmark is free to spend its export revenues and its profit can be used for any lawful purpose. *See* Landmark AQR.

The evidence placed on the record of this new shipper review by Landmark demonstrates an absence of government control, both in law and in fact, with respect to Landmark's exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company–specific rate to

Landmark, the exporter which shipped the subject merchandise to the United States during the POR.

Meikangchi

Meikangchi placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, Meikangchi reported that it does not have any relationship with the central, provincial, or local governments. *See* Meikangchi's October 12, 2005, Section A questionnaire response (''Meikangchi AQR''). Meikangchi submitted a copy of its business license and stated it is renewed annually and the Industrial and Commerical Administration Bureau of Nantong, Jiangsu Province examines the license yearly. Meikangchi reported that the subject merchandise did not appear on any government list regarding export provisions or export licensing, and the subject merchandise is not subject to export quotas. *See* Meikancghi AQR. Meikancghi explained that the license imposes no other limitations on Meikancghi, nor grants any entitlements to the company by its license. Through the questionnaire responses, we examined each of the related laws and Meikancghi's business license and preliminarily determine that they demonstrate the absence of *de jure* control over the export activities and evidence in favor of the absence of government control associated with Meikangchi's business license.

In support of an absence of *de facto* control, Meikangchi reported the following: (1) During the POR, Meikangchi explained that it sold the subject merchandise in the United States through its U.S. affiliated company, Up Country, Inc. The prices are not subject to review by, or guidance from, any other entity, including any government organization; (2) Meikangchi explained that it set its sales prices and they are not subject to the review or approval of any organization outside the company; (3) Meikangchi is not required to notify any government authorities of its management selection; and (4) Meikangchi is free to spend its export revenues and its profit can be used for any lawful purpose. *See* Meikangchi AQR.

The evidence placed on the record of this new shipper review by Meikangchi demonstrates an absence of government control, both in law and in fact, with respect to Meikangchi's exports of the merchandise under review. As a result, for the purposes of these preliminary results, the Department is granting a separate, company–specific rate to Meikangchi, the exporter which shipped the subject merchandise to the United States during the POR.

Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply ''facts otherwise available'' where necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall so inform the party submitting the response and shall, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department ''shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority'' if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

We have determined that the use of facts available is warranted for Kunyu's consumption rates for certain FOPs in the determination of NV. During Kunyu's FOP verification, we determined that Kunyu was unable to wholly reproduce its total consumption of certain inputs that it had provided in its questionnaire responses. *See Kunyu Verification Report.* However, most consumption rates obtained at verification were close to the consumption rates Kunyu reported in its responses, with certain differences appearing to be due to rounding errors. Also, due to Kunyu's small size and rudimentary factory operations, the company explained that it does not maintain product–specific records reflecting gross consumption, nor does it maintain inventory withdrawal documentation or production records that allow for per–unit or product–specific allocation of gross consumption. Additionally, based on Kunyu's responsiveness and cooperation at verification, and relying on the Department's experience in examining other furniture companies, it is evident that Kunyu has not benefitted from its reported consumption rates. Further, in its responses and at verification, the Department observes that Kunyu has made every effort to act to the best of its ability and to provide the Department with the requested information. Kunyu is a *pro se* respondent previously unfamiliar with our proceedings. We note, however, that in future reviews of this proceeding, all respondents, including Kunyu, must comply with all requests for information by the Department, and therefore, should maintain the appropriate books and records to comply with these requests and should provide the requisite supporting documentation. If respondents are unable to comply with such requests in the future, the Department may resort to the use of adverse facts available if appropriate.

For the above reasons and pursuant to section 776(a)(1)(D) of the Act, we have resorted to the facts otherwise available to determine the consumption rates for certain inputs. The Department finds that Kunyu acted to the best of its ability in complying with the Department's numerous requests for information. Thus, we find an adverse inference is not warranted for the consumption rates for the above inputs pursuant to section 776(b) of the Act. The Department is applying facts available for birchwood, plywood, woodscrews, dowels, glue, finishes, drawerslides, sandpaper, boxes, package paper, and tape. As facts available, we are using the reported information obtained at verification for each of the above inputs. *See* Memorandum to the file from Michael Holton, Case Analyst, through Robert Bolling, Program Manager, *Preliminary Results of New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Program Analysis for the Preliminary Results of Review: Shenyang Kunyu Wood Industry Co., Ltd. (''Kunyu'')*, dated June 26, 2006, (*''Kunyu Prelim Analysis Memorandum''*).

Date of Sale

Section 351.401(i) of the Department's regulations provides that the Department will normally use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business, as the date of sale of

the subject merchandise. However, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001).

After examining the questionnaire responses and the sales documentation that Kunyu, Landmark, and Meikangchi placed on the record, we preliminarily determine that invoice date is the most appropriate date of sale for Kunyu, Landmark, and Meikangchi. We made this determination based on record evidence which demonstrates that Kunyu, Landmark, and Meikangchi's invoices establish the material terms of sale to the extent required by our regulations.

Normal Value Comparisons

To determine whether sales of wooden bedroom furniture to the United States by Kunyu, Landmark, and Meikangchi were made at less than NV, we compared export price (''EP'') or constructed export price (''CEP'') to NV, as described in the ''*Export Price*,'' ''*Constructed Export Price*'' and ''*Normal Value*'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for Kunyu and Landmark's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d). In accordance with section 772(b) of the Act, we used CEP for Meikangchi's sales because it sold subject merchandise to its affiliated company in the United States, which in turn sold subject merchandise to unaffiliated U.S. customers.

We compared NV to individual EP and CEP transactions, in accordance with section 777A(d)(2) of the Act.

Kunyu

For Kunyu's EP sales, we based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses. Movement expenses include expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight and marine insurance. *See* the proprietary discussion of this issue in the *Kunyu Prelim Analysis Memorandum*.

Landmark

For Landmark's EP sales, we based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses. Movement expenses include expenses for foreign inland freight from the plant to the port of exportation, and domestic brokerage and handling. *See* the proprietary discussion of this issue in the Memorandum from Eugene Degnan, Case Analyst, through Robert Bolling, Program Manager, to the File, *Preliminary Results of New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Program Analysis for the Preliminary Results of Review: Dongguan Landmark Furniture Products Ltd. (''Landmark'')*, dated June 26, 2006.

Meikangchi

For Meikangchi's CEP sales, we based the CEP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions from the starting price for movement expenses. Movement expenses include expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. duty, and inland freight from the warehouse to the unaffiliated U.S. customer. In accordance with section 772(d)(1) of the Act, the Department additionally deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, we determined and deducted CEP profit in accordance with sections 772(f) and 772(d)(3) of the Act. *See* the proprietary discussion of these issues in the Memorandum from Michael Holton, Case Analyst, through Robert Bolling, Program Manager, to the File, *Preliminary Results of New Shipper Review of Wooden Bedroom Furniture from the People's Republic of China: Program Analysis for the Preliminary Results of Review: Meikangchi (Nantong) Furniture Company Ltd.* (''Meikangchi''), dated June 26, 2006 (''*Meikangchi Prelim Analysis Memorandum*'').

At verification, we found that Up Country (Meikangchi's U.S. affiliate) incorrectly calculated its indirect selling expenses by limiting its numerator of selling expenses to only a few expenses and by applying an incorrect denominator. *See Up Country Verification Report*. Thus, for the preliminary results, we have recalculated indirect selling expenses based on information from Up Country's verification. *See Meikangchi Prelim Analysis Memorandum*.

As all foreign inland freight and foreign brokerage and handling expenses (where applicable) were provided by PRC service providers or paid for in renminbi, we valued these services using Indian SVs (*see ''Factor Valuations''* section below for further discussion). *See Factor Valuation Memorandum*.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOP, because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 772(c)(3) of the Act, FOP include but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used FOP reported by respondents for materials, energy, labor and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available

information to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994). However, when the Department has reason to believe or suspect that such prices may be distorted by subsidies, the Department will disregard the NME purchase prices and use SVs to determine the NV. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001) (''*TRBs 1998–1999*''), and accompanying *Issues and Decision Memorandum* at Comment 1.

It is the Department's consistent practice that, where the facts developed in the United States or third–country countervailing duty findings include the existence of subsidies that appear to be used generally (in particular, broadly available, non–industry specific export subsidies), it is reasonable for the Department to consider that it has particular and objective evidence to support a reason to believe or suspect that prices of the inputs from the country granting the subsidies may be subsidized. *See TRBs 1998–1999* and accompanying *Issues and Decision Memorandum at Comment 1; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying *Issues and Decision Memorandum* at Comment 1; *see also China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1338–39 (CIT 2003).

With regard to the Indian import–based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See TRBs 1998–1999* and accompanying *Issues and Decision Memorandum* at Comment 1. In avoiding the use of prices that may be subsidized the Department does not conducte a formal investigation to ensure that such prices are not subsidized. *See* also H.R. Rep. 100–576, at 590 (1988), *reprinted in* 1988 U.S.C.C.A.N. 1547, 1623–24. Rather, the Department bases its decision on information that is available to it at the time of its determination. *Id.* Accordingly, we have not used prices from Indonesia, South Korea and Thailand in calculating the Indian import–based SVs.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian SVs (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). *See Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all SVs used to value the respondent's reported FOPs, see *Factor Valuation Memorandum*.

The respondent's reported that all of their inputs to production were sourced from suppliers in NME countries and paid for in NME currency. *See Factor Valuation Memorandum* for a listing of these inputs. Therefore, we did not use respondents' actual prices for any raw materials purchases. In accordance with past practice, we used data from the Indian Import Statistics as published by the *World Trade Atlas*, or from the *2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook* in order to calculate surrogate values for Kunyu, Landmark, and Meikangchi. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 70 FR 67412, 67420 (November 7, 2005); *see also Polyvinyl Alcohol from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67434, 67439 (November 7, 2005).

In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POR, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index as published in the *International Financial Statistics* of the International Monetary Fund. *See Factor Valuation Memorandum; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517, 2522 (January 17, 2006) (''*TRBs 2003–2004*''). The Department used the Indian Import Statistics to value the following raw material inputs and packing materials that the respondents used to produce the subject merchandise during the POR, such as: birchwood, plywood, woodscrews, dowels, glue, finishes, drawerslide, sandpaper, and packaging materials. For a complete list of all the raw material inputs the Department valued using the Indian Import Statistics, see the *Factor Valuation Memorandum*.

For direct labor, indirect labor and and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's website, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, http://ia.ita.doc.gov/wages/index.html. The source of these wage–rate data is the Yearbook of Labour Statistics 2002, ILO (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1996 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor

reported by the respondent. *See Factor Valuation Memorandum*.

The Department valued water using data from the Maharastra Industrial Development Corporation (www.midcindia.org) as it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 rates for the ''inside industrial areas'' usage category and 193 rates for the ''outside industrial areas'' usage category. *See TRBs 2003–2004*, 71 FR at 2522.

To value electricity and diesel, we used data from the International Energy Agency *Key World Energy Statistics* (2003 edition). Because the values for water, electricity and diesel were not contemporaneous with the POR, we adjusted the values for inflation. *See Factor Valuation Memorandum*.

The Department used two sources to calculate a SV for domestic brokerageexpenses. The Department averaged December 2003–November 2004 data contained in Essar

Steel's February 28, 2005, public version response submitted in the antidumping administrative review of hot–rolled carbon steel flat products from India with February 2004–January 2005 data contained in Agro Dutch's May 24, 2005, public version response submitted in the antidumping investigation of certain preserved mushrooms from India. The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions is ranged data. The Department first derived an average per–unit amount from the source. Then, the Department averaged the two per–unit amounts to derive an overall average rate for the POR. *See Factor Valuation Memorandum* at page 7.

We used Indian transport information in order to value the freight–in cost of the raw materials. The Department determined the best available information for valuing truck and rail freight to be from www.infreight.com. This source provides daily rates from six major points of origin to five destinations in India during the POR. The Department obtained a price quote on the first day of each month of the POR from each point of origin to each destination and averaged the data accordingly. *See Factor Valuation Memorandum*.

To value factory overhead, selling, general, and administrative expenses (''SG&A''), and profit, we used the 2004–2005 financial statements of Indian Furniture Products, Ltd. (''IFP''), and the audited financial statements for the fiscal year ending March 31, 2003, from the following producers: IFP, Raghbir Interiors Pvt. Ltd., Nizamuddin Furnitures Pvt. Ltd., Fusion Design Private Ltd., Jayaraja Furniture Group, Akriti Perfections India Pvt. Ltd., Swaran Furnitures Ltd., Evergreen International Limited, and D'nD's Fine Furniture Pvt. Ltd., all of which are Indian producers of comparable merchandise. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. For further discussion, see *Factor Valuation Memorandum*.

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margins exist for the period June 24, 2004, through June 30, 2005:

WOODEN BEDROOM FURNITURE FROM THE PRC

Producer/Exporter	Weighted–Average Margin (Percent)
Kunyu	222.04
Landmark	0.00
Meikangchi	1.25

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d). Further, parties submitting written comments should provide the Department with an additional copy of those comments on diskette. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d).

The Department will issue the final results of these new shipper reviews, which will include the results of its analysis of issues raised in the briefs, within 90 days of publication of these preliminary results, in accordance with 19 CFR 351.214(i)(1), unless the time limit is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of these new shipper reviews. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer–or customer specific assessment rate or value for merchandise subject to these reviews. For these preliminary results we divided the total dumping margins for the reviewed sales by the total entered quantity of those reviewed sales for each applicable importer. In these reviews, if these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments of wooden bedroom furniture from the PRC exported by Kunyu, Landmark, and Meikangchi that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these new shipper reviews. The following cash deposit requirements will be effective upon publication of the final results of these new shipper reviews for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for Kunyu, Landmark, and Meikangchi, the cash deposit rate will be that established in the final results of these reviews; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 198.08 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall

remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These new shipper reviews and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214(h).

Dated: June 27, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10488 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Revocation of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada

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

SUMMARY: On July 1, 2005, the Department of Commerce (''the Department'') initiated its sunset reviews of the countervailing duty (''CVD'') orders on pure magnesium and alloy magnesium from Canada. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the International Trade Commission (''the ITC''), in its sunset reviews, determined that revocation of the CVD orders on pure magnesium and alloy magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Pure and Alloy Magnesium from Canada*, 71 FR 36359 (June 26, 2006). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department is revoking the CVD orders on pure magnesium and alloy magnesium from Canada.

EFFECTIVE DATE: August 16, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1174 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Orders

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Background

On August 31, 1992, the Department issued the CVD orders on pure magnesium and alloy magnesium from Canada. *See Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 39392 (August 31, 1992). On July 1, 2005, the Department initiated, and the ITC instituted, the second sunset reviews of the CVD orders on pure magnesium and alloy magnesium Canada. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 38101 (July 1, 2005). As a result of its CVD sunset reviews, the Department found that revocation of the CVD orders would be likely to lead to continuation or recurrence of a countervailable subsidy, and notified the ITC of the level of subsidy likely to prevail were the orders to be revoked. *See Final Results of Expedited Sunset Reviews of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada*, 70 FR 67140 (November 4, 2005). On June 26, 2006, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the CVD orders on pure magnesium and alloy magnesium from Canada would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Pure and Alloy Magnesium from Canada*, 71 FR 36359 (June 26, 2006) and USITC Publication 3859 (June 2006), entitled *Pure and Alloy Magnesium from Canada* (Inv. Nos. 701–TA–309–A- B).

Determination

As a result of the determination by the ITC that revocation of these CVD orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d) of the Act, is revoking the CVD orders on pure magnesium and alloy magnesium from Canada. Pursuant to section 751(c)(6)(A)(iii) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is August 16, 2005 (*i.e.*, the fifth anniversary of the date of publication in the **Federal Register** of the notice of continuation of these CVD orders). The Department will notify U.S. Customs and Border Protection to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after August 16, 2005, the effective date of revocation of the CVD orders. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five-year sunset reviews and notice are in accordance with section 751(d)(2) and published pursuant to section 777(i)(1) of the Act.

Dated: June 29, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–10567 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

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

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, July 27, 2006. The Judges Panel is composed of ten members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the stage 1 process, Judges' individual review of the stage 1 scoring data, consideration for moving applicants forward, discussion of stage 1 data and selection of applicants for consensus, questions and answers on stage 2 and stage 3 process documentation, and summary of Improvements Day . The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene July 27, 2006 at 8:15 a.m. and adjourn at 4:30 p.m. on July 27, 2006. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 27, 2005, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: June 28, 2006.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. E6–10495 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Subsistence Fishery for Pacific Halibut in Waters Off Alaska: Registration and Marking of Gear

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 5, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This submission seeks renewal of collection-of-information requirements that are part of the program for the Pacific halibut subsistence fishery. The program includes requirements for registration to participate in the fishery, and the marking of certain types of gear used in this fishery. The registration requirement is intended to allow qualified persons to practice the long-term, customary, and traditional harvest of Pacific halibut for food in a non-commercial manner. The gear-marking requirement aids in enforcement and in actions related to gear damage or loss. The registration information may be submitted by an individual or as a list of multiple individuals from an Alaska Native tribe.

II. Method of Collection

Applications may be submitted on-line or as email attachments; paper forms may be sent by mail or FAX.

III. Data

OMB Number: 0648–0460.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; state, local, and tribal government; and individuals or households.

Estimated Number of Respondents: 13,350.

Estimated Time per Response: 10 minutes, Subsistence halibut registration; 15 minutes Subsistence halibut gear marking.

Estimated Total Annual Burden Hours: 1,739.

Estimated Total Annual Cost to Public: $25,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 28, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10498 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Observer Providers Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 5, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Peter Christopher, 978–281–9288 or *peter.christopher@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

National Marine Fisheries Service (NMFS) Northeast Region manages the Atlantic sea scallop (scallop) fishery of the Exclusive Economic Zone (EEZ) off the East Coast under the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). The regulations implementing the Scallop FMPs are at 50 CFR part 648. On June 16, 2006, NMFS implemented an emergency action that re-activated the industry-funded observer program in the Scallop FMP, wherein scallop vessels are required to procure observer coverage from an approved observer service provider. The observer service providers are required to submit an application to NMFS for approval, and once approved, are required to submit various information to support the observer program. Scallop vessel owners or operators are required to contact approved observer service providers in order to procure an observer for trips on which an observer is required. NMFS requests information from candidate scallop fishery observer service providers to evaluate applications for approval. NMFS also requests information from approved scallop fishery observer service providers to monitor activity for compliance with observer service provider requirements and to evaluate observer data; and information from participating scallop fishery participants to assign observers to selected vessels.

II. Method of Collection

Paper applications and telephone calls are required from participants. Facsimile transmission of paper forms, mail, and express mail are the methods of information submittal.

III. Data

OMB Number: 0648–0546.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions, and business or other for-profits organizations.

Estimated Number of Respondents: 805.

Estimated Time per Response: Application for approval of observer service provider, 10 hours; applicant response to denial of application for approval of observer service provider, 10 hours; observer service provider request for observer training, 30 minutes; observer deployment report, 10 minutes; observer availability report, 10 minutes; safety refusal report, 30 minutes; submission of raw observer data, 5 minutes; observer debriefing, 2 hours; biological samples, 5 minutes; rebuttal of pending removal from list of approved observer service providers, 8 hours; vessel request to observer service provider for procurement of a certified observer, 25 minutes; vessel request for waiver of observer coverage requirement, 5 minutes.

Estimated Total Annual Burden Hours: 611.

Estimated Total Annual Cost to Public: $6,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 29, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10501 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southwest Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 5, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patricia A. Culver, 562–980–4239 or *Trisher.Culver@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Permits are required for persons to participate in Federally-managed fisheries off the West Coast. There are two types of permits, for coastal pelagic and highly migratory fisheries. Appeals and certain waiver requests can also be submitted. Transfer applications may also be required. Permits for the Western Pacific fisheries have been included in this information collection, but will now be covered under 0648–0490, Pacific Islands Permit Family of Forms.

The permit application forms provide basic information about permit holders and the vessels and gear being used. This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids in enforcement of regulations.

II. Method of Collection

Forms are available on the Internet; paper applications are also available and may be submitted by mail or FAX.

III. Data

OMB Number: 0648–0204.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,407.

Estimated Time Per Response: Permit applications and transfers, 30 minutes; additional information (when requested) for the coastal pelagic fishery, 1 hour; appeals, 2 hours.

Estimated Total Annual Burden Hours: 333.

Estimated Total Annual Cost to Public: $575.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 29, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10502 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061606A]

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the draft updated Recovery Plan (Plan) for the fin whale (*Balaenoptera physalus*). NMFS is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on September 5, 2006.

ADDRESSES: Send comments to Angela Somma, Chief, Endangered Species Division, Protected Resources Division, NMFS. Comments may be submitted by: (1) E-mail: *finwhale.recoveryplan@noaa.gov*, include in the subject line the following document identifier: Fin Whale Recovery Plan. E-mail comments, with or without attachments, are limited to 5 megabytes; (2) Chief, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD, 20910; (3) Fax: (301) 427 2523. Interested persons may obtain the Plan for review from the above address or on-line from *http://www.nmfs.noaa.gov/pr/*.

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis, (562–980–3232), e-mail *Monica.DeAngelis@noaa.gov*; or Shannon Bettridge, (301–713–2322 ext. 141), e-mail *Shannon.Bettridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (15 U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans would not promote the conservation of the species. Accordingly, NMFS provided a contract for preparation of a draft Recovery Plan for fin and sei (*Balaenoptera borealis*) whales that was released for public comment and review in 1998 (63 FR 41802). The draft Recovery Plan for the fin and sei whale was never finalized. NMFS has since determined that the recovery plans for the fin and sei whales should be separated. This Plan updates the 1998 Recovery Plan's information for the fin whale and discusses the natural history, current status, and the known and potential human impacts to fin whales. Actions needed to promote the recovery of this species are identified and discussed. The Plan will be used to direct U.S. activities, and to encourage international cooperation to promote the recovery of this endangered species. NMFS' goal is to restore endangered fin whale populations to the point where they are again secure, self-sustaining members of their ecosystems, and no longer need the protections of the ESA. NMFS will consider all substantive comments and information presented during the public comment period in the course of finalizing this Plan.

Dated: June 29, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–10558 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061606B]

Endangered and Threatened Species; Recovery Plans

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the draft Recovery Plan (Plan) for the sperm whale (*Physeter macrocephalus*). NMFS is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on September 5, 2006.

ADDRESSES: Send comments to Angela Somma, Chief, Endangered Species Division, Office of Protected Resources, NMFS. Comments may be submitted by: (1) E-mail: *spermwhale.recoveryplan@noaa.gov*, include in the subject line the following document identifier: Sperm Whale Recovery Plan. E-mail comments, with or without attachments, are limited to 5 megabytes; (2) Mail to: Chief, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD, 20910; (3) Fax: (301) 427 2523. Interested persons may obtain the Plan for review from the above address or on-line from *http://www.nmfs.noaa.gov/pr/*.

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis, (562–980–3232), e-mail *Monica.DeAngelis@noaa.gov*; or Shannon Bettridge, (301–713–2322 ext. 141), e-mail *Shannon.Bettridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (15

U.S.C. 1531 *et seq.*) requires that NMFS develop and implement recovery plans for the conservation and survival of threatened and endangered species under its jurisdiction, unless it is determined that such plans would not promote the conservation of the species. This Plan discusses the natural history, current status, and the known and potential human impacts to sperm whales. Actions needed to promote the recovery of this species are identified and discussed. The Plan will be used to direct U.S. activities, and to encourage international cooperation to promote the recovery of this endangered species. NMFS' goal is to restore endangered sperm whale populations to the point where they are again secure, self-sustaining members of their ecosystems, and no longer need the protections of the ESA. NMFS will consider all substantive comments and information presented during the public comment period in the course of finalizing this Plan.

Dated: June 29, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–10559 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.062706C]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of an application to renew and to modify a scientific research permit; request for comments.

SUMMARY: Notice is hereby given that NMFS has received an application to renew and modify a permit for scientific research from the National Park Service (NPS) in Point Reyes Station, CA (1046). The permit would affect federally endangered Central California Coast coho salmon, threatened California Coastal Chinook salmon, and threatened Central California Coast steelhead. This document serves to notify the public of the availability of the permit application for review and comment.

DATES: Written comments on the permit application must be received no later than 5 p.m. Pacific Standard Time on August 7, 2006.

ADDRESSES: Comments submitted by e-mail must be sent to the following address: *FRNpermits.SR@noaa.gov*. The application and related documents are available for review by appointment, for Permit 1046 Modification 2: Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 315, Santa Rosa, CA 95404 (ph: 707–575–6097, fax: 707–578–3435).

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn at phone number 707–575–6097, or e-mail: *Jeffrey.Jahn@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to federally endangered Central California Coast coho salmon (*Oncorhynchus kisutch*), threatened California Coastal Chinook salmon (*O. tshawytscha*), and threatened Central California Coast steelhead (*O. mykiss*).

Renewal and Modification Request Received

NPS requests to renew and modify a 5-year permit (1046) for take of juvenile Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead to monitor out-migrating salmonid smolts in Olema Creek, Pine Gulch, and Redwood Creek watersheds in Marin County, California. NPS requests authorization for an estimated annual non-lethal take of 9,875 juvenile Central California Coast coho salmon, 750 juvenile California Coastal Chinook salmon, and 9,875 juvenile Central California Coast steelhead, with no more than 3 percent unintentional mortality to result from capture (by fyke-net trap or pipe trap), handling, and release of fish. NPS also requests authorization for an estimated annual non-lethal take of 2,625 juvenile Central California Coast coho salmon, 250 juvenile California Coastal Chinook salmon, and 2,625 juvenile Central California Coast steelhead, with no more than 5 percent unintentional mortality to result from capture (by fyke-net trap or pipe trap), handling, passive integrated transponder (PIT) tagging, fin-clipping, and release of fish.

NPS requests take of juvenile Central California Coast coho salmon and Central California Coast steelhead to conduct a juvenile salmonid diet composition study in Olema Creek, Pine Gulch, and Redwood Creek watersheds in Marin County, California. NPS requests authorization for an estimated annual non-lethal take of 250 juvenile Central California Coast coho salmon and 150 juvenile Central California Coast steelhead, with no more than 5 percent unintentional mortality to result from capture (by fyke-net trap, pipe trap, or electrofishing), handling, stomach sampling (a process during which a blunt hypodermic syringe is used to flush stomach contents out of the esophagus), and release of fish.

NPS requests take of previously dead adult carcasses of Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead to collect genetic information on spawning salmonids in the following watersheds: Olema Creek, Lagunitas Creek, Pine Gulch, Redwood Creek, and Easkoot Creek in Marin County, California; West Union Creek, Martini Creek, San Vicente Creek, and Denniston Creek in San Mateo County, California; and Alhambra Creek and Frankin Creek in Contra Costa County, California. NPS requests authorization to handle, tissue sample, and release an estimated 550 Central California Coast coho salmon adult carcasses, 150 California Coastal Chinook salmon adult carcasses, and 750 Central California Coast steelhead adult carcasses annually. NPS does not request any take of live adult salmonids for this study.

NPS requests take of adult Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead to conduct adult spawner population monitoring, population abundance, fish migration, and population genetics studies in

Olema Creek, Pine Gulch, and Redwood Creek in Marin County, California. NPS requests authorization for an estimated annual non-lethal take of 500 adult Central California Coast coho salmon, 200 adult California Coastal Chinook salmon, and 500 adult Central California Coast steelhead, with no more than 3 percent unintentional mortality to result from capture (by weir-trap), handling, tagging (with an external anchor tag), and release of fish.

NPS requests take of juvenile Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead to conduct summer fish population monitoring in the following watersheds: Olema Creek, Lagunitas Creek, Pine Gulch, Redwood Creek, and Easkoot Creek in Marin County, California; West Union Creek, Martini Creek, San Vicente Creek, and Denniston Creek in San Mateo County, California; and Alhambra Creek and Frankin Creek in Contra Costa County, California. NPS requests authorization for an estimated annual non-lethal take of 9,500 juvenile Central California Coast coho salmon, 50 juvenile California Coastal Chinook salmon, and 11,500 juvenile Central California Coast steelhead, with no more than 3 percent unintentional mortality to result from capture (by seine or electrofishing), handling, fin-clipping, scale-sampling, and release of fish.

NPS requests take of juvenile Central California Coast coho salmon, California Coastal Chinook salmon, and Central California Coast steelhead to conduct fish rescue and relocation efforts of stranded salmonids in dry streams in the following watersheds: Olema Creek, Lagunitas Creek, Pine Gulch, Redwood Creek, and Easkoot Creek in Marin County, California; West Union Creek, Martini Creek, San Vicente Creek, and Denniston Creek in San Mateo County, California; and Alhambra Creek and Frankin Creek in Contra Costa County, California. NPS requests authorization for an estimated annual non-lethal take of 5,000 juvenile Central California Coast coho salmon, 50 juvenile California Coastal Chinook salmon, and 5,200 juvenile Central California Coast steelhead with no more than 5 percent unintentional mortality to result from capture (by seine or electrofishing), handling, transport, and release of fish.

NPS requests take of juvenile Central California Coast coho salmon and Central California Coast steelhead to conduct juvenile salmonid winter movement and habitat utilization studies in Olema Creek, Pine Gulch, and Redwood Creek watersheds in Marin County, California. NPS requests authorization for an estimated annual non-lethal take of 3,000 juvenile Central California Coast coho salmon and 3,000 juvenile Central California Coast steelhead, with no more than 3 percent unintentional mortality to result from capture (by seine or electrofishing), handling, and release of fish. NPS also requests authorization for an estimated annual non-lethal take of 2,000 juvenile Central California Coast coho salmon and 2,000 juvenile Central California Coast steelhead, with no more than 5 percent unintentional mortality to result from capture (by seine or electrofishing), handling, PIT tagging, fin-clipping, and release of fish.

Dated: June 29, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–10557 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Privacy Act of 1974; System of Records

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the United States Patent and Trademark Office (USPTO) is amending the system of records currently listed under ''COMMERCE/PAT–TM–10 Patent Deposit Accounts System.'' This action is being taken to update the Privacy Act notice and to include user profiles for electronic funds transfers (EFT). The system of records will also be renamed ''COMMERCE/PAT–TM–10 Deposit Accounts and Electronic Funds Transfer Profiles.'' We invite the public to comment on the amendments noted in this publication.

DATES: Written comments must be received no later than August 7, 2006. The amendments will become effective as proposed on August 7, 2006, unless the USPTO receives comments that would result in a contrary determination.

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

- E-mail: *Tamara.McClure@uspto.gov.*
- Fax: (571) 273–6500, marked to the attention of Tamara McClure.
- Mail: Tamara McClure, Office of Finance, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

All comments received will be available for public inspection at the USPTO Public Search Facility, Madison East Building—1st Floor, 600 Dulany Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Director, Office of Finance, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, (571) 272–6400.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) is giving notice of an amendment to a system of records that is subject to the Privacy Act of 1974. This system of records maintains information on deposit accounts that may be used by customers to pay fees for processing and services related to patents, trademarks, and information products. The USPTO is revising this system of records to include user profiles for electronic funds transfers (EFT), which provide customers with another method for paying patent and trademark fees. The Privacy Act notice is also being updated with current address information for the system location and system manager. The categories of individuals covered by the system, categories of records in the system, routine uses of records maintained in the system, and other system descriptions are being updated to include information regarding EFT user profiles and to reflect current practice. The authority for maintenance of the system and rule references for the notification procedure and contesting record procedures are being updated to correspond to the current statutes and rules for those items as related to the USPTO.

Due to the addition of information concerning EFT user profiles, the name of the system of records in this Privacy Act notice is being changed to ''COMMERCE/PAT–TM–10 Deposit Accounts and Electronic Funds Transfer Profiles.'' The amended system of records notice is published in its entirety below.

COMMERCE/PAT–TM–10

SYSTEM NAME:

Deposit Accounts and Electronic Funds Transfer Profiles.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Finance, Receipts Accounting Division, United States

Patent and Trademark Office, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; Office of the Chief Information Officer, United States Patent and Trademark Office, Madison West Building, 600 Dulany Street, Alexandria, VA 22314.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registered patent attorneys and agents and other members of the public who maintain deposit accounts or make electronic funds transfer (EFT) payments to pay the cost of products and services rendered by the United States Patent and Trademark Office (USPTO).

CATEGORIES OF RECORDS IN THE SYSTEM:

For deposit accounts: Name, address, telephone number, fax number, contact e-mail address, taxpayer ID number, Agency Location Code (ALC), deposit account number, type of account, authorized users list, access code, and financial transactions with the USPTO. For EFT: Bank account holder's name, address, bank name, bank routing number, bank account number and type of account, contact phone number, and contact e-mail address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 2 and 41 and 15 U.S.C. 1113.

PURPOSE(S):

The USPTO collects customer financial information for fee processing. Under 35 U.S.C. 41 and 15 U.S.C. 1113, as implemented in 37 CFR 1.16–1.28, 2.6–2.7, and 2.206–2.209, the USPTO charges fees for processing and other services related to patents, trademarks, and information products. This system of records contains the information necessary to allow customers to establish deposit accounts at the USPTO, maintain existing accounts, or charge the appropriate fee amount to the appropriate deposit account. This system of records also allows customers to establish and maintain a user profile in order to make fee payments from their bank accounts by EFT.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses Nos. 1–5, 9–10 and 13, as found at 46 FR 63501–63502 (December 31, 1981). The financial information is used to establish and maintain deposit accounts and EFT user profiles for USPTO customers and to validate and process fee sales. Account information may also be disclosed to financial institutions for verification and processing of transactions. For EFT payments, the contact phone number and e-mail address are used in order to communicate with the customer in case there are any problems with the EFT information or the EFT fee sale. After a sale is completed, the information is stored as a historical transaction along with the identifying mark of the sale item. This historical information is used to verify that a customer has paid the appropriate fees for their goods or services.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm and magnetic storage media.

RETRIEVABILITY:

Deposit account records may be retrieved by: Deposit account number, holder name, and access code. EFT records may be retrieved by: Bank routing number and bank account number. The files are searchable in a database available only to authorized staff.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Where information is retrievable by terminal, all appropriate system safeguards (hardware and software) are utilized. Financial information is collected using appropriate encryption technology and records are stored on a secure server. Access to electronic records is limited to key personnel and is restricted to the specific functions required by their duties. System operators and administrators are trained to keep financial information secure.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the series record schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Finance, United States Patent and Trademark Office, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314.

NOTIFICATION PROCEDURE:

Information may be obtained from the Privacy Officer, Office of General Law, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450. Requesters should provide name, account information, and record sought, pursuant to the inquiry provisions appearing in 37 CFR Part 102 Subpart B.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The rules for access, contesting contents, and appealing initial determinations by the individual concerned appear in 37 CFR Part 102 Subpart B. Requests from individuals should be addressed to the same address as stated in the notification section above.

RECORD SOURCE CATEGORIES:

Subject individuals and those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 29, 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. E6–10526 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2006–0034]

Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) uses the Small Business Administration (SBA) size standard for the purpose of paying reduced patent fees as its size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. The Small Business Administration Office of Advocacy (SBA-Advocacy) has questioned whether this is the appropriate size standard for conducting an analysis or making a certification under the Regulatory Flexibility Act. Pursuant to the Regulatory Flexibility Act, the USPTO is providing this opportunity for public comment on the establishment of

the SBA's definition of ''small business concern'' for the purpose of paying reduced patent fees as the definition of ''small business concern'' for Regulatory Flexibility Act purposes for patent-related regulations.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before August 7, 2006. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to *rfa-patents.comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Christina T. Donnell. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Christina T. Donnell, Senior Petition Attorney, Office of Petitions, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–3211, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Christina T. Donnell.

SUPPLEMENTARY INFORMATION: The patent statute provides that ''fees charged under [35 U.S.C. 41](a), (b) and (d)(1) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Director.'' 35 U.S.C. 41(h)(1). The SBA defines a small business concern for the purpose of paying reduced patent fees as one: ''(a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this section.'' 13 CFR 121.802.

The USPTO uses the SBA size standard for the purpose of paying reduced patent fees in 13 CFR 121.802 as the size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See e.g., Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan*, 69 FR 56481, 56530 (Sept 21, 2004) (discussion indicating that small entities for purposes of Regulatory Flexibility Act are considered a subset of the small entities for purposes of paying reduced patent fees). The SBA-Advocacy, however, has questioned whether the USPTO's size standard is under-inclusive because it excludes ''any business concern that has assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under [13 CFR 121.802].'' 13 CFR 121.802(b).

The size standard set forth in 13 CFR 121.802 is the size standard ''for the purpose of paying reduced patent fees'' and thus appears to be limited to payment of patent fees. *See* 13 CFR 121.801. The SBA small business size standards are set forth in 13 CFR 121.201. The USPTO uses the SBA size standard for the purpose of paying reduced patent fees as its size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act because the USPTO has no business need (other than to conduct an analysis or make a certification under the Regulatory Flexibility Act) to collect information from patentees and patent applicants concerning whether they are a small business concern using the size standards set forth in 13 CFR 121.201, and thus, the USPTO does not collect this information. The USPTO is proposing to use the size standard set forth in 13 CFR 121.802 as its size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act to avoid the need to collect information from patentees and patent applicants concerning whether they are a small business concern using the size standards set forth in 13 CFR 121.201.

The Regulatory Flexibility Act permits an agency head to establish, for purposes of Regulatory Flexibility Act analysis and certification, one or more definitions of ''small business concern'' that are appropriate to the activities of the agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment. *See* 5 U.S.C. 601(3) and 13 CFR 121.903(c). Therefore, the USPTO is publishing for comment a definition of small business concern for purposes of the USPTO conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. Specifically, the USPTO's definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition.

Dated: June 28, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–10564 Filed 7–5–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technology Vectors will meet in closed session on *July 11 and 12, 2006:* at Strategic Analysis, Inc. (SAI), 3601 Wilson Boulevard, Suite 500, Arlington, VA. This meeting will continue to map the study's direction

and begin discussion on what will be the Technology Vectors DoD will need for the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: review previous attempts by DoD to identify critical technologies in order to derive lessons that would help illuminate the current challenge; identify the National Security objectives for the 21st century and the operational missions that U.S. military will be called upoon to support these objectives; identify new operational capabilities needed for the proposed missions; identify the critical science technology, and other related enablers of the desired capabilities; assess current S&T investment plans' relevance to the needed operational capabilities and enablers and recommend needed changes to the plans; identify mechanisms to accelerate and assure the transition of technology into U.S. military capabilities; and review and recommend changes as needed, the current processes by which national security objectives and needed operational capabilities are used to develop and prioritize science, technology, and other related enablers, and how those enablers are then developed.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by section 10(a) of the Federal Advisory Committee Act and § 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

C.R. Choate,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6009 Filed 7–5–06; 8:45am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meetings

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on *July 20–21, 2006;* at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting continues the task force's work and will consist of a FOUO briefing and the remaining is executive session on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or via phone at (703) 571–0083.

C.R. Choate,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–6010 Filed 7–5–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of the information collection listed at the end of this notice. Comments are invited on: (a) Whether the extended information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this collection must be received on or before August 7, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to: Jeffrey Martus, IM–11/Germantown Building, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585–1290; or by fax at 301–903–9061 or by e-mail at *Jeffrey.martus@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeffrey Martus at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The information collection package listed in this notice for public comment include the following:

(1) *OMB No.:* 1910–1000.

(2) *Package Title:* Personal Property.

(3) *Type of Review:* Renewal.

(4) *Purpose:* This information collection provides the Department with the information necessary for the management, control, reutilization, and

disposal of government personal property.

(5) *Respondents:* 176.

(6) *Estimated Number of Burden Hours:* 3,960.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91.

Issued in Washington, DC on June 28, 2006.

Sharon A. Evelin,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–10561 Filed 7–5–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the Draft Environmental Assessment for the Proposed Infrastructure Improvements for the Yucca Mountain Project, Nevada

AGENCY: U.S. Department of Energy.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability, and the opportunity for public review and comment, of a draft environmental assessment (EA) (DOE/EA–1566) that examines the impacts of a proposal by the Department of Energy (DOE) to repair, replace, or improve certain facilities, structures, roads, and utilities (collectively referred to as *infrastructure*) for the Yucca Mountain Project. The proposed action would enhance safety at the project and enable DOE to safely continue ongoing operations, scientific testing, and maintenance until such time as the Nuclear Regulatory Commission decides whether to authorize construction of a repository.

DATES: Comments should be submitted to DOE no later than August 7, 2006. DOE will consider comments submitted after this date to the extent practicable.

ADDRESSES: Comments, or requests for copies of the draft EA, should be sent to Dr. Jane Summerson, EA Document Manager, United States Department of Energy, 1551 Hillshire Drive, Las Vegas, NV 89134. Requests for copies of the draft EA may also be made by calling 1–800–225–6972. The draft EA and electronic comment forms are available at *http://www.ocrwm.doe.gov*. Comments may also be faxed to 1–800–967–0739.

FOR FURTHER INFORMATION CONTACT: Dr. Jane Summerson, EA Document Manager, at the above address or at 1–800–225–6972.

SUPPLEMENTARY INFORMATION: The proposed action is to repair, replace, or improve certain infrastructure at Yucca Mountain over a two-year period to enhance safety at the project and to enable DOE to continue safely conducting operations, scientific testing, and routine maintenance until such time as the Nuclear Regulatory Commission (NRC) decides whether to authorize construction of a repository. For purposes of analysis in this EA, DOE assumes this period could be up to 10 years in duration. This EA does not, however, consider or include any actions beyond an NRC decision on construction authorization. The main elements of the proposed action are as follows:

- Construct up to 33 miles of new and replacement roads (with two options for an access road)
- Construct up to 20.6 miles of new 138 kV power lines (with two options for a main power line)
- Develop a Central Operations Area consisting of six support buildings to replace existing infrastructure that is nearing or, in some instances, has exceeded its expected design and operational life
- Site, repair, and construct other facilities and structures for the Yucca Mountain Project

Under both the proposed action and the no-action alternative, ongoing operations, scientific testing, and routine maintenance would continue to be considered.

Some portions of the roads evaluated in this EA cross or run parallel to floodplains. Therefore, this EA includes a floodplain and wetlands assessment in compliance with DOE Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022).

DOE will consider comments received (see **DATES** and **ADDRESSES**, above) in finalizing the EA. Based on the final EA, DOE will determine whether to prepare an environmental impact statement or issue a finding of no significant impact if appropriate for the proposed action.

Issued in Washington, DC, on June 29, 2006.

Edward F. Sproat, III,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. E6–10563 Filed 7–5–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–963–001]

Central Maine Power Company; Notice of Amendment To Filing

June 21, 2006.

On June 8, 2006, Central Maine Power filed an answer to a protest providing additional information in support of its request recover Regional Transmission Organization formation costs in its transmission rates. This additional information constitutes an amendment to Central Maine Power's pending filing in Docket No. ER06–963–000.

Comment Due Date: 5 p.m. Eastern Time, June 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10486 Filed 7–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

June 21, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No.:* 2642–013.

c. *Date Filed:* April 3, 2006.

d. *Applicant:* Garkane Energy Cooperative, Inc.

e. *Name of Project:* Glen Canyon-Paria Transmission Line Project.

f. *Location:* The project is located in Kane County, Utah, and Coconino County, Arizona. The project occupies lands of the United States managed by the Bureau of Reclamation and the National Park Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Mike Avant, Engineering Manager, Garkane Energy Cooperative, Inc., 1802 South 175 East, Kanab, Utah 84741, (435)644–5026, Fax (435)644–8120.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the issuance date of this notice.

k. *Description of Request:* In a July 13, 2000 order, the Commission made a finding that the subject transmission line is not required to be licensed. The Commission stated in that order that the license will remain in effect until its expiration date or until the license is surrendered. In the current proceeding, the licensee filed an application to surrender its transmission line license, and included in its filing information about obtained individual rights of way for the continued operation of the line.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10484 Filed 7–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–378–000]

Minnesota Energy Resources Corporation; Notice of Filing

June 21, 2006.

Take notice that on May 31, 2006, Minnesota Energy Resources Corporation (MERC) filed an application pursuant to 18 CFR 284.224 and 284.123(b)(2) of the Commission's regulations, for a limited jurisdiction blanket certificate authorizing it to engage in non-discriminatory sales and/or transportation of natural gas subject to the jurisdiction of the Commission through intrastate facilities in the state of Minnesota and for approval of the rates for such service. This certificate is needed so that MERC can sell and transport to Aquila, Inc. (Aquila) a local distribution company with a service territory in Iowa. Gas transported and sold to Aquila will be delivered to 11 small and residential customers in Silver Lake, Iowa. The annual sales to Aquila will be approximately 11,000 therms. In order to permit MERC to close on its purchase of the Minnesota facilities and initiate service thereunder, MERC requests expedited Commission approval of the certificate application and rate proposal on or before July 1, 2006 as described in its application which is on file with the Commission and open for public inspection.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time June 26, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10485 Filed 7–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

June 21, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–131–000.

Applicants: Sunbury Generation, LLC; Sunbury Holdings, LLC; Corona Power, LLC.

Description: Sunbury Generation, LLC, et al submit their joint application for authorization to transfer 100% of membership interests to Corona Power, LLC, pursuant to Section 203 of the Federal Power Act.

Filed Date: 6/15/2006.

Accession Number: 20060620–0109.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: EC06–132–000.

Applicants: Southern Power Company; Rowan County Power, LLC; Progress Genco Ventures, LLC; Progress County Power, LLC

Description: Southern Power Company; et al, submit a joint application for approval of the disposition of jurisdictional facilities pursuant to Section 203 of the Federal Power Act.

Filed Date: 6/16/2006.

Accession Number: 20060620–0232.

Comment Date: 5 p.m. Eastern Time on Friday, July 7, 2006.

Docket Numbers: EC06–133–000.

Applicants: Fox Energy Company LLC; Calpine Fox LLC.

Description: Calpine Fox LLC and Fox Energy Co LLC submit a joint application for authorization to dispose of jurisdictional facilities, pursuant to Section 203 of the Federal Power Act.

Filed Date: 6/15/2006.

Accession Number: 20060620–0344.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–980–013.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Co submits an informational filing showing the implementation of their formula rate for the charges that became effective 6/1/06.

Filed Date: 6/15/2006.

Accession Number: 20060620–0114.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER00–1053–018.

Applicants: Maine Public Service Company.

Description: Maine Public Service Co submits an informational filing setting forth the changed open access transmission tariff charges effective 6/1/06 with back-up materials.

Filed Date: 6/15/2006.

Accession Number: 20060620–0103.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER03–683–010.

Applicants: California Independent System Operator.

Description: California Independent System Operator Corp submits an Update re the Provision of Refunds, pursuant to Commission Order issued 5/30/03.

Filed Date: 6/15/2006.

Accession Number: 20060620–0102.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER04–691–076.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Section 38.9.1(A) of its OAT&EM Tariff, Third Revised Volume No. 1.

Filed Date: 6/15/2006.

Accession Number: 20060616–0292.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER05–6–069; EL04–135–072; EL02–111–089; EL03–212–085.

Applicants: Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C.; Ameren Services Company.

Description: PJM Transmission Owners submits a revision to its Attachment R tariff sheets, correcting the applicable 2002 Lost Revenues numbers for its 5/26/06 filing.

Filed Date: 6/15/2006.

Accession Number: 20060616–0293.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER05–1284–002.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Co submits its corrected tariff sheets 60–73 in compliance with the Commission's 5/19/06 order.

Filed Date: 6/16/2006.

Accession Number: 20060616–0294.

Comment Date: 5 p.m. Eastern Time on Friday, July 7, 2006.

Docket Numbers: ER06–734–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits a Large Generator Interconnection Agreement with FPL Energy Green Lake Wind and American Transmission Co. LLC in compliance with FERC's 5/16/06 Order.

Filed Date: 6/15/2006.

Accession Number: 20060616–0295.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER06–818–001.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co submits revised tariff sheets to reflect its ISO Wholesale TRBAA, pursuant to FERC's letter order issued 5/31/06.

Filed Date: 6/15/2006.

Accession Number: 20060616–0299.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER06–900–001.

Applicants: Vermont Transco L.L.C; Central Vermont Public Service Corporation; Green Mountain Power Corporation.

Description: Vermont Transco, LLC et al submits additional signatures and substitute pages to correct their 4/21/06 filing.

Filed Date: 6/9/2006.

Accession Number: 20060620–0104.

Comment Date: 5 p.m. Eastern Time on Friday, June 30, 2006.

Docket Numbers: ER06–1126–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits the amended and restated Mutual Assistance Transmission Service Agreement with San Diego Gas & Electric Co and Imperial Irrigation District *et al.*

Filed Date: 6/13/2006.

Accession Number: 20060616–0015.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 5, 2006.

Docket Numbers: ER06–1138–000.

Applicants: Fox Energy Company LLC.

Description: Fox Energy Co, LLC submits its application for market-based rate authority under section 205 of the FPA, for authority to amend rate schedule for the sales of reactive power and expedited consideration for waivers and pre-approvals.

Filed Date: 6/15/2006.

Accession Number: 20060620–0105.

Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: ER06–1139–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits a Service Agreement for Wholesale Distribution Service with the City of Corona, California.

Filed Date: 6/16/2006.

Accession Number: 20060620–0101.

Comment Date: 5 p.m. Eastern Time on Friday, July 7, 2006.

Docket Numbers: ER06–1141–000.

Applicants: American Electric Power Service Corporation; Indianan and Michigan Power Company.

Description: Indiana and Michigan Power Co submits its Interconnection and Local Delivery Service Agreement with the Village of Paw Paw, Michigan.

Filed Date: 6/16/2006.

Accession Number: 20060620–0313.

Comment Date: 5 p.m. Eastern Time on Friday, July 7, 2006.

Docket Numbers: ER06–1143–000.
Applicants: MATEP LLC.
Description: MATEP LLC submits its application for market-based rate authority for its FERC Electric Tariff, Original Volume 1.
Filed Date: 6/16/2006.
Accession Number: 20060620–0311.
Comment Date: 5 p.m. Eastern Time on Friday, July 7, 2006.

Docket Numbers: ER06–1144–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits its Interconnection Service Agreement with Brookfield Power Piney & Deep Creek LLC and Pennsylvania Electric Co.
Filed Date: 6/16/2006.
Accession Number: 20060620–0335.
Comment Date: 5 p.m. Eastern Time on Friday, July 7, 2006.

Docket Numbers: ER06–1145–000.
Applicants: Xcel Energy Services Inc.; Public Service Company of Colorado.
Description: Public Service Co of Colorado submits an Amended and Restated Agreement for Interconnection Service with Blue Spruce Energy Center, LLC.
Filed Date: 6/16/2006.
Accession Number: 20060620–0310.
Comment Date: 5 p.m. Eastern Time on Friday, July 7, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES06–53–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group, Inc submits its application for authority to issue additional 4, 343,295 shares of Company Common Stock in connection with the Long-Term Performance-Based Incentive Plan.
Filed Date: 6/7/2006.
Accession Number: 20060614–0078.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 28, 2006.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC06–12–000.
Applicants: Brookfield Asset Management Inc.
Description: Brookfield Asset Management, on behalf of its direct and indirect subsidiaries, submits a Notice of Self-Certification of Foreign Utility Company Status, pursuant to sections 366.1 and 366.7(a) of the Regulations.
Filed Date: 6/15/2006.
Accession Number: 20060615–5029.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: FC06–14–000.
Applicants: Centrica Barry Limited, Barrow Offshore Wind Limited; Braes of Doune Wind Farm (Scotland) Limited; Centrica (DSW) Limited; Centrica (IDW) Limited; Centrica (Lincs) Limited; Centrica (RBW) Limited; Centrica Brigg Limited; Centrica KL Limited; Centrica Langage Limited; Centrica KPS Limited; Centrica PB Limited; Centrica RPS Limited; Centrica SHB Limited; Glens of Foundland Windfarm Limited; Segebel SA.
Description: Centrica Barry Limited, et al submit a Notice of Self-Certification of Foreign Utility Company Status, pursuant to Section 366.1 of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5077.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH06–84–000.
Applicants: EnergySouth, Inc.
Description: EnergySouth, Inc. submits its Exemption Notification pursuant to Section 366.1 of PUCHA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5015.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–85–000.
Applicants: Barrick Gold Corporation; Barrick Goldstrike Mines, Inc.
Description: Barrick Gold Corp and Barrick Goldstrike Mines, Inc. submit their Exemption notification of section 366.3(b)(2)(iii) of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5024.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–86–000.
Applicants: PG&E Corporation.
Description: PG&E Corporation submits its Waiver Notification of Status as a Single-State Holding Co. System; pursuant to sections 366.21, 366.22, and 366.23 of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5040.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–87–000.
Applicants: Trans-Elect, Inc.; Trans-Elect Holding Company; Trans-Elect Michigan, LLC; Michigan Transco Holdings, Limited Partnership.
Description: Trans-Elect Holding Company, et al, submit their Notification of Wavier of sections 3.66.21, 366.22, and 366.23 of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5041.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–88–000.
Applicants: Merrill Lynch & Company, Inc.
Description: Merrill Lynch & Co, Inc submits a notification of exemption of sections 366.3(a) and 366.3(b) of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060616–0311.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–89–000.
Applicants: Energy West Resources, Inc.
Description: Energy West Inc. submits a request for exemption of section 366.3 of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060616–0298.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–90–000.
Applicants: Horizon Asset Management, Inc.
Description: Horizon Asset Management, Inc submits its notification of exemption of section 366.3(b)(2)(i)(C) of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060616–0310.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–91–000.
Applicants: Ironhill Transmission, LLC; International Transmission Holdings Limited Partnership; ITC Holdings Corp.
Description: Ironhill Transmission, LLC, et al submit a Joint Waiver Notification of Sections 366.(c)(3), 366.3(c)(1) and 366.5(c)(1) of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5088.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–92–000.
Applicants: UIL Holdings Corporation.
Description: UIL Holdings Corporation submits a Waiver Notification of sections 366.3(c)(1) and 366.4(c)(1) of PUHCA 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5094.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–93–000.
Applicants: Brookfield Asset Management Inc.
Description: Brookfield Asset Management Inc. submits an exemption notification of section 366.4(b)(1) of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5103.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–94–000.
Applicants: ATC Management Inc.
Description: ATC Management Inc. submits its Waiver Notification of sections 366.3 and 366.4 of PUHCA of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060615–5114.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–95–000.
Applicants: AES Corporation.
Description: AES Corporation submits a Waiver Notification of Status as Single-State Holding Co. System pursuant to sections 366.4(c)(1), et al. of PUHCA.
Filed Date: 6/15/2006.
Accession Number: 20060615–5115.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–96–000.
Applicants: Pinnacle West Capital Corporation.
Description: Pinnacle West Capital Corporation submits its Public Utility Holding Company Act of 2005 Waiver Request.
Filed Date: 6/15/2006.
Accession Number: 20060616–5044.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–97–000.
Applicants: ArcLight Capital Holdings, LLC.
Description: ArcLight Capital Holdings, LLC submits its exemption notification of section 366.4(b)(1) of Regulations.
Filed Date: 6/15/2006.
Accession Number: 20060615–4009.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–98–000.
Applicants: National Fuel Gas Company.
Description: National Fuel Gas Co. submits its Waiver Notification pursuant to the Commission's Order 667 under the Public Utility Holding Company Act of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060620–0204.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Docket Numbers: PH06–99–000.
Applicants: LGB Cap Rock LLC.
Description: LGB Cap Rock LLC submits Waiver Notification pursuant to the Commission's Regulations under the Public Utility Holding Company Act of 2005.
Filed Date: 6/15/2006.
Accession Number: 20060620–0203.
Comment Date: 5 p.m. Eastern Time on Thursday, July 6, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC.

There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10489 Filed 7–5–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–9–000]

RTO Border Utility Issues; Notice Postponing Technical Conference

June 21, 2006.

The Commission is postponing the technical conference on RTO border utility issues originally scheduled for July 10, 2006. The new date will be announced in a future notice.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10487 Filed 7–5–06; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

June 28, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contacts listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has requested OMB approval of this information collection under the emergency processing provisions of the Paperwork Reduction Act by July 20, 2006.

OMB Control Number: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form Number: FCC Forms 499A and 499Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,625 respondents; 17,465 responses.

Estimated Time per Response: 10–25 hours per quarterly filing; 13.5–25 hours per annual filing.

Frequency of Response: On occasion, one-time, quarterly and annual reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 263,230 hours.

Total Annual Cost: 0.

Privacy Impact Assessment: N/A.

Needs and Uses: This collection was submitted as a revision to an existing collection to obtain emergency clearance for FCC Forms 499–A and 499–Q (3060–0855). Universal Service obligations have been extended to Interconnected Voice over Internet Protocol Providers. The Federal Communications Commission (Commission) requires telecommunications carriers and other providers of telecommunications to contribute to the universal service fund. The Commission has found that interconnected VoIP providers are providers of interstate telecommunications. As such, the Commission has determined that interconnected VoIP providers should contribute to the universal service fund. By including interconnected VoIP providers in the contribution base, the Commission ensures that its contribution mechanism remains equitable, nondiscriminatory, and competitive neutral. The Commission determined that interconnected VoIP providers may contribute based on either an interim safe harbor amount, under which interconnected VoIP providers treat 64.9 percent of their telecommunications revenues as interstate; their actual interstate end-user telecommunications revenues; or an estimate of their interstate end-user telecommunications revenues as determined by a traffic study that has been approved by the Federal Communication Commission and submitted to USAC.

In addition, the Commission determined that to the extent wireless providers report revenue based on traffic studies, in lieu of reporting actual interstate end-user telecommunications revenues or the interim wireless safe harbor of 37.1 percent, such traffic studies must be filed with the Federal Communications Commission and the Universal Service Fund administrator.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–10474 Filed 7–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 27, 2006.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning this information collection(s) contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov*. If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0647.

Title: Annual Cable Price Survey and Supplemental Questions.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 758.

Estimated Time per Response: 2–7 hours.

Frequency of Response: Annual Reporting Requirement.

Total Annual Burden: 6,822 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This data collection represents a small number of supplemental questions needed to complete the 2006 report on cable industry prices. The Commission received OMB approval for the Annual Survey of Cable Industry Prices on February 7, 2006. Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming service, and equipment. The report must

compare the prices charged by cable operators subject to effective competition and those not subject to effective competition. The data from these supplemental questions are needed to complete this report.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–10476 Filed 7–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

June 26, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 7, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1058.

Title: FCC Wireless Telecommunications Bureau Application or Notification for Spectrum Leasing Arrangement or Private Commons Arrangement.

Form No.: FCC Form 608 (formerly known as FCC Form 603–T).

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 1,490.

Estimated Time per Response: 1–4 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 6,010 hours.

Total Annual Cost: $846,600.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them.

The Commission adopted and released a Second Report and Order (R&O) in FCC 04–167, WT Docket No. 00–230, which set out regulations and procedures that removed unnecessary barriers that inhibited the development of secondary markets in spectrum usage rights. Specifically, the R&O promoted the wider use of ''spectrum leasing'' by facilitating the ability of licensees in the Wireless Radio Services that hold ''exclusive'' authority to lease some or all of their spectrum usage rights to third parties for any amount spectrum and in any geographic area encompassed by the license, for any period of time within the terms of the license. In essence, the Commission has replaced the existing standard for assessing *de facto* control with an updated standard applicable for spectrum leasing that better accommodates evolutionary developments in the Commission's spectrum policies, technological advances, and marketplace trends. In the interest of administrative efficiency, the Commission now has created FCC Form 608 (formerly FCC Form 603–T) that pertains specifically to spectrum leasing arrangements. We recognize that, due to the transaction costs associated with leasing or other market factors, licensees and other parties may wish to utilize other types of arrangements involving opportunistic use of licensed spectrum. To that end, we adopt a ''private commons'' option distinct from either spectrum leases or other existing arrangements. The private commons option may be particularly well suited to meet the unique needs of market participants that incorporate ''smart'' or ''opportunistic'' use technologies within their bands.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–10477 Filed 7–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

June 28, 2006.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 7, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918. If you would like to obtain a copy of the information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLMENTARY INFORMATION:

OMB Control Number: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 18,498.

Estimated Time per Response: 26 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Total Annual Burden: 484,019 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action which may be necessary and advise the station licensee of any condition which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to ensure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–10478 Filed 7–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

June 26, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments September 5, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0745.

Title: Implementation of the Local Exchange Carrier Tariff Streamlining Provisions in the Telecommunications Act of 1996, CC Docket No. 96–187.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 67.

Estimated Time per Response: 1–55.9 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 3,934 hours.

Annual Cost Burden: $775,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) after this 60 day comment period as an extension (no change in requirements) in order to obtain the full three year clearance from them. The number of respondents has decreased from 1,520 to 67 from the last time this collection was submitted to OMB in 2003. The requested changes in burden for the total annual burden hours and annual costs have been revised to accurately reflect the most recent information available. Many local exchange carriers have chosen to participate in group filings for tariffs. This has resulted in a major adjustment to the number of respondents, estimated burden hours and annual costs. For instance, National Exchange Carrier Association (NECA) files for approximately 900 Local Exchange Carriers (LECs). This has drastically reduced the number of respondents for this collection.

The Commission issued these reporting, recordkeeping and third party disclosure requirements in CC Docket No. 96–187 in January 31, 1997. The rulemaking adopted measures to

streamline tariff filing requirements for LECs of the Telecommunications Act of 1996. In order to achieve a streamlined and de-regulatory environment for LEC tariff filings, LECs are required to file tariffs electronically.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E6–10480 Filed 7–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011839–003.

Title: Med-Gulf Space Charter Agreement.

Parties: Hapag-Lloyd Container Linie GmbH and Compania Sud Americana de Vapores S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment would delete CP Ships, add Hapag-Lloyd Container Linie GmbH, make corresponding changes throughout the agreement, change the name of the agreement, and restate the agreement.

Agreement No.: 201170.

Title: The Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement.

Parties: Port of Los Angeles and Port of Long Beach.

Filing Party: Heather M. Burns, Esq., Los Angeles City Attorney's Office, 425 S. Palos Verdes St., San Pedro, CA 90731.

Synopsis: The agreement would allow the parties to discuss and agree upon joint programs and strategies to improve port transportation infrastructure and decrease port-related pollution emissions. The parties request expedited review.

Dated: June 30, 2006.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–10546 Filed 7–5–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 010564NF.

Name: American World Alliance, Inc.

Address: 4130 Santa Fe Avenue, Long Beach, CA 91080.

Date Revoked: May 8, 2006.

Reason: Surrendered license voluntarily.

License Number: 019268N.

Name: Dispatch Services Logistics Air Limited.

Address: Unit 1, 13/F, Wong's Factory Blvd., 368–370 Sha Tsui Road, Tusen Wan, NT, Hong Kong.

Date Revoked: May 8, 2006.

Reason: Surrendered license voluntarily.

License Number: 001291F.

Name: Robert J. Semany & Co. dba Altransco.

Address: 930 E. Layfayette Blvd., Suite 203, Detroit, MI 48207.

Date Revoked: June 22, 2006.

Reason: Failed to maintain a valid bond.

License Number: 004633F.

Name: The Hawken Group, Inc.

Address: 13126 S. Broadway Street, Los Angeles, CA 90061.

Date Revoked: June 19, 2006.

Reason: Failed to maintain a valid bond.

License Number: 003103F.

Name: United Aero Marine Services, Inc.

Address: 5250 W. Century Blvd., Suite 407, Los Angeles, CA 90045.

Date Revoked: June 12, 2006.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E6–10545 Filed 7–5–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Horizon Lines of Guam, LLC, 4064 Colony Road, Suite 200, Charlotte, NC 28211. Officers: Brian Taylot, President (Qualifying Individual), Mar F. Labrador, Vice President.

Universal Freight Systems, Inc., 1601 Brummel Avenue, Elk Grove, IL 60007. Officer: Ada Chang, President (Qualifying Individual).

Grupo Delpa Corp, 1810 N.W. 96th Avenue, Doral, FL 33172. Officers: Lucila Rosario, Treasurer (Qualifying Individual), Cecilia M. Lima, President.

ACM International, Corp. dba ACM Cargo, 1141 Acadia Avenue, #2, Acadia, CA 91007. Officers: Yi Jie, Wan, Vice President (Qualifying Individual), Yun, Bai, President.

FIL Lines USA Inc., 175–01 Rockaway Blvd., Suite 305, Jamaica, NY 11434. Officers: Martin Huen, President (Qualifying Individual), Harry Taurani, Vice President.

TW Solutions Inc., 15–05 132nd Street, College Point, NY 11356. Officers: Hsin-Hauan Chen, President (Qualifying Individual).

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

D.C. Worldwide Logistics, LLC dba Transgroup, International dba Transfreight Express Lines dba

Transgroup International, 44965 Aviation Drive, Suite 303, Dulles, VA 20166. Officers: Greg Vernoy, Member (Qualifying Individual), Matthew Trachtman, Member/ Manager.

TBD Services, Inc. dba Transgroup International dba Transfreight Express Lines dba Transgroup International, 940 Aldrin Drive, Suite 110, Eagan, MN 55121. Officer: Michelle Lynn Frank, President (Qualifying Individual).

Watership Ltd, dba Transgroup International dba Transfreight Express Lines dba Transgroup International, 650 Atlanta South Parkway, Suite 100, Atlanta, GA 30349. Officers: Raymond L. Bachman, President (Qualifying Individual), Tamara Barnes, Secretary.

Idaho Specialized Transportation, Inc. dba Transgroup International dba Transfreight Express Lines dba Transgroup International, 1287 Boeing Street, Boise, ID 83705. Officers: Clay Sauer, President (Qualifying Individual), Jesper Bach, Vice President.

Gateway Logistics, LLC dba Transgroup International dba Transfreight Express Lines dba Transgroup International, 4700 Oakland Street, Suite 160, Denver, CO 80239. Officers: Laura Gravina, Vice President (Qualifying Individual), Linda Gravina, President.

World Cargo Express, Inc., 4701 W. Imperial Hwy., Suite 202, Inglewood, CA 90304. Officers: John Chang, President (Qualifying Individual), Gary Dorian, Vice President.

Fortune Logistics (USA) Inc., 3770 West Century Blvd., Inglewood, CA 90303. Officer: Paul Tak Po Chow, CEO (Qualifying Individual).

Dated: June 30, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–10544 Filed 7–5–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Midwest Community Bancshares, Inc., Marion, Illinois, to merge with C.P. Burnett & Sons, Inc., Eldorado, Illinois, and thereby indirectly acquire C.P. Burnett & Sons, Bankers, Eldorado, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. U.S. Bancorp, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Vail Banks, Inc., Avon, Colorado, and thereby indirectly acquire WestStar Bank, Vail, Colorado.

Board of Governors of the Federal Reserve System, June 30, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–10527 Filed 7–5–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Republic Bancorp Co., Orland Park, Illinois; to acquire up to 24.99 percent of the voting shares of Park Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Park Federal Savings Bank, Chicago, Illinois, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, June 30, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–10528 Filed 7–5–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Effect of the Federal Deposit Insurance Reform Act on the Consolidated Reports of Condition and Income

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice.

SUMMARY: On May 8, 2006, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a joint notice, with a request for comment, announcing the effect of the Federal Deposit Insurance Reform Act on the reporting of certain deposit-related data in the Consolidated Reports of Condition and Income (Call Report; FFIEC 031 and 041). The notice described regulatory reporting revisions being made to the Call Report effective June 30, 2006, primarily in response to an increase in the deposit insurance coverage for certain retirement plan deposits from $100,000 to $250,000. After considering the comments received on the agencies' notice, the agencies are providing additional information concerning the implementation of the regulatory reporting changes related to retirement plan deposits eligible for $250,000 in insurance coverage.

DATES: The regulatory reporting revisions related to certain retirement plan deposits take effect June 30, 2006, subject to transition guidance.

FOR FURTHER INFORMATION CONTACT:

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Long, Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, (202) 898–3907, Room MB–3064, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Banks file Call Report data with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of reporting banks and the industry as a whole. In addition, Call Report data provide the most current statistical data available for evaluating bank corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Report data are also used to calculate all banks' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

II. Current Actions

The Federal Deposit Insurance Reform Act of 2005 (Reform Act) (Pub. L. 109–171), enacted in February 2006, increased the deposit insurance limit for certain retirement plan deposit accounts from $100,000 to $250,000. The basic insurance limit for other depositor—individuals, joint accountholders, businesses, government entities, and trusts—remains at $100,000. The FDIC issued an interim rule to implement this increase in coverage and other provisions of the Reform Act pertaining to deposit insurance coverage effective April 1, 2006 (71 FR 14629).

Because the deposit insurance coverage for certain retirement plan deposits has increased while the insurance limit for deposit accounts in other ownership capacities has not changed, the agencies announced on May 8, 2006 (71 FR 26809), that data on the number and amount of retirement deposit accounts with balances within and in excess of the new $250,000 insurance limit will begin to be reported separately in the Call Report from data on the number and amount of other deposit accounts within and in excess of the $100,000 insurance limit (Schedule RC–O, Memorandum item 1). The agencies also stated that the Call Report instructions for reporting estimated uninsured deposits by banks with $1 billion or more in total assets (Schedule RC–O, Memorandum item 2) and for reporting fully insured brokered deposits (Schedule RC–E, Memorandum item 1.c) will be revised to reflect the new insurance limit for retirement deposit accounts. The agencies' announcement also advised that these reporting revisions would take effect June 30, 2006, the first report date following the effective date of the FDIC's interim rule and that, for the June 30 report date only, banks may provide reasonable estimates for any new or revised Call Report item for which the requested information is not readily available. After banks make any necessary changes to their systems and records, the agencies estimated that these deposit-related reporting changes would produce an average net increase of 0.5 hours per bank per year in the ongoing reporting burden of the Call Report.

The agencies received comments on their notice from America's Community Bankers (ACB), the Independent Community Bankers of America (ICBA), and the American Bankers Association (ABA).

ACB supported the Call Report revisions but expressed concern about the short amount of time for banks to implement the items. ACB urged the agencies to waive any penalties for reporting errors specific to the new or revised items in the June 30, 2006, Call Report. The agencies do not anticipate imposing monetary penalties on banks for such reporting errors in that Call Report.

The ICBA commented that the reporting revisions are not overly burdensome and the ability to report reasonable estimates in the June 30, 2006, Call Report is helpful. The ICBA added, however, that once necessary systems changes are made, the ongoing reporting burden from the revised reporting requirements would be 20 to 30 minutes per quarter rather than the 30 minutes per year that the agencies had estimated. The agencies will revise their estimate of the effect of the deposit-related reporting changes to an average net increase of 1.33 hours per bank per year in the ongoing reporting burden of the Call Report.

The ABA urged the agencies to delay the reporting revisions until the FDIC finalizes its interim rule on retirement deposit account insurance and banks have had time to make necessary systems changes. The ABA noted that the amount of time that banks have to prepare for these reporting revisions is shorter than usual and indicated that bank deposit records and systems do not clearly distinguish the types of retirement deposit accounts eligible for the higher insurance coverage from other accounts. It also asserted that there is uncertainty in the banking industry as to which retirement deposit accounts are eligible for the higher insurance coverage. To address these concerns, the agencies will implement the following transitional approach to

the Call Report revisions related to retirement deposit accounts.

First, because banks have long reported the total amount of deposits held in Individual Retirement Accounts (IRAs) and Keogh Plan accounts in Call Report Schedule RC–E, Memorandum item 1.a, these two types of retirement deposit accounts should already be identified in banks' deposit records and systems. All deposits held in IRAs and those deposits held in Keogh Plan accounts that are ''self-directed'' are eligible for the $250,000 insurance coverage. For IRAs, banks may provide reasonable estimates for the information to be reported in the revised Schedule RC–O and Schedule RC–E Memorandum items in their June 30 and September 30, 2006, Call Reports. For Keogh Plan accounts, banks may provide reasonable estimates of the portion of these accounts eligible for the $250,000 insurance coverage in the revised Schedule RC–O and Schedule RC–E Memorandum items in their June 30 and September 30, 2006, Call Reports. If a bank's existing deposit records and systems for Keogh Plan accounts provide insufficient information to allow the bank to make a reasonable estimate, the bank may treat all deposits held in Keogh Plan accounts as eligible for the $250,000 insurance coverage in these two Call Reports (even though some of these accounts may not be ''self-directed'' and, therefore, would not be eligible for the increased coverage).

Second, banks should determine whether they have other retirement deposit accounts eligible for the $250,000 insurance coverage (*i.e.*, accounts other than IRAs and Keogh Plan accounts). Banks may provide reasonable estimates for the information to be reported in the revised Schedule RC–O and Schedule RC–E Memorandum items in their June 30 and September 30, 2006, Call Reports. If a bank's existing deposit records and systems for these other retirement deposit accounts provide insufficient information to allow the bank to make a reasonable estimate, the bank may treat all of these deposit accounts as eligible for the $100,000 insurance coverage in these two Call Reports.

For the December 31, 2006, Call Report, banks would be expected to have made appropriate systems changes to enable them to report reasonably accurate data on all types of retirement deposit accounts eligible for the $250,000 insurance coverage. Therefore, banks would no longer be permitted to elect to treat all Keogh Plan accounts as eligible for the $250,000 insurance coverage and all other retirement deposit accounts as eligible for the $100,000 insurance coverage in the revised Schedule RC–O and Schedule RC–E Memorandum items in their December 31, 2006, Call Report. Thereafter, banks' deposit records and systems should enable them to report information on all retirement deposit accounts in these Call Report items in accordance with the applicable instructions.

In addition, the agencies have received inquiries concerning the reporting of brokered certificates of deposit issued in $1,000 amounts under a master certificate of deposit in the revised Schedule RC–O and Schedule RC–E Memorandum items. For these so-called ''retail brokered deposits,'' multiple purchases by individual depositors from an individual bank normally do not exceed the applicable deposit insurance limit (either $100,000 or $250,000), but under current deposit insurance rules the deposit broker is not required to provide information routinely on these purchasers and their account ownership capacity to the bank issuing the deposits. For purposes of reporting in the Call Report, these brokered certificates of deposit in $1,000 amounts are rebuttably presumed to be fully insured brokered deposits and should be reported in Schedule RC–E, Memorandum item 1.c.(1), ''Issued in denominations of less than $100,000.'' These deposits should also be included in Schedule RC–E, Memorandum item 2.b, ''Total time deposits of less than $100,000.'' For purposes of revised Schedule RCO, Memorandum item 1, the instructions state that multiple accounts of the same depositor should not be aggregated. Therefore, in the absence of information on account ownership capacity for retail brokered certificates of deposit in $1,000 amounts, which are rebuttably presumed to be fully insured brokered deposits, banks issuing these brokered deposits should include them in Schedule RC–O, Memorandum item 1, as ''Deposit accounts of $100,000 or less.''

Dated: June 27, 2006.

James Gillespie,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, June 29, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 27th day of June, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–6020 Filed 7–5–06; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

GENERAL SERVICES ADMINISTRATION

Establishment of a Transaction Fee for Transportation Services Provided for the GSA, Office of Global Supply

AGENCY: Federal Supply Service, GSA.

ACTION: Notice in response to comments on proposed rule.

SUMMARY: GSA published a notice in the **Federal Register** at 70 FR 73248 on December 9, 2005, and an extension to that notice at 70 FR 76455 on December 27, 2005, soliciting comments on the establishment of a 4% transaction fee for transportation services provided for the GSA, Office of Global Supply. Subsequent meetings were held with transportation service provider industries and the GSA, Office of Global Supply. This notice is in response to the comments GSA received.

FOR FURTHER INFORMATION CONTACT Ms. Mary Anne Sykes, Transportation Programs Branch, by telephone at 703–605–2889 or via email at *maryanne.sykes@gsa.gov*.

SUPPLEMENTARY INFORMATION: The proposed rule is applicable to the Freight Management Program (FMP), Standard Tender of Service (STOS), for transportation services provided to the Eastern Distribution Center (EDC), Burlington, NJ; Western Distribution Center (WDC), French Camp, CA; and the National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH). It applies to all transportation service providers (TSPs) transporting these shipments.

Comments were received from the following individual transportation service providers, their representatives, and various industry associations:

Associations

American Trucking Associations

National Motor Freight Traffic Association

Transportation Intermediaries Association

NYP, Inc.

Fiore Associates

Transportation Service Providers

Crossroad Carriers

Economy Transport, Inc.

Landstar System, Inc.

Tucker Company

General comments and issues raised were centered on the following topics:

- Economic justification/value proposition
- Fee is too high
- Oppose fee
- Overall increase to Government Cost
- Increase in TSP fees and administrative burden
- Fee must not apply to existing tenders
- TSP must be given time to adjust rates
- Fee must apply universally to all TSPs
- TSPs shouldn't collect and pay transaction fees

The following responses take into consideration the comments on the potential impact of the proposed rule on both GSA and the transportation industry.

GSA must fund its programs to remain viable and cover the cost of the services provided by the freight program. GSA's Federal Supply Service (FSS) has assessed an industrial funding fee for essentially all of its programs since Congress authorized GSA to charge fees for its services in 1987. The proposed 4% transaction fee aligns the Global Supply transportation services with GSA's funding mechanism for its other programs.

TSPs will realize additional savings through reduction in administrative requirements to process invoices. TSPs that provide transportation services for GSA, Global Supply will benefit from TMSS electronic billing, electronic rate submission, automated prepayment audit, faster payments, online transaction tracking, automated reports, and complete audit history trails.

After careful deliberations GSA decided to delay assessment of the 4% transaction fee until the TMSS pre-payment audit and payment modules are complete. TSPs will be required to remit the 4% fee for paid invoices directly to GSA quarterly instead of deducting the 4% fee from each invoice via TMSS prior to payment. The Final Rule outlining the collection method and implementation plan will be published in the **Federal Register** once the TMSS modules are complete. The proposed changes will be highlighted in a Request for Offers that will be issued for a special rate filing window that will be opened prior to implementation. GSA will monitor the shipment volume to determine if the 4% fee needs future adjustments. GSA wants to ensure that the appropriate percentage is being applied.

Dated: June 29, 2006.

Susan T. May,

Acting Director, Travel and Transportation Management Division (FBL), GSA.

[FR Doc. E6–10579 Filed 7–5–06; 8:45 am]

BILLING CODE 6820–89–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health Emergency Preparedness; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AN, Office of Public Health Emergency Preparedness, as last amended at 70 FR 5183–5184, dated February 1, 2005. This organizational change is primarily to realign the functions of OPHEP to more clearly delineate responsibilities for the various activities associated with advanced research and development and acquisition of medical countermeasures and emergency preparedness and response. The changes are as follows.

I. Under Part A, Chapter AN, ''Office of Public Health Emergency Preparedness (AN),'' delete in its entirety and replace with the following:

Section AN.00 Mission: On behalf of the Secretary, the Office of Public Health Emergency Preparedness (OPHEP) leads the Federal public health and medical response to acts of terrorism or nature, and other public health and medical emergencies. OPHEP is a component of the Public Health Service (PHS) and is responsible for ensuring a One-Deparmtent approach to developing public health and medical preparedness and response capabilities and leading and coordinating the relevant activities of the HHS Operating Division (OPDIV). The principal areas of program emphasis are (1) enhancement of State and local public health and medical preparedness—primarily health departments and hospitals; (2) development and use of National and Departmental policies and plans relating to the response to public health and medical threats and emergencies (e.g., Emergency Support Function (ESF) 8 of the National Response Plan (NRP), Homeland Security Presidential Directives (HSPD) 5 and 10, HHS's Concept of Operations Plans (CONOPS) for Public Health and Medical Emergencies and for the Incident Response Coordination Team (IRCT)); (3) coordination with relevant entities inside and outside HHS such as State, local and Tribal public health and medical officials, the private sector, the Departments of Homeland Security (DHS), Defense (DOD), Veterans Affairs (VA), Justice (DOJ), the Homeland Security Council (HSC) and National Security Council (NSC), other ESF 8 partner organizations and others within the National security community; (4) rapid public health and medical support to Federal, State, local and Tribal governments who may be responding to incidents of national significance or public health and medical emergencies; (5) coordination, support of, and participation in research, development and procurement activities related to public health emergency medical countermeasures destined for the Strategic National Stockpile, including under Project BioShield; (6) leadership in international programs, initiatives, and policies that deal with public health and medical emergency preparedness and response related to naturally occurring threats such as infectious deceases and deliberate threats from biologic, chemical, nuclear and radiation sources and (7) leadership and oversight on medical, science, and public health policies, issues, and programs.

Section 10.AN Organization: OPHEP is headed by the Assistant Secretary for Public Health Emergency Preparedness (ASPHEP), who reports directly to the Secretary, and includes the following components:

1. Immediate Office of the ASPHEP (ANA)
2. Office of the Public Health Emergency Medical Countermeasures (ANB)
3. Office of Preparedness and Emergency Operations (ANC)
4. Office of Medicine, Science and Public Health (ANF)
5. Office of Policy and Strategic Planning (ANE)

Section 20.AN Functions:

1. *Immediate Office of the ASPHEP (ANA).* The Immediate Office of the ASPHEP (IO/ASPHEP) provides executive and administrative direction to all OHEP components. The ASPHEP is the principal advisor to the Secretary on matters relating to public health and medical emergencies, whether resulting from acts of nature, accidents, or terrorism. The ASPHEP coordinates interagency interfaces between HHS, the Homeland Security Council, the National Security Council, other Federal Departments and Agencies, State, local and Tribal public health and medical

entities and the private sector. The ASPHEP directs and coordinates the Department's activities relating to protecting the U.S. population from acts of terrorism and other public health and medical threats and emergencies. The ASPHEP provides leadership in the coordination of activities for public health and medical emergency preparedness and represents the Department in working closely with DHS, DOD, VA, and other Federal Departments and Agencies.

2. *Office of Public Health Emergency Medical Countermeasures (ANB).* The Office of Public Health Emergency Medical Countermeasures (OPHEMC) is headed by a Director and is responsible for coordination of the Public Health Medical Countermeasures Enterprise (PHMCE). The PHMCE is a coordinated interagency effort to: (1) Define and prioritize requirements for public health medical emergency countermeasures, (2) coordinate research, early and late stage product development and procurement activities addressing the requirements and (3) set deployment and use strategies for medical countermeasures held in the Strategic National Stockpile.

OPHEMC undertakes public health modeling of population exposures to assist in determining requirements and assessing deployment and utilization strategies, supports late-stage medical countermeasure research and development to address prioritized requirements for addressing the health effects of naturally-occurring infectious diseases and deliberately released biologic, and chemical and radiation threats that could cause a public health emergency, facilitates collaboration among the Department of Health and Human Services agencies, relevant industries, academia, and others with respect to advanced product research and development, facilitates contacts between interested persons and companies interested in requirements set by the Food and Drug Administration regarding such products, and procures targeted medical countermeasures destined for the Strategic National Stockpile, including vaccines, antivirals, and diagnostics for pandemic preparedness authorized under the Project BioShield Act of 2004 (Pub. L. 108–276). OPHEMC is responsible for coordinating, supporting, and providing leadership and expert advice with respect to a public health medical countermeasure late stage advanced development and procurement. OPHEMC supports the ASPHEP by working with all scientific agencies of the Department, including the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), as well as other Governmental, private ,and nonprofit scientific entities.

3. *Office of Preparedness and Emergency Operations (ANC).* The Office of Preparedness and Emergency Operations (OPEO) is headed by a Director and is responsible for developing operational plans, analytical products, and developing and participating in training and exercises to ensure the preparedness of the Office, the Department, the Government and the public to respond to domestic and international public health and medical threats and emergencies. OPEO is also responsible for ensuring that OPHEP has the systems, logistical support and procedures necessary to coordinate the Department's operational response to acts of terrorism and other public health and medical threats and emergencies. OPEO leads the HHS and interagency planning and response activities required to fulfill HHS responsibilities under ESF #8 of the NRP and HSPD #10. OPEO manages the Secretary's Operations Center (SOC); trains and manages the Incident Response Coordination Team (IRCT); plans, implements, and evaluates Departmental and interagency response exercises and the HHS Continuity of Operations (COOP) and Continuity of Government (COG) programs. OPEO maintains a regional planning and response coordination capability. OPEO has operational responsibility for HHS functions related to the National Disaster Medical Systems (NDMS) and is also the primary operational liaison to emergency response entities within HHS (e.g., FDA, HRSA, SAMHSA, CDC), within the interagency community (e.g., HDS, VA, DoD), and the public. OPEO manages the continued planning for capabilities to meet public health and medical response missions, including development of Federal Medical Stations (FMS) and other mobile medical units. OPEO works to integrate mass casualty preparedness activities, through its surge capacity efforts, across local, State and Federal levels consistent with the National Incident Management System (NIMS) and the National Response Plan Catastrophic Incident Annex. In collaboration with DHS, OPEO coordinates preparedness grant activities across the Department in compliance with HSPD 8 and the National Preparedness Goal. OPEO is the primary OPHEP liaison with the Health Resources and Services Administration (HRSA) regarding its programs for hospital bioterrorism preparedness, volunteer health professionals and terrorism-related preparedness and response education and training for health care professionals. OPEO coordinates with CDC on public health preparedness issues and consults with the HHS scientific community on the inclusion of newly acquired countermeasures into response plans.

4. *Office of Medicine, Science and Public Health (ANF).* The Office of Medicine, Science and Public Health (OMSPH) is headed by a Director and is responsible for providing expert medical, scientific, and public health advice on domestic and international medical preparedness policies, programs, initiatives, and activities of OPHEP. OMSPH serves as the OPHEP liaison to health and science professional organizations for domestic and international issues. OMSPH carries out special scientific and public health related projects directly and works with others to establish activities, programs, policies, and standards to protect the public from acts of terrorism, naturally occurring infectious disease threats, and other natural or man-made public health threats. OMSPH coordinates OPHEP's overall influenza pandemic effort and works closely with HHS components (e.g., National Vaccine Program Office, Office of Global Health Affairs, CDC, NIH, and FDA), and other agencies and offices such as the Department of State, the U.S. Department of Agriculture (USDA) and the World Health Organization (WHO) to ensure that programs and plans for dealing with avian influenza and pandemic influenza are as effective as possible. OMSPH oversees the development of medical policies related to providing access to medical products, including those needed on an emergency basis as medical countermeasures to counteract terrorism or naturally occurring biological, chemical or radiological/nuclear threats. These policies and their implementation include use of investigational and emergency use authorities. OMSPH serves as the focal point in HHS for biosafety, biosecurity and dual use technology issues and is the liaison to the National Science Advisory Board on Biosecurity and to the State Department on the Biological and Chemical Weapons Convention. In addition to domestic issues and programs, OMSPH is the OPHEP focal point for all international activities related to public heath emergency preparedness. OMSPH supports the Early Warning Infectious Disease Surveillance (EWIDS) program at the national borders with Mexico and

Canada and works with other nations and multilateral organizations (e.g., WHO) in combating public health threats, emergencies, and bioterrorism by establishing bilateral and multilateral international arrangements to develop early warning surveillance and response capability for infectious disease outbreaks, including those involving potential bioterrorism agents. OMSPH provides leadership in the activities of the regional and multilateral groups including the Global Health Security Action Group (GHSAG) and the Security and Prosperity Partnership (SPP) and the implementation of the WHO International Health Regulations (IHR), in coordination with the Office of Global Health Affairs.

5. *Office of Policy and Strategic Planning (ANE).* The Office of Policy and Strategic Planning (OPSP) is headed by a Director and is responsible for policy formulation, analysis, coordination, and evaluation for preparedness, response, and strategic planning. In coordination with other OPHEP and Departmental offices, OPSP analyzes proposed policies, Presidential directives and regulations. OPSP also develops short and long-term policy and strategic objectives for OPHEP, and leads in the development and implementation of an integrated OPHEP approach to policy, strategy, and long-term, planning processes. On behalf of the ASPHEP, OPSP serves as the focal point for HSC/NSC policy coordination activities and represent the ASPHEP, as appropriate, in interagency meetings. The office undertakes studies of preparedness and response issues, identifying gaps in policy, and initiating policy planning and formulation to fill these gaps. OPSP takers the lead on special projects, initiatives, and policy analysis and evaluation as tasked by the ASPHEP.

II. *Continuation of Policy:* Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to the Office of Public Health Emergency Preparedness heretofore issued and in effect prior to the date of this reorganization are continued in full force and effect.

III. *Delegations of Authority:* All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

IV. *Funds, Personnel and Equipment:* Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment and other resources.

Dated: June 27, 2006.

Joe Ellis,

Assistant Secretary for Administration and Management.

[FR Doc. 06–6004 Filed 7–5–06; 8:45 am]

BILLING CODE 4150–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panels (SEP): HIV III—OPT-Out Testing in Emergency Department Settings, Program Announcement (PA) PS06–003

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): HIV III—OPT-Out Testing in Emergency Department Settings, PA PS06–003.

Time and Date: 12 p.m.–1 p.m., July 12, 2006 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''HIV III—OPT-Out Testing in Emergency Department Settings,'' PA PS06–003. Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–3.150(b)).

Contact Person for More Information: Jim Newhall, Ph.D., Scientific Review Administrator, Office of Public Health Research, CDC, 1600 Clifton Road NE, Mailstop D72, Atlanta, GA 30333, Telephone 404.639.4641.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 29, 2006.

Kathy Skipper,

Acting Director, Management Analysis and Services Office , Centers for Disease Control and Prevention.

[FR Doc. 06–6035 Filed 7–5–06; 8:45 am]

BILLING CODE 4163–18–P

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, Tools and Technology to Measure Menopausal Symptomotology.

Date: July 24, 2006.

Time: 8 a.m. to 5 p.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: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov*.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Tools and Technology to Measure Patient Adherence in CAM Research.

Date: July 25, 2006.

Time: 8 a.m. to 5 p.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: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine,

NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov*.

Dated: June 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5994 Filed 7–5–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Center for Research Resources Special Emphasis Panel, June 21, 2006, 2 p.m. to June 21, 2006, 4 p.m., National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Conference Room 1087, Bethesda, MD 20892 which was published in the **Federal Register** on May 31, 2006, 71 FR 30943.

The date of the meeting has been changed to July 18, 2006. The time and location remains the same. The meeting is closed to the public.

Dated: June 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5995 Filed 7–5–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institutes; 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 Human Genome Research Institute Special Emphasis Panel, Sequencing Technology RFA.

Date: July 18–19, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hotel Rouge, 1315 16th Street, Washington, DC 20036.

Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20582, 301–402–0838.

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 Human Genome Research Institute, Special Emphasis Panel, ELSI Public Consultation RFA.

Date: July 20, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW, Washington, DC 20037.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0383.

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. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5993 Filed 7–5–06; 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 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, Training in Computational Neuroscience: From Biology to Model and Back Again.

Date: June 29, 2006.

Time: 8:30 a.m. to 5 a.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Murat Oz, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Neuroscience Center, Rm. 229, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892, 301–435–1433, *moz2@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 Institute on Drug Abuse Special Emphasis Panel, Member Conflict.

Date: June 30, 2006.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@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 Drug Abuse Special Emphasis Panel, Member Conflict.

Date: July 18, 2006.

Time: 5 p.m. to 7 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: Murat Oz, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Neuroscience Center, Rm. 229, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892, 301–435–1433, *moz2@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5990 Filed 7–5–06; 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 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, Pharmacokinetic and Pharmacodynamic Studies for Medication Development.

Date: July 11, 2006.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Eric Zatman, 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) 435–1438.

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. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS).

Dated: June 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5991 Filed 7–5–06; 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 provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 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 disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, NIH Support for Conferences and Scientific Meetings.

Date: July 14, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Natcher Building, Room 3AN–12, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Arthur L. Zachary, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, (301) 594–2886, zacharya@nigms.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 Domestice 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 Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 26, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5992 Filed 7–5–06; 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 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 Child Health and Human Development Special Emphasis Panel, Extramural Associates Research Infrastructure Program.

Date: July 20–21, 2006.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jefferson Hotel, 1200 16th Street, NW., Washington, DC 20036.

Contact Person: Carla T. Walls, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Human Zona Pellucida Epitopes: Identification of Immuno-Contraception Candidate.

Date: July 25, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6100 Executive Blvd, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Characterization of the Molecular Events During Spermiation.

Date: July 26, 2006.

Time: 10:00 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Blvd., Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6884, *randhandi@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 27, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–5996 Filed 7–5–05; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration (USFA), Federal Emergency Management Agency (FEMA), Department of Homeland Security.

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Federal Emergency Management Agency announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Dates of Meeting: July 25, 2006.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: July 25, 2006, 1:30–4 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the Federal Emergency Management Agency announces that the committee meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before July 21, 2006.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

The National Fire Academy Board of Visitors is administered by the United States Fire Administration, which is currently being transferred to the newly created Preparedness Directorate of the Department of Homeland Security. During this transition FEMA, also part of the Department of Homeland Security, will continue to support this program as the new Directorate stands up. Ultimately this function will be transferred to the Preparedness Directorate.

Dated: June 28, 2006.

Charlie Dickinson,

Deputy U.S. Fire Administrator.

[FR Doc. E6–10492 Filed 7–5–06; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2006–0029]

RIN 1660-ZA05

Privacy Act System of Records; Amendment to Existing Routine Uses

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Notice of amendment to routine uses.

SUMMARY: In compliance with the requirements of the Privacy Act of 1974, as amended, FEMA gives notice that it proposes to revise its Disaster Recovery Assistance Files, FEMA/REG–2, to address important issues that arose in the aftermath of Hurricane Katrina.

EFFECTIVE DATE: The amended system of records will be effective August 7, 2006, unless comments are received that result in a contrary determination. The public, the Office of Management and Budget (OMB), and Congress are invited to comment on the amended system of records. The amended system of records will be applicable to major disasters or emergencies declared on or after July 6, 2006, unless comments are received that result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2006–0029 by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments;
- E-mail: *FEMA-RULES@dhs.gov.* Include the Docket ID in the subject line of the message;
- Fax: 202–646–4536 (not a toll-free number); or
- Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472; Maureen Cooney, Acting Chief Privacy Officer, Department of Homeland Security, 601 S. 12th Street, Arlington, VA 22202.

Instructions: All submissions received must include the agency name and Docket ID (if available) for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of General Counsel, 500 C Street, SW., Room 840, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: In compliance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, FEMA gives notice that it intends to make several changes to its system of records entitled, FEMA/REG–2, Disaster Recovery Assistance Files, which was last published in the **Federal Register** on November 15, 2004 (69 FR 65615). As a result of experiences during Hurricane Katrina and questions raised about FEMA's authority to share vital information needed to assist in disaster recovery and relief, FEMA is revising its Disaster Recovery Assistance Files system of records in several respects.

First, FEMA has modified the ''Purpose(s)'' section to add as a purpose of the system information sharing in the event of another Presidentially-declared major disaster or emergency that adversely impacts a significant portion of the United States. The information FEMA collects during its disaster assistance efforts can be of critical importance to State and local governments, private relief organizations, and law enforcement agencies, and although FEMA believes it has the authority to share information with these partners, it is revising its SORN to make transparent the fact that

such sharing is a purpose of the system of records.

Second, FEMA intends to add new routine uses that allow for information sharing with Federal agencies, State and local governments or other authorized entities for the purposes of reunifying families, locating missing children, voting, and with law enforcement entities in the event of circumstances involving an evacuation, sheltering, or mass relocation, for purposes of identifying and addressing public safety and security issues. These routine uses are being added to resolve any ambiguities about FEMA's authority to share information under these circumstances and to ensure that necessary information can be disseminated in an efficient and effective manner.

FEMA is also making some non-substantive editorial changes to its system notice. FEMA is eliminating routine uses that are related to internal, administrative processes including routine use ''(k) Private Relief Legislation,'' and ''(p) Freedom of Information Act (FOIA) Discussions with Other Agencies Regarding DHS Documents and Vice Versa.'' FEMA is deleting routine uses that are unnecessary including routine use ''(h) Requesting Information'' and routine use and ''(i) Requested Information.''

The proposed revisions to this system of records will not change the type or amount of information collected from individuals who apply for disaster assistance. Instead, the revisions will change with whom that information can be shared and for what purposes. FEMA believes that these revisions will allow it to more effectively provide a full range of disaster assistance and meet its responsibilities to share critical information with other Federal, State, and local government agencies as well as private entities involved in various aspects of disaster recovery and relief.

In accordance with the requirements of 5 U.S.C. 552a(r), a report on the revisions to this system notice has been provided to the Office of Management and Budget and to Congress.

DHS/FEMA–REG 2

SYSTEM NAME:

Disaster Recovery Assistance Files.

SYSTEM LOCATION:

National Processing Service Centers (NPSC) located at FEMA MD–NPSC, 6505 Belcrest Road, Hyattsville, MD 20782; FEMA VA–NPSC, 19844 Blue Ridge Mountain Road, Bluemont, VA 20135; FEMA TX–NPSC, 3900 Karina Lane, Denton, TX 76208; and FEMA PR–NPSC, Carr 8860, KM 1.1 Bldg T–1429, Trujillo Alto, PR 00976.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for disaster recovery assistance through three different mediums including: (a) electronically via the Internet, (b) by calling FEMA's toll-free number, or (c) through the submission of a paper copy of FEMA Form 90–69 following Presidentially-declared major disasters or emergencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records of registration for assistance (Form 90–69, Disaster Assistance Registration/Application) include individual applicants' names, addresses, telephone numbers, social security numbers, insurance coverage information, household size and composition, degree of damage incurred, income information, programs to which FEMA refers applicants for assistance, flood zones, location and height of high water level, and preliminary determinations of eligibility for disaster assistance.

(b) Inspection reports (Form 90–56, Inspection Report) contain individuals' identifying information and results of surveys of damaged real and personal property and goods, which may include individuals' homes and personal items.

(c) Temporary housing assistance eligibility determinations (Forms 90–11 through 90–13, 90–16, 90–22, 90–24 through 90–28, 90–31, 90–33, 90–41, 90–48, 90–57, 90–68 through 90–70, 90–71, 90–75 through 90–78, 90–82, 90–86, 90–87, 90–94 through 90–97, 90–99, and 90–101). These refer to approval and disapproval of temporary housing assistance and include: general correspondence, complaints, appeals and resolutions, requests for disbursement of payments, inquiries from tenants and landlords, general administrative and fiscal information, payment schedules and forms, termination notices, information shared with the temporary housing program staff from other agencies to prevent the duplication of benefits, leases, contracts, specifications for repair of disaster damaged residences, reasons for eviction or denial of aid, sales information after tenant purchase of housing units, and the status of disposition of applications for housing.

(d) Eligibility decisions for disaster aid from other Federal and State agencies (for example, the disaster loan program administered by the Small Business Administration, and disaster aid decisions of the State-administered Individual and Family Grants (IFG) and its successor program, Other Needs Assistance (ONA)) as they relate to determinations of individuals' eligibility for disaster assistance programs.

(e) State files, independently kept by the State, which contains records of persons who request disaster aid, specifically for IFG and its successor program, ONA, and administrative files and reports required by FEMA. As to individuals, the State keeps the same type of information as described above under registration, inspection, and temporary housing assistance records. As to administrative files and reporting requirements, the State uses forms 76–27, 76–28, 76–30, 76–32, 76–34, 76–35, and 76–38. This collection of information is essential to the effective monitoring and management of the IFG and the ONA Program by FEMA's Regional Office staff who have the oversight responsibility of ensuring that the State perform and adhere to FEMA regulations and policy guidance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5121–5206 and Reorganization Plan No. 3 of 1978.

PURPOSE(S):

To register applicants needing disaster assistance, to inspect damaged homes, to verify information provided by each applicant, to make eligibility determinations regarding an applicant's request for assistance, and to identify and implement measures to reduce future disaster damage, and for other purposes identified in the ''Routine Uses'' section below, resulting from a Presidentially-declared major disaster or emergency that adversely impacts a significant portion of the United States.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS or FEMA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(a) FEMA may disclose applicant information to certain agencies as necessary and as described below to prevent a duplication of efforts or a duplication of benefits in determining eligibility for disaster assistance. FEMA shall only release as much information as is necessary to enable the recipient agency to determine eligibility for that agency's particular assistance program(s). The receiving agency is not

permitted to alter or to further disclose our disclosed records to other disaster organizations. FEMA may make such disclosures under the following circumstances:

(1) To another Federal agency or State government agency charged with administering disaster relief programs to make available any additional Federal and State disaster assistance to individuals and households.

(2) When an applicant seeks assistance from a local government agency or a voluntary organization (as defined at 44 CFR 206.2(a)(27), as amended or superseded) charged under legislation or charter with administering disaster relief programs, and FEMA receives a written request from that local government or voluntary agency that includes the applicant's name, FEMA registration/application number, and damaged dwelling address. The written request must explain the type of tangible assistance being offered and the type of verification required before the assistance can be provided.

(3) To voluntary organizations (as defined at 44 CFR 206.2(a)(27), as amended or superseded) that have an established disaster assistance program to address the disaster-related unmet needs of disaster victims, are actively involved in the recovery efforts of the disaster, and either have a national membership, in good standing, with the National Voluntary Organizations Active in Disaster (NVOAD), or are participating in the disaster's Long-Term Recovery Committee. When a voluntary agency satisfies all of the criteria listed in this sub-paragraph, FEMA may release lists of individuals' names, contact information, and their FEMA inspected loss amount to the volunteer agency for the sole purpose of providing additional disaster assistance. FEMA shall release this information only while the period for assistance for the current disaster is open.

(b) When an individual's eligibility, in whole or in part, for a DHS/FEMA disaster assistance program depends upon benefits already received or available from another source for the same purpose, FEMA may disclose information to relevant agencies, organizations, and institutions as necessary to determine what benefits are available from another source and to prevent the duplication of disaster assistance benefits (as described in section 312 of the Stafford Act).

(c) In response to a written request, FEMA may disclose information from this system of records to Federal, State, or local government agencies charged with the implementation of hazard mitigation measures and the enforcement of hazard-specific provisions of building codes, standards, and ordinances. FEMA may only disclose information for the following purposes:

(1) For hazard mitigation planning purposes to assist States and local communities in identifying high-risk areas and preparing mitigation plans that target those areas for hazard mitigation projects implemented under Federal, State or local hazard mitigation programs.

(2) For enforcement purposes, to enable State and local communities to ensure that owners repair or rebuild structures in conformance with applicable hazard-specific building codes, standards, and ordinances.

(d) Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. 3325(d) and 7701(c)(1), FEMA is required to collect and release to the United States Department of the Treasury the social security number of the person doing business with FEMA, including an applicant for a grant. Therefore, FEMA will release an applicant's social security number in connection with a request for payment to the U.S. Treasury in order to provide a disaster assistance payment to an applicant under the Individual Assistance program.

(e) FEMA may provide a list of applicants' names, amounts of assistance provided, and related information to a State in connection with billing that State for the applicable non-Federal cost share under the Individuals and Households Program.

(f) When an applicant is occupying a FEMA Temporary Housing unit, FEMA may release only the location of the FEMA Temporary Housing unit to local emergency managers for the sole purpose of preparing emergency evacuation plans. FEMA shall not release any information on an individual, such as their name, type or amount of disaster assistance received.

(g) Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil or regulatory—the relevant records may be referred to an appropriate Federal, State, territorial, tribal, local, international, or foreign agency law enforcement authority or other appropriate agency charged with investigating or prosecuting such a violation or enforcing or implementing such law. In the event of circumstances requiring an evacuation, sheltering, or mass relocation, FEMA may also share applicant information with Federal, State or local law enforcement in order to identify illegal or fraudulent conduct and address public safety or security issues.

(h) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(i) To the National Archives and Records Administration or other Federal Government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. sections 2904 and 2906.

(j) To an agency, organization, or individual for the purposes of performing authorized audit or oversight operations.

(k) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(l) To the Department of the Treasury, Justice, the United States Attorney's Office, or a consumer reporting agency for further collection action on any delinquent debt when circumstances warrant.

(m) To the Department of Justice (DOJ) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (1) DHS, or (2) any employee of DHS in his/her official capacity, or (3) any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee, or (4) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation.

(n) Reunification of Families: To a Federal or State law enforcement authority, or agency, or other entity authorized to investigate and/or coordinate locating missing children and/or reuniting families.

(o) Voting: To State and local government election authorities to oversee the voting process within their respective State/county/parish, for the limited purpose of ensuring voting rights of individuals who have applied to FEMA for Disaster Assistance, limited to their own respective State's/county's/parish's citizens who are displaced by a Presidentially-declared major disaster or emergency out of their State/county/parish voting jurisdiction.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure under 5 U.S.C. 552a(b)(12): FEMA may make disclosures from this system to consumer reporting agencies' as defined in the Fair Credit Reporting

Act, 15 U.S.C. Section 1681a(f), or the Debt Collection Act of 1982, 31 U.S.C. Section 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interactive database, computer discs, and paper records in file folders.

RETRIEVABILITY:

By an individual's name, address, social security number, and case file number.

SAFEGUARDS:

Only authorized individuals and FEMA employees have access to this information. Hardware and software computer security measures are used to control access to the data. Access to the data is based upon an individual's position in FEMA and/or their designated duties. Individuals are assigned specific ''rights'' or specific access (e.g., read only, modify, delete, etc.). The access granted is based upon an individual's position responsibilities for ''official use'' only. FEMA employees are allowed access to the data as a function of their specific job assignments within their respective organizations. Each FEMA employee's access to the data is restricted to that needed to carry out their duties.

No individual applying for disaster assistance will have access to the entire database via the Internet. Applicants will have limited access to only their own information that they submitted via the Internet, and to the status of their own information regarding the processing of their own application (e.g. the status of required documentation, inspection status, or SBA status). Applicants are provided a Logon id, password, and Personal Identification Number (PIN) that connect only to the applicant's data. The password and PIN ensures that the login id belongs to the applicant. Computer security software ensures that the login id is mapped only to the applicant's data. Applicants will have access to only their own application information after FEMA assigns them a properly authenticated user id, password, and PIN. Applicants will be registered and authenticated in accordance with National Institute of Standards and Technology Level 2 Assurance guidelines.

RETENTION AND DISPOSAL:

Records covered by paragraphs (a) through (d) are covered by Records Schedule N1–311–86–1 4C10a and are destroyed after 6 years and 3 months. Records covered by paragraph (e) are covered by Records Schedules N1–311–86–1 4C7 and/or N1–311–86–1 4C10b and are destroyed 3 years after closeout.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director, Recovery Division, FEMA, 500 C Street SW., Washington, DC 20472 and applicable Regional Directors, as listed in Appendix A(1).

NOTIFICATION PROCEDURE:

Requests for Privacy Act protected information generally are governed by DHS regulations found at 6 CFR part 5 and FEMA's regulations at 44 CFR part 6. They must be made in writing, and clearly marked as a ''Privacy Act Request'' on the envelope and letter. The name of the requester, the nature of the record sought, and the verification of identity must be clearly indicated, as required by DHS regulation 6 CFR 5.21 and FEMA regulation at 44 CFR 6.30. Requests may also be sent to: Privacy Act Officer, DHS/FEMA Office of General Counsel (GL), Room 840, 500 C Street, SW., Washington, DC 20472.

RECORD ACCESS PROCEDURES:

Same as the Notification Procedure above.

CONTESTING RECORD PROCEDURE:

Same as the Notification Procedure above. The letter should state clearly and concisely what information you are contesting, the reasons for contesting it, and the proposed amendment to the information that you seek pursuant to DHS Privacy Act regulations at 6 CFR part 5 and FEMA regulations at 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Applicants for disaster recovery assistance, credit rating bureaus, financial institutions, insurance companies, and state, local and voluntary agencies providing disaster relief, commercial databases (for verification purposes).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: June 30, 2006.

Maureen Cooney,

Acting Chief Privacy Officer.

Appendix A (1)—Addresses for FEMA Regional Offices

Region I—Regional Director, FEMA, 99 High Street, 6th Floor, Boston, MA 02110;
Region II—Regional Director, FEMA, 26 Federal Plaza, New York, NY 10278–0002;
Region III—Regional Director, FEMA, One Independence Mall, 615 Chestnut Street, Philadelphia, PA 19106–4404;
Region IV—Regional Director, FEMA, 3003 Chamblee-Tucker Road, Atlanta, GA 30341;
Region V—Regional Director, FEMA, 536 S. Clark Street, Chicago, IL 60605;
Region VI—Regional Director, FEMA, Federal Center, 800 North Loop 288 Denton, TX 76209;
Region VII—Regional Director, FEMA, 2323 Grand Boulevard, Kansas City, MO 64108–2670;
Region VIII—Regional Director, FEMA, Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267;
Region IX—Regional Director, FEMA, 1112 Broadway St. Oakland, CA 94607;
Region X—Regional Director, FEMA, Federal Regional Center, 130 228th Street, SW., Bothell, WA 98021–9796.

[FR Doc. E6–10640 Filed 7–5–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–41]

Notice of Application for Designation as a Single Family Foreclosure Commissioner

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial power of sale of single-family HUD-held mortgages and may appoint foreclosure commissioners to do this. HUD needs the notice and resulting applications for compliance with the Act's requirements that commissioners be qualified.

DATES: *Comments Due Date:* August 7, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2510–0012) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available

documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www.5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title Of Proposal: Notice of Application for Designation as a Single Family Foreclosure Commissioner.

OMB Approval Number: 2510–0012.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Under the Single Family Mortgage Foreclosure Act of 1994, HUD may exercise a nonjudicial power of sale of singe-family HUD-held mortgages and may appoint foreclosure commissioners to do this. HUD needs the notice and resulting applications for compliance with the Act's requirements that commissioners be qualified.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	5	1		1		5

Total Estimated Burden Hours: 5.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–10547 Filed 7–5–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–42]

Accountability in the Provision of HUD Assistance—''Applicant/Recipient Disclosure/Update''

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Applicants for assistance are required to disclose information concerning other governmental assistance they have obtained or is pending for the same project, as well as information about the key individuals involved with the proposed project/activity.

DATES: *Comments Due Date:* August 7, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2510–0011) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Accountability in the Provision of HUD Assistance—''Applicant/Recipient Disclosure/Update.

OMB Approval Number: 2510–0011.

Form Numbers: HUD 2880.

Description of the Need for the Information and Its Proposed Use: Applicants for assistance are required to disclose information concerning other governmental assistance they have obtained or is pending for the same project, as well as information about the key individuals involved with the proposed project/activity.

Frequency of Submission: On occasion, Other—Submitted with an application for funding.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	11,500	1.25		2.16		31,080

Total Estimated Burden Hours: 31,080.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 30, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–10548 Filed 7–5–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 24, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 21, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

CALIFORNIA

Kern County

NASA Dryden Flight Research Center Building 4802, South end of Walker Ave., Edwards Air Force Base, 06000656

Los Angeles County

Subway Terminal Building, 417, 415, 425 S. Hill St., 416, 420 424 S. Olive St., Los Angeles, 06000657

Santa Barbara County

Southern Pacific Train Depot, 209 State St., Santa Barbara, 06000658

Santa Clara County

MacFarland House, 775 Santa Ynez St., Stanford, 06000659

COLORADO

Denver County

East High School, 1545 Detroit St., Denver, 06000660

MARYLAND

Howard County

Roberts Inn, 14610 Frederick Rd., Cooksville, 06000661

OREGON

Lane County

Marx—Schaefers House, (Residential Architecture of Eugene, Oregon MPS) 1718 Lincoln St., Eugene, 06000662

PENNSYLVANIA

Dauphin County

Millersburg Ferry, Susquehanna R. bet. Millersburg and Buffalo Township, Millersburg, 06000663

Philadelphia County

American Railway Express Company Garage, 3002–3028 Cecil B. Moore Ave., Philadelphia, 06000664

SOUTH DAKOTA

Kingsbury County

Badger School District Number 18, (Schools in South Dakota MPS) Jct. of Main St. and First Ave., Badger, 06000665

Esmond Methodist Episcopal Church and Township Hall, Jct. of Center St. and Elm St., Esmond, 06000666

Omdalen Barn, 44750 209th St., Lake Preston, 06000667

TENNESSEE

Williamson County

Hamilton—Brown House, 845 Old Charlotte Pike, Franklin, 06000668

WASHINGTON

King County

Windham Apartments, 420 Blanchard St., Seattle, 06000669

Pierce County

National Bank of Tacoma, 1123 Pacific Ave., Tacoma, 06000671

Rhodes, Henry A. and Birdella, House, 701 North J St., Tacoma, 06000670

[FR Doc. E6–10494 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Agriculture, Forest Service, Gila National Forest, Silver City, NM; and in the former possession of Arizona State Museum, University of Arizona, Tucson, AZ; Field Museum of Natural History, Chicago, IL; Logan Museum of Anthropology, Beloit College, Beloit, WI; Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM; Museum of Indian Arts and Culture, Museum of New Mexico, Santa Fe, NM; Ohio Historical Society, Columbus, OH; Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA; University of Texas at Austin, Austin, TX; and U.S. Department of Agriculture, Forest Supervisor's Office, Gila National Forest, Silver City, NM. The human remains and associated funerary objects were removed from the Gila National Forest, Catron County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects and supercedes the number of human remains and associated funerary objects reported in three notices: Notice of Inventory Completion published in the **Federal Register** on July 22, 1998 [FR Doc. 98–19536, pages 39293–39294]; Notice of Inventory Completion correction published in the **Federal Register** on August 3, 2005 [FR Doc. 05–15316, pages 44686–44687]; and Notice of Inventory Completion correction published in the **Federal Register** on September 27, 2005 [FR Doc. 05–19265, pages 56483–56484].

A detailed assessment of the human remains was made by Arizona State Museum, University of Arizona; Field Museum of Natural History; Logan Museum of Anthropology, Beloit College; Maxwell Museum of Anthropology, University of New Mexico; Museum of Indian Arts and Culture, Museum of New Mexico; Ohio Historical Society; Peabody Museum of Archaeology and Ethnology, Harvard University; University of Texas at Austin; U.S. Department of Agriculture, Gila National Forest; and U.S. Department of Agriculture, Forest Supervisor's Office, Gila National Forest professional staff in consultation with

representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

In August 2005, the Field Museum of Natural Historiy, Chicago, IL, re-examined the human remains and associated funerary objects taken from nine sites in the Gila National Forest, Catron County, NM. In 2005, Gila National Forest, Silver City, NM, also re-examined the human remains and associated funerary objects taken from all sites in the Gila National Forest, Catron County, NM. In light of the findings from re-examination, the original Notice of Inventory Completion and previously corrected Notices of Inventory Completion are superceded by this notice.

In 1935 and 1936, human remains representing a minimum of 51 individuals were removed from Starkweather Ruin in Gila National Forest, Catron County, NM, during legally authorized excavations by Paul H. Nesbitt of Beloit College, Beloit, WI. The human remains were curated at the Logan Museum of Anthropology, Beloit College, Beloit, WI, until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The 139 associated funerary objects are ceramic vessels and sherds, shell and stone jewelry, and a projectile point.

Based on material culture, architecture, and site organization, the Starkweather Ruin has been identified as an Upland Mogollon pithouse village and pueblo occupied between A.D. 500–1300.

Between 1935 and 1955, human remains representing a minimum of 79 individuals were removed from SU site, Oak Springs Pueblo, Tularosa Cave, Apache Creek Pueblo, Turkey Foot Ridge site, Wet Leggett Pueblo, Three Pines Pueblo, and South Leggett Pueblo in Catron County, NM, by Dr. Paul Martin of the Field Museum, Chicago, IL. The human remains were curated at the Field Museum, Chicago, IL, until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The 56 associated funerary objects include ceramic vessels and sherds, stone and shell jewelry, stone and bone tools, and projectile points.

Based on material culture, architecture, and site organization, the eight sites listed in the preceding paragraph have been identified as Upland Mogollon cave, pithouse village, and pueblos occupied between A.D. 300 and A.D. 1300.

In 1955, human remains representing 22 individuals were removed from Apache Creek Pueblo (LA 2949), Catron County, NM, during legally authorized excavations and collections conducted by Stewart Peckham of the Museum of New Mexico as part of a New Mexico Highways Department project. The human remains were curated at the Museum of New Mexico until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The 41 associated funerary objects include ceramic vessels and shell and stone jewelry.

Based on material culture, architecture, and site organization, Apache Creek Pueblo site has been identified as an Upland Mogollon masonry pueblo with pithouses occupied circa A.D. 1100–1350.

In 1987 and 1988, human remains representing a minimum of four individuals were removed from the SU site (LA 64931) and Brown site (LA 68924), Catron County, NM, during legally authorized excavations conducted by Dr. Chip Wills of the University of New Mexico as part of a field school. The human remains were curated at the Maxwell Museum of Anthropology, University of New Mexico until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The 34 associated funerary objects include stone tools and animal bone.

Based on material culture, architecture, and site organization, the SU site (LA 64931) and Brown site (LA 689924) have been identified as an Upland Mogollon village and masonry roomblock occupied circa A.D. 600–1100.

Between 1979 - 1986, human remains representing a minimum of one individual were removed from the WS Ranch site, Catron County, NM, during legally authorized excavations and collections conducted by Dr. James A. Neely of the University of Texas at Austin. The human remains were curated at the University of Texas at Austin until 2005 when they were transferred to Gila National Forest. No known individual was identified. The seven associated funerary objects include lithics, sherds, and ceramic jars. The two ceramic jars were curated at the Forest Supervisor's Office, Gila National Forest, Silver City, NM, until 2005 when they were transferred to Gila National Forest.

Based on material culture, architecture, and site organization, the WS Ranch site has been identified as an Upland Mogollon masonry pueblo occupied between A.D. 1150–1300.

In 1933, human remains representing a minimum of three individuals from Mogollon Village, Catron County, NM, during legally authorized excavations and collections conducted by Dr. Emil Haury of the Gila Pueblo Foundation. The human remains were curated at the Peabody Museum, Harvard University and the Arizona State Museum, University of Arizona until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The eight associated funerary objects include beads and a projectile point fragment.

Based on material culture, architecture, and site organization, the Mogollon Village site has been identified as an Upland Mogollon pithouse village occupied between A.D. 600–1050.

Between 1947 and 1949, human remains representing a minimum of seven individuals were removed from the Jewett Gap site, Catron County, NM, during legally authorized excavations and collections by the Gila Pueblo Foundation. The human remains were curated by the Arizona State Museum, University of Arizona, until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The 18 associated funerary objects include ceramic vessels.

Based on material culture, architecture, and site organization, the Jewett Gap site has been identified as an Upland Mogollon pueblo occupied circa A.D. 1000–1150.

In 1986, human remains representing a minimum of one individual were removed from the Eva Faust site, Catron County, NM, during legally authorized excavations and collections conducted by Dr. James Neely, University of Texas at Austin. The human remains were curated at the Forest Supervisor's Office, Gila National Forest, Silver City, NM. No known individual was identified. No associated funerary objects are present.

Based on material culture, architecture, and site organization, the Eva Faust site has been identified as an Upland Mogollon pithouse village with surface rooms occupied circa A.D. 600–1100.

In 1955, human remains representing a minimum of two individuals were removed from site LA 2948, Catron County, NM, during legally authorized excavations and collections conducted by Edwin N. Ferdon of the Museum of New Mexico. The human remains were curated at the Museum of New Mexico until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The one associated funerary object is a ceramic vessel.

Based on material culture, architecture, and site organization, the

sites LA 2947 and LA 2948 have been identified as two Upland Mogollon pithouses occupied between A.D. 200–1000.

In 1971 and 1972, human remains representing a minimum of 34 individuals were removed from sites LA 4988, LA 6082, and LA 6083, Catron County, NM, during legally authorized excavations and collections conducted by David W. Kayser of the Museum of New Mexico. The human remains were curated at the Museum of New Mexico until 2005 when they were transferred to Gila National Forest. No known individuals were identified. The 53 associated funerary objects include ceramic vessels, a stone bowl, and stone tools.

Based on material culture, architecture, and site organization, the sites LA 4988, LA6082, and LA6083 have been identified as Upland Mogollon pueblos and a pithouse occupied circa A.D. 1150–1300.

In 1973, human remains representing a minimum of six individuals were removed without a permit from an unnamed site northwest of Apache Creek by Mr. Brad Triplehorn. Mr. Triplehorn then donated the human remains to the Ohio Historical Society where they were curated until 2005. The human remains then were transferred to Gila National Forest. No known individuals were identified. The 12 associated funerary objects include ceramic sherds and animal bone.

Upland Mogollon villages had pithouses or pueblo-style houses. Most archeological evidence linking Upland Mogollon to present-day Indian tribes relies on ceramics. Continuities of ethnographic materials, technology, and architecture indicate affiliation of the Upland Mogollon with historic and present-day Puebloan cultures. Present-day descendants of the Upland Mogollon are the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Furthermore, the territory of the Upland Mogollon stretched from south-central Arizona to south-central New Mexico. Today, the Upland Mogollon territories are claimed, currently inhabited, or used by the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Oral traditions presented by representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico support cultural affiliation with the Upland Mogollon sites described above in this portion of southwestern New Mexico.

Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 210 individuals of Native American ancestry. Officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have also determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 369 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of Agriculture, Forest Service, Gila National Forest have determined that, pursuant to 25 U.S.C. 3001 (2), there is a shared group identity that can be reasonably traced between the Native American human remains and the associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 333 Broadway Blvd., S.E., Albuquerque, NM 87102; telephone (505) 842–3238, before August 7, 2006. Repatriation of the human remains and associated funerary objects may proceed after that date if no additional claimants come forward.

The U.S. Department of Agriculture, Forest Service, Gila National Forest is responsible for notifying the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 25, 2006.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. E6–10512 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History, New York, NY, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The approximately 183 cultural items include carved sticks and figures, wood dishes, pendants, spoons, coins, buttons, and beads.

In 1882, Mr. James Terry, collected 28 cultural items from ''Tum-wa-ta, Memaluse Rock, Columbia River, Oregon.'' The 28 cultural items are 1 carved stick, 1 stick with holes, 2 dancing sticks, 2 carved figures, 4 wood dishes, 1 bone pendant, 2 bone spoons, 3 horn spoons, 3 copper beads, 1 horn truss, 1 whip handle, 3 wood tubes, 1 bear claw, 1 basket, and 2 pendants. The museum acquired the cultural items from Mr. Terry in 1891 when the museum purchased his entire collection of more than 26,000 items. The museum accessioned the items between 1891 and 1893.

Mr. Terry's ''Memaluse Rock'' is likely to be one of two Memaloose Islands located near present-day The Dalles, OR. The two dancing sticks are carved with anthropomorphic figures. The two carved figures are also anthropomorphic; one figure is holding a shield and both figures have inlaid shell eyes. The dancing sticks and carved figures are approximately 30 centimeters in length and 7 centimeters wide.

At an unknown date, A.W. Robinson collected two cultural items from Memaloose Island, OR. The two cultural items are one iron bracelet and one copper ceremonial object. Morris Jesup, President of the American Museum of Natural History, purchased part of Mr. Robinson's collection and gifted it to the museum in 1902.

At an unknown date, Dr. Simms collected two brass bells, probably from Memaloose Island, OR. The museum received the bells as a gift and accessioned them in 1903.

Historically, the Memaloose Islands were used by the local Upper Chinook and Sahaptin inhabitants to bury their dead, usually in above-ground charnel houses. The Upper Chinook and Sahaptin people of the Middle Columbia region are ancestors of members of the Confederated Tribes and

Bands of the Yakama Reservation, Washington and Confederated Tribes of the Warm Springs Reservation, Oregon.

In 1882, Mr. Terry collected at least 151 cultural items from ''Chenoworth Rock, Columbia River, Washington.'' The cultural items are 1 carved board, and at least 150 coins, buttons, and glass beads. The museum acquired the cultural items from Mr. Terry in 1891 when the museum purchased his collection. The museum accessioned the items between 1891 and 1893.

Mr. Terry indicated that the coins, buttons, and glass beads were collected from a ''Burial on Chenoworth Rock'' and that the carved board was from a ''Dead House on Chenoworth Rock.'' Mr. Terry also indicated that Chenoworth Rock is near the ''. . . mouth of the Little White Salmon River,'' which is approximately 10 miles west of The Dalles, OR. The board is rectangular, carved with an anthropomorphic figure and measures 181 centimeters long by 57 centimeters wide. The coins date to the early and mid 1800s, and the buttons and glass beads indicate a postcontact date for the burial.

The locale of the unassociated funerary objects is consistent with the postcontact territory of the Confederated Tribes and Bands of the Yakama Reservation, Washington and the Confederated Tribes of the Warm Springs Reservation, Oregon.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the approximately 183 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes and Bands of the Yakama Reservation, Washington and Confederated Tribes of the Warm Springs Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before August 7, 2006. Repatriation of the unassociated funerary objects to the Confederated Tribes and Bands of the Yakama Reservation, Washington and Confederated Tribes of the Warm Springs Reservation, Oregon may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Confederated Tribes and Bands of the Yakama Reservation, Washington and Confederated Tribes of the Warm Springs Reservation, Oregon that this notice has been published.

Dated: June 15, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–10524 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from Santa Barbara County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

In 1876, human remains representing two individuals were collected from Carpinteria, Santa Barbara County, CA, by Stephen Bowers. The human remains were purchased from James Terry by the museum in 1891. The museum did not find any information on how or when Mr. Terry acquired the human remains and associated funerary objects from Mr. Bowers. No known individuals were identified. The four associated funerary objects are three copper spindles and one copper rod.

The individual has been identified as Native American based on geographic and historical evidence. The associated funerary objects suggest that the human remains date to the contact period. Historic records identify the Chumash Indians as the inhabitants of the Santa Barbara area. The human remains were collected from Carpinteria, CA, which is the modern city nearly superimposed over the historic coastal Chumash settlement of Misopsno. In 1855, a small plot of land on a creek near the Santa Ynez Mission was given to the remaining Chumash Indians. One hundred and nine members of the tribe settled there, supporting a historical connection between the present-day Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California and the archeologically known Coastal Chumash.

In 1882, human remains representing a minimum of one individual were collected from Burton Mound, Santa Barbara County, CA, by Ben Burton. The museum purchased the human remains from Mr. Terry in 1891. The museum did not find any information on how or when Mr. Terry acquired the human remains. No known individual was identified. No associated funerary objects are present.

The individual has been identified as Native American based on geographical and historical information. Based on the occupation dates for the Burton Mound site, the human remains may be late precontact to contact in age. The human remains were collected from the postcontact territory of the Eastern Coastal Chumash. Archeological research indicates continuity in coastal Chumash society from at least the late precontact period and perhaps considerably earlier.

At an unknown date, human remains representing a minimum of one individual were collected from San Miguel Island, Santa Barbara County, CA, by an unknown collector. The human remains were purchased by the museum in 1935 from Edward Oswald. It is unknown how or when Mr. Oswald acquired the human remains. No known individual was identified. The 433 associated funerary objects are shell beads.

The individual has been identified as Native American based on geographic and historical evidence. The associated funerary objects suggest that the human remains date to a period from circa A.D. 1500 through the mid-nineteenth

century. San Miguel Island is one of the Channel Islands, which are historically associated with the Chumash people, and archeologists have suggested that there is considerable cultural continuity in this area. The establishment of Spanish missions resulted in the dispersal of the Island Chumash. The 109 Chumash Indians who settled on the small plot of land near the Santa Ynez Mission given to them in 1855, support a historical connection between the present-day Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California and the Island Chumash people.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of four individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 437 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5837, before August 7, 2006. Repatriation of the human remains and associated funerary objects to the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California that this notice has been published.

Dated: May 24, 2006.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. E6–10507 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers-Memphis District, Memphis, TN; U.S. Department of the Interior, Fish and Wildlife Service-Southeast Region, Savannah, GA; and Arkansas Archeological Survey, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Defense, Army Corps of Engineers-Memphis District, Memphis, TN, and U.S. Department of the Interior, Fish and Wildlife Service-Southeast Region, Savannah, GA; and in the possession of the Arkansas Archeological Survey, University of Arkansas, Fayetteville, AR. The human remains and associated funerary objects were removed from Mississippi County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d) (3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal Agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Arkansas Archeological Survey, University of Arkansas, and U.S. Army Corps of Engineers-Memphis District professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Quassarte Tribal Town, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Osage Tribe, Oklahoma; Quapaw Tribe of Indians, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Between 1969 and 1976, human remains representing a minimum of 35 individuals were removed from the Zebree site (3MS20), Mississippi County, AR, during a planned excavation by the U.S. Army Corps of Engineers-Memphis District. The human remains were transferred to and continue to be curated at the University of Arkansas Collections Facility in Fayetteville, AR. No known individuals were identified. The two associated funerary objects are a Neeley's Ferry plain bottle and a fish effigy bowl. An unspecified number of shell beads associated with one individual were documented as ''lost in the field.''

The Zebree site, originally discovered in 1967, is listed on the National Register of Historic Places as the Zebree Homestead and is located in the U.S. Fish and Wildlife Service Big Lake National Wildlife Refuge. The site was a major village site in Arkansas. The Big Lake phase component at Zebree was superimposed directly upon a Dunklin phase occupation. Archeological evidence indicates that the human remains and associated funerary objects date to the Early (circa A.D. 900–1100) and Middle Mississippian (circa A.D. 1100–1300). Oral history evidence presented by representatives of the Quapaw Tribe of Indians, Oklahoma indicates that the region including Mississippi County has long been included in the traditional and hunting territory of the Quapaw. Historical documents, specifically French colonial documents and maps circa A.D. 1673–1720, indicate that only the Quapaw had villages in eastern Arkansas and the area of northeastern Arkansas was used as hunting territory.

Officials of the U.S. Army Corps of Engineers-Memphis District and U.S. Fish and Wildlife Service-Southeast Region have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of 35 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers-Memphis District and U.S. Fish and Wildlife Service-Southeast Region also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above are reasonably believed to have been placed with or near the individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers-Memphis District and U.S. Fish and Wildlife Service-Southeast Region have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should

contact Richard S. Kanaski, Regional Historic Preservation Office, U.S. Fish and Wildlife Service-Southeast Region, Savannah Coastal Refuges, 1000 Business Center Drive, Suite 10, Savannah, GA 31405, telephone (912) 652–4415, ext. 113, before August 7, 2006. Repatriation of the human remains and associated funerary objects to the Quapaw Tribe of Indians, Oklahoma, may proceed after that date if no additional claimants come forward.

The U.S. Fish and Wildlife Service-Southeast Region is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Quassarte Tribal Town, Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Muscogee (Creek) Nation, Oklahoma; Osage Tribe, Oklahoma; Quapaw Tribe of Indians, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: June 7, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–10514 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Field Museum of Natural History, Chicago, IL, that meets the definition of ''sacred object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is a pipe (FM 68555), which consists of a stem carved from wood, stained dark blue and measuring 24.2 x 1.8 inches. Upon one side of the stem is written in black ink, ''Pipe of Paul Sawgonkwado - Cross Village Mich - Aug 1893.''

At an unknown date, Walter C. Wyman acquired the pipe under unknown circumstances. The museum purchased the pipe from Mr. Wyman in December of 1900. The museum accessioned the pipe into its collection that same year.

Museum records indicate that the pipe is ''Ottawa'' and that it was acquired in Cross Village, MI. The cultural affiliation of the pipe is Little Traverse Bay Bands of Odawa Indians as indicated by museum records and by consultation evidence presented by the Little Traverse Bay Bands of Odawa Indians, Michigan.

During consultation, Little Traverse Bay Bands of Odawa Indians traditional religious leaders presented evidence that the pipe is needed for the practice of a traditional Native American religion.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Field Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Little Traverse Bay Bands of Odawa Indians, Michigan. Lastly, officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (13), the museum has right of possession of the pipe, but has decided to waive that right.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Jonathan Haas, MacArthur Curator of North American Anthropology, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7829, before August 7, 2006. Repatriation of the sacred object to the Little Traverse Bay Bands of Odawa Indians, Michigan may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying the Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; and Little Traverse Bay Bands of Odawa Indians, Michigan that this notice has been published.

Dated: May 19, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–10510 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Horner Collection, Oregon State University, Corvallis, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Horner Collection, Oregon State University, Corvallis, OR, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The Museum of Oregon Country, Oregon Agricultural College was renamed the John B. Horner Museum of the Oregon Country in 1936, and became commonly known as the Horner Museum. The Oregon Agricultural College was renamed the Oregon State College in 1937, and became Oregon State University in 1962. The Horner Museum closed in 1995. Currently, cultural items from the Horner Museum are referred to as the Horner Collection, which is owned by, and in the possession of, Oregon State University.

Horner Collection, Oregon State University professional staff consulted with representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon, Cow Creek Band of Umpqua Indians of Oregon, and Miccosukee Tribe of Indians of Florida. The Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations and Seminole Nation of Oklahoma were informed, but did not participate in the consultations.

At an unknown date, two necklaces composed of French porcelain beads, alligator teeth, iron grape beads, and Sea beans were removed from an unknown location. J.L. Hill loaned the necklaces

to the Horner Museum in 1933, and they were gifted to the Horner Museum by the heirs of Mr. Hill in 1981.

Although the necklaces are nearly identical, museum records indicate only one is Seminole in cultural affiliation. A representative of the Miccosukee Tribe of Indians of Florida has identified the two cultural items as traditional to the Miccosukee and as cultural items that would have been buried with their owner. The Horner Collection, Oregon State University has no evidence the cultural items were ever buried with any individual. However, Mr. Hill is known to have collected human remains and cultural items from burials and mounds. Based on information obtained through consultation, the Horner Collection, Oregon State University has identified the two cultural items as unassociated funerary objects.

Officials of the Horner Collection, Oregon State University have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Horner Collection, Oregon State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the two unassociated funerary objects and the Miccosukee Tribe of Indians of Florida.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Sabah Randhawa, Executive Vice President and Provost, President's Office, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331, telephone (541) 737–8260, before August 7, 2006. Repatriation of the unassociated funerary objects to the Miccosukee Tribe of Indians of Florida may proceed after that date if no additional claimants come forward.

The Horner Collection, Oregon State University is responsible for notifying the Confederated Tribes of the Warm Springs Reservation of Oregon; Cow Creek Band of Umpqua Indians of Oregon; Miccosukee Tribe of Indians of Florida; Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations; and Seminole Nation of Oklahoma that this notice has been published.

Dated: May 25, 2006.

C. Timothy McKeown,

Acting Manager, National NAGPRA Program.

[FR Doc. E6–10508 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: Institute for American Indian Studies, Washington, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the Institute for American Indian Studies, Washington, CT, that meets the definition of ''sacred object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The one cultural item is an Onondaga False Face mask.

In 1993, an Onondaga False Face mask (#67.29.14) was transferred from the Mattatuck Museum, Waterbury, CT, to the Institute for American Indian Studies. The mask had been transferred to the Mattatuck Museum from the Museum of the American Indian/Heye Foundation, New York, NY, on October 20, 1967. The only information on the mask derives from the Mattatuck accession records, which note the following: ''Onondago [sic] Reservation, NY, 1946.''

According to museum records and Institute for American Indian Studies professional staff and consultants, the mask is a sacred object used by Native American religious practitioners in healing and other religious ceremonies. Consultation with the Onondaga Nation of New York confirm and support that the mask is of Native American religious importance to the Onondaga people.

Officials of the Institute for American Indian Studies have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural item described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Institute for American Indian Studies also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Onondaga Nation of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object should contact Dr. Lucianne Lavin, Director of Research and Collections, Institute for American Indian Studies, 38 Curtis Road, Washington, CT 06793, telephone (860) 868–0518, before August 7, 2006. Repatriation of the sacred object to the Onondaga Nation of New York may proceed after that date if no additional claimants come forward.

The Institute for American Indian Studies is responsible for notifying the Onondaga Nation of New York that this notice has been published.

Dated: June 7, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–10509 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Institute for American Indian Studies, Washington, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Institute for American Indian Studies, Washington, CT, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The two cultural items are elbow pipes. The first elbow pipe is a plain burnished clay elbow pipe bowl and part of a stem. The second pipe is a ''copper pipe'' with a thin stem 6 inches in length.

In the early 1970s, the Institute for American Indian Studies purchased the two cultural items from the Rogers family as part of their acquisition of the Edward H. Rogers collection. Mr. Rogers was a collector residing in Devon, CT, who excavated, traded, and bought archeological items from throughout the Western Hemisphere. The bulk of his collection is from New England. It was accumulated during the early and mid-twentieth century. According to Mr. Rogers' notebooks, he purchased the two elbow pipes from Mr. Harry Hathaway of Devon, CT, in 1940. According to Mr. Rogers' notes, Mr. Hathaway believed that Mr. Andrew Chase had removed the two elbow pipes, along with a glass bottle and spectacles, from an ''Indian Grave'' in Tiverton, RI, in 1900. Nothing further is known about the present disposition of the glass bottle and spectacles.

Since the lands presently known as Rhode Island are claimed by the Narragansett Indian Tribe of Rhode Island as their ancient homelands, and the claim appears to be supported by historical documents, the Institute for American Indian Studies believes that a preponderance of evidence shows a cultural affiliation with the Narragansett peoples.

Officials of the Institute for American Indian Studies have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Institute for American Indian Studies also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the two unassociated funerary objects and the Narragansett Indian Tribe of Rhode Island.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Lucianne Lavin, Director of Research and Collections, Institute for American Indian Studies, Washington, CT 06793, telephone (860) 868–0518, before August 7, 2006. Repatriation of the two unassociated funerary objects to the Narragansett Indian Tribe of Rhode Island may proceed after that date if no additional claimants come forward.

The Institute for American Indian Studies is responsible for notifying the Narragansett Indian Tribe of Rhode Island that this notice has been published.

Dated: June 8, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–10522 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE. The human remains were collected from Dakota, Douglas, and Thurston Counties, NE and from an unknown location.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Nebraska State Museum professional staff in consultation with representatives of the Omaha Tribe of Nebraska.

At an unknown time, human remains representing a minimum of four individuals were removed from an unknown location. In 1998, the human remains, which were labelled ''Omaha 2,3,4,5'' were found in Bessey Hall on the campus of the University of Nebraska-Lincoln. The human remains show evidence of having been the subject of scientific analysis, but the sample numbers cannot be related to any records of prior study. No known individuals were identified. No associated funerary objects are present.

The condition of the human remains is consistent with archeological derivation. Given the designation ''Omaha'' on the labels, and that prior studies on Omaha human remains have been conducted under University of Nebraska auspices, it has been determined that the individuals are affiliated with the Omaha Tribe of Nebraska.

On December 8, 1932, human remains representing a minimum of two individuals were removed from the Omaha Creek site in Dakota and Thurston Counties, NE, by the University of Nebraska Archaeological Survey. No known individuals were identified. The 71 associated funerary objects are 8 copper thimbles, 19 copper feather holders, 5 metal buttons, 8 textile scraps, 2 mirror fragments, 27 iron fragments, 1 chipped stone tool fragment, and 1 gunflint.

Based on the condition of the human remains, the individuals have been determined to be Native American. Based on the apparent historic age of the human remains, the location of the burial, and the historic nature of the associated funerary objects, the individuals have been determined to be affiliated with the Omaha Tribe of Nebraska.

In 1907, human remains representing a minimum of four individuals were removed from the Ponca Creek District in Douglas County, NE, by Robert F. Gilder under the auspices of the University of Nebraska State Museum. The site is approximately 10 miles north of the city of Omaha on the south side of Ponca Creek. No known individuals were identified. No associated funerary objects are present.

Preservation resembles that of human remains from historic sites. A tag on the human remains states ''from presumably Omaha burial.'' Based on the condition of the human remains, the individuals have been determined to be Native American. Based on the apparent historic age and location of burial, the individuals have been determined to be affiliated with the Omaha Tribe of Nebraska.

Officials of the University of Nebraska have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of ten individuals of Native American ancestry. Officials of the University of Nebraska also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 71 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human

remains and associated funerary objects and the Omaha Tribe of Nebraska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Priscilla Grew, NAGPRA Coordinator, University of Nebraska State Museum, 307 Morrill Hall, Lincoln, NE 68588–0338, telephone (402) 472–3779 before August 7, 2006. Repatriation of the human remains and associated funerary objects to the Omaha Tribe of Nebraska may proceed after that date if no additional claimants come forward.

The University of Nebraska is responsible for notifying the Omaha Tribe of Nebraska that this notice has been published.

Dated: May 19, 2006.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E6–10506 Filed 7–5–06; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–576]

In the Matter of Certain Portable Digital Media Players and Components Thereof; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 1, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Apple Computer, Inc. of Cupertino, California. An amended complaint was filed on June 6, 2006, and supplementary letters were filed on June 7 and 22, 2006. The complaint as amended and supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable digital media players and components thereof, by reason of infringement of claim 25 of U.S. Patent No. 7,046,230, claims 25 and 33 of U.S. Patent No. 5,341,293, claims 36–39, 48, 65, 72–73, and 77–78 of U.S. Patent No. 5,898,434, and claims 1, 24, and 32 of U.S. Patent No. 6,282,646. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and permanent cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Erin Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2550.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 28, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable digital media players or components thereof, by reason of infringement of one or more of claim 25 of U.S. Patent No. 7,046,230, claims 25 and 33 of U.S. Patent No. 5,341,293, claims 36–39, 48, 65, 72–73, and 77–78 of U.S. Patent No. 5,898,434, and claims 1, 24, and 32 of U.S. Patent No. 6,282,646, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Apple Computer, Inc., 1 Infinite Loop, Cupertino, CA 95014.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served: Creative Technology, Ltd., 31 International Business Park, Singapore 609921.

Creative Labs, Inc., 1901 McCarthy Boulevard, Milpitas, CA 95035.

(c) The Commission investigative attorney, party to this investigation, is Erin Joffre, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr., is designated as the presiding administrative law judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: June 29, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–10538 Filed 7–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–577]

In the Matter of Certain Wireless Communication Equipment, Articles Therein, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 2, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Samsung Telecommunications America, LLP of Richardson, Texas and Samsung Electronics Co., Ltd. of Korea (collectively, ''Samsung''). Samsung filed a supplement to the complaint on June 23, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States and sale of certain wireless communication equipment, articles therein, and products containing the same by reason of infringement of claims 1–16 of U.S. Patent No. 6,598,202, claims 1–29 of U.S. Patent No. 6,882,636, claims 1–6, 10–13, 16–19, 26–31, 34, 36, 38–41, 45, 47, and 48 of U.S. Patent No. 6,154,652, claims 1–32 and 34–35 of U.S. Patent No. 6,920,331, claims 1–11 of U.S. Patent No. 6,421,353, claims 1, 2, 4, 5, 9, 11, 12, 14, 15, 17, 21–23, and 25, of U.S. Patent No. 6,920,602, and claims 1–33 of U.S. Patent No. 6,928,604. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 29, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless communication equipment, articles therein, or products containing the same by reason of infringement of one or more of claims 1–16 of U.S. Patent No. 6,598,202, claims 1–29 of U.S. Patent No. 6,882,636, claims 1–6, 10–13, 16–19, 26–31, 34, 36, 38–41, 45, 47, and 48 of U.S. Patent No.6,154,652, claims 1–32, 34 and 35 of U.S. Patent No. 6,920,331, claims 1–11 of U.S. Patent No. 6,421,353, claims 1, 2, 4, 5, 9, 11, 12, 14, 15, 17, 21–23, and 25 of U.S. Patent No. 6,920,602, and claims 1–33 of U.S. Patent No. 6,928,604 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Samsung Telecommunications America LLP, 1301 East Lookout Drive, Richardson, Texas 75082. Samsung Electronics Co., Ltd., Samsung Main Building, 250, Taepyung-ro 2-ka, Chung-ku, Seoul 100–742 Korea.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ericsson, Inc., 6300 Legacy Drive, Plano, Texas 75024.

Telefonaktiebolaget LM Ericsson, Torshamnsgatan 23, Kista, 164 83 Stockholm Sweden.

Sony Ericsson Mobile Communications AB, Nya Vattentornet, Lund, Sweden SE–221 88.

Sony Ericsson Mobile Communications (USA) Inc., 7001 Development Drive, Research Triangle Park, NC 27709.

(c) The Commission investigative attorney, party to this investigation, is Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, D.C. 20436; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 29, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–10539 Filed 7–5–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Public Comment Period for Proposed First Amendment to Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that, for a period of 30 days, the United States will receive public comments on a proposed First

Amendment to Consent Decree in *United States and the State of Minnesota* v. *Koch Petroleum Group, L.P.* (Civil Action No. 00–CV–2756), which was lodged with the United States District Court for the District of Minnesota on June 23, 2006. Koch recently changed its corporate name and is now known as Flint Hills Resources, LP (''FHR'').

The parties are amending the April 25, 2001, Consent Decree in this national, multi-facility Clean Air Act (''Act'') enforcement action against FHR pursuant to Section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b) (1983), *amended by,* 42 U.S.C. 7413(b) (Supp. 1991). The original settlement, covering three refineries, was entered by the Court on April 25, 2001, as part of EPA's Petroleum Refinery Initiative. The proposed Amendment allows FHR additional time to conduct studies of various nitrogen oxide (''NO_X'') reducing catalysts and to decide on the final NO_X control scheme for the fluidized catalytic cracking unit (''FCCU'') at the Pine Bend, Minnesota, facility. Second, the Amendment establishes a process to address any leaks of process fluids into the non-contract, recirculating cooling tower systems as required by the National Emission Standard for Benzene Waste Operations, 40 CFR part 61, subpart FF. Third, and finally, the Amendment exempts two heaters in the FHR system from the application of current or next generation ultra low-NO_X burners, but requires FHR to install specific control technology and accept restrictive emission limits for these two heaters.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and the State of Minnesota* v. *Koch Petroleum Group, L.P.,* D.J. Ref 90–5–2–1–07110.

The First Amendment to Consent Decree may be examined at the Office of the United States Attorney, District of Minnesota, 600 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415. During the public comment period the Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6026 Filed 7–5–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Application For Restoration of Explosives Privileges [1140–0064].

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 5, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Francis Burroughs, Explosives Industry Programs Branch, 650 Massachusetts Avenue, NW., Room 500, Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Explosives Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.29. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. ATF F 5400.29 is required in order to determine whether or not explosive privileges may be restored. The form is used to conduct an investigation to establish if it is likely that the applicant will act in a manner dangerous to public safety or contrary to public interest.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Deputy Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Lynn Bryant,

Deputy Department Clearance Officer, Department of Justice.

[FR Doc. E6–10549 Filed 7–5–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,451]

Columbian Chemicals Company, Proctor, WV; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2006 in response to a worker petition filed by a company official on behalf of workers of Columbian Chemicals Company, Proctor, West Virginia.

The petition is a duplicate petition filed under case number TA–W–59,361. Consequently, this investigation has been terminated.

Signed at Washington, DC this 1st day of June, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–10518 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,413]

Eaton Corporation, Cleveland, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 17, 2006 in response to a petition filed by a company official on behalf of workers at the Eaton Corporation in Cleveland, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 6th day of June, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–10515 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA W–58,809]

Henry Pratt Company, Dixon, IL; Notice of Revised Determination on Reconsideration

By letter dated May 15, 2006 International Association of Machinists and Aerospace Workers, District No. 8, AFL–CIO requested administrative reconsideration regarding the Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm who support production of machined and painted component parts of water valves at Henry Pratt Company, Machine Shop and Weld/Paint Shop, Dixon, Illinois.

The initial investigation resulted in a certification of Machine Shop and Weld/Paint Shop and did not include workers of other departments who supported production at Machine Shop and Weld/Paint Shop. The determination was signed on April 21, 2006 and the notice was published in the **Federal Register** on May 10, 2006 (71 FR 27291).

In the request for reconsideration the petitioner described the work performed by employees of other departments as support of production.

A review of the initial investigation confirmed the allegations of the petitioner and provided the facts in support of eligibility of workers of other departments for TAA as workers supporting production of machined and painted component parts of water valves at the subject firm.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the initial investigation, I determine that there was a shift in production from the workers' firm or subdivision to a foreign country of articles that are like or directly competitive with those produced by the subject firm or subdivision, and there has been or is likely to be an increase in imports of like or directly competitive articles. In accordance with the provisions of the Act, I make the following certification:

All workers of Henry Pratt Company, Dixon, Illinois, engaged in activities related to production and support of production of machined and painted component parts of water valves, who became totally or partially separated from employment on or after January 26, 2005 through April 21, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 20th day of June, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–10520 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,452]

Insight Direct USA, Working at Allegheny Energy, Greensburg, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2006 in response to a petition filed on behalf of workers of Insight Direct USA, working at Allegheny Energy, Greensburg, Pennsylvania.

The petition has been deemed invalid. The petition was signed by one worker instead of the required three workers. Consequently, the investigation has been terminated.

Signed at Washington, DC this 12th day of June 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–10519 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,380]

Siemens VDO, Elkhart, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2006 in response to a worker petition filed Teamsters Local 364 on behalf of workers at Siemens VDO, Elkhart, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, this investigation has been terminated.

Signed at Washington, DC, this 2nd day of June, 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–10517 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,438]

Stimson Lumber Company, St. Helens, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 22, 2006 in response to a worker petition filed by a state agency representative on behalf of workers of Stimson Lumber Company, St. Helens, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 7th day of June 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–10516 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,118]

Thomson, Inc., Circleville, OH; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Thomson, Inc., Circleville, Ohio. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,118; Thomson, Inc., Circleville, Ohio (June 19, 2006)

Signed at Washington, DC, this 20th day of June 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–10513 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 17, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 17, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 21st day of June 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA Petitions instituted between 6/13/06 and 6/16/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59541	Waterbury Rolling Mills Olin Corporation (Comp)	Waterbury, CT	06/13/06	06/08/06
59542	Tyler Pipe Co. (GMP)	Macungie, PA	06/13/06	05/15/06
59543	Georgia Pacific (State)	Old Town, ME	06/13/06	06/09/06
59544	Osram Sylvania, Inc. (Union)	Wellsboro, PA	06/13/06	06/09/06
59545	Getronics (Wkrs)	Liberty Lake, WA	06/13/06	05/25/06
59546	Chair Tech (State)	Benton, AR	06/13/06	06/09/06
59547	Newstech PA (Comp)	Northampton, PA	06/13/06	06/09/06
59548	Nishikawa Standard Co. (Wkrs)	New Haven, IN	06/13/06	05/25/06

APPENDIX—Continued

[TAA Petitions instituted between 6/13/06 and 6/16/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59549	Manufacturer's Products Co. (UAW)	Warren, MI	06/13/06	06/05/06
59550	FMC Technologies, Inc. (Wkrs)	Homer City, PA	06/13/06	05/22/06
59551	Advanced Casting, Inc. (Comp)	Central Falls, RI	06/13/06	06/01/06
59552	Admiral Machine (UAW)	Wadsworth, OH	06/13/06	06/09/06
59553	Convergys Corporation (Comp)	Tampa, FL	06/13/06	06/12/06
59554	Georgia-Pacific Corporation (Comp)	Green Bay, WI	06/13/06	06/09/06
59555	Michaels of Oregon (Comp)	Meridian, ID	06/13/06	06/12/06
59556	ATA Airlines, Inc. (Wkrs)	Indianapolis, IN	06/13/06	06/07/06
59557	GFP Strandwood Corp. (Comp)	Hancock, MI	06/13/06	06/12/06
59558	Clarion Technologies, Inc. (Comp)	Caledonia, MI	06/13/06	06/12/06
59559	Express Point Technology Services (State)	Lincolnton, CA	06/13/06	06/12/06
59560	Thermo IEC Inc. (Comp)	Milford, MA	06/13/06	06/09/06
59561	Jones Apparel Group Inc. (Comp)	Bristol, PA	06/13/06	06/12/06
59562	Arkema Corporation (USW)	Riverview, MI	06/13/06	05/26/06
59563	Distinctive Designs Furniture USA (Comp)	Granite Falls, NC	06/13/06	06/12/06
59564	Greatbatch-Sierra, Inc. (Comp)	Carson City, NV	06/14/06	06/13/06
59565	GN Resound Group North American (State)	Bloomington, MN	06/14/06	06/13/06
59566	Cho Won, Inc. (State)	Van Nuys, CA	06/14/06	06/13/06
59567	GE Dothan Motor Plant (Comp)	Dothan, AL	06/14/06	06/13/06
59568	East Palestine China Co. (Wkrs)	East Palestine, OH	06/14/06	06/13/06
59569	Fort Wayne Foundry Corp. (Comp)	Fort Wayne, IN	06/14/06	06/14/06
59570	Non-Metallic Components Inc. (Comp)	Cuba City, WI	06/15/06	06/14/06
59571	Fairchild Semiconductor (Wkrs)	So. Portland, ME	06/15/06	06/13/06
59572	Gear for Sports (Comp)	Bedford, IA	06/15/06	06/14/06
59573	Johnson Controls (Comp)	Zeeland, MI	06/15/06	06/12/06
59574	Kentucky Derby Hosiery Co. Inc. (Comp)	Hickory, NC	06/16/06	06/12/06
59575	Ephrata Manufacturing Co. (Comp)	Ephrata, PA	06/16/06	06/12/06
59576	Springs Global U.S. Inc. (Comp)	Chester, SC	06/16/06	06/14/06
59577	Union Apparel Inc. (Wkrs)	Norvelt, PA	06/16/06	06/09/06
59578	Wells Manufacturing Corp. (Wkrs)	Fond Du Lac, WI	06/16/06	06/15/06
59579	Harodite Industries Inc. (Comp)	Taunton, MA	06/16/06	06/15/06
59580	SSA Global Technologies, Inc. (Wkrs)	Chicago, IL	06/16/06	06/15/06
59581	VF Imagewear (Comp)	Martinsville, VA	06/16/06	06/08/06
59582	Convergys (Wkrs)	Portland, OR	06/16/06	06/08/06

[FR Doc. E6–10521 Filed 7–5–06; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of Apprenticeship is soliciting comments concerning the proposed extension of the collection for the Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship Training.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or at this Web site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before September 5, 2006.

ADDRESSES: Anthony Swoope, Administrator, Office of Apprenticeship, U.S. Department of Labor, Employment and Training Administration, Room N–5311, 200 Constitution Avenue, NW., Washington, DC 20210, Phone: (202) 693–2796 (This is not a toll-free number), Fax: (202) 693–2808, or e-mail: *swoope.anthony@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Apprenticeship Act of 1937, Section 50 (29 U.S.C. 50), authorizes and directs the Secretary of Labor ''to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with Section 17 of Title 20.'' Section 50a of the Act authorizes the Secretary of Labor to ''publish information relating to existing and proposed labor standards of apprenticeship,'' and to ''appoint national advisory committees * * *'' (29 U.S.C. 50a).

Title 29 CFR part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for review of apprenticeship programs, for registering apprenticeship programs, for processing complaints, and for deregistering non-complying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of State agencies which register apprenticeship programs for Federal purposes.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship Training.

OMB Number: 1205–0224.

Agency Form Number: ETA 9039.

Recordkeeping: Apprenticeship sponsors are required to keep accurate records on recruitment, selection of the applicant and/or apprentice and the employment and training activities related to the apprentice and the qualifications of each applicant/apprentice pertaining to determination of compliance with the regulation. Records must be retained, where appropriate, regarding affirmative action plans and evidence that qualification standards have been validated. State Apprenticeship Councils are also obligated to keep adequate records pertaining to determination of compliance with these regulations. All of the above records are required to be maintained for five years. If this information was not required, there would be no documentation that the apprenticeship programs were being operated in a nondiscriminatory manner. Many apprenticeship programs are four years or more in duration; therefore, it is important to maintain the records for at least five years.

Affected Public: Applicants, Apprentices, Sponsors, State Apprenticeship Councils or Agencies, Tribal Government.

Total Respondents: 28,800.

Estimated Total Burden Hours: 5,842.

SUMMARY OF BURDEN FOR 29 CFR PART 30

Sec.	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
30.3	1,540	1-time basis	1,540	1/2 hr./spon	770
30.4	70	1-time basis	70	1 hr./spon	70
30.5	6,140	1-time basis	6,140	1/2 hr./spon	3,070
30.6	50	1-time basis	50	5 hrs./spon	250
30.8	28,800	1-time/ program	28,800	1 min./spon	480
30.8	30 State Agencies	1-time basis	14,120	5 min./spon	1,177
30.11	28,800	1 time	28,800	Handout	
ETA 9039	50 appl/appr.	1-time basis	50	1/2 hr	25
30.15	30 State Agencies	1-time	Completed		
30.19	30 State Agencies	Varies			
Totals	28,800		50,770		5,842

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 23, 2006.

Anthony Swoope,

Administrator, Office of Apprenticeship.

[FR Doc. E6–10505 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Information Regarding the Reclassification of Positions in the Occupational Safety and Health Administration as Reported in the Department of Labor's FY 2005 FAIR Act Inventory

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

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Federal Activities Inventory Reform Act of 1998 (FAIR Act), and the Office of Management and Budget (OMB) Circular A–76, the Department of Labor must notify the public when it either concurs or disagrees with a challenge from directly affected employees. In this case, the challenge concerns the reclassification of a number of full time equivalent (FTE) Whistleblower Investigators, Supervisory Investigators, Program Managers, and Team Leaders in OSHA's National Office and field locations, to ''inherently governmental'' status from their prior classification as commercial in nature in the Department of Labor's FY 2005 FAIR Act Inventory for OSHA.

FOR FURTHER INFORMATION CONTACT: Douglas Goodell, Office of Human Resources, 200 Constitution Avenue,

NW., Washington, DC 20210, 202–693–2588.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270), and consistent with Section B.1 of Attachment A of Office of Management and Budget (OMB) Circular A–76 (revised May 29, 2003), the Department of Labor has concurred with a challenge from directly affected employees regarding 70 full time equivalent (FTE) Whistleblower Investigators, Supervisory Investigators, Program Managers, and Team Leaders in OSHA's National Office (3 FTE) and 45 field locations (67 FTE). The Department has determined that all 70 FTE should be reclassified as ''inherently governmental'' from their prior classification as commercial in nature (i.e., 3 FTE as Commercial Reason Code A and 67 FTE as Commercial Reason Code B) in the Department of Labor's FY 2005 FAIR Act Inventory for OSHA. An updated 2005 FAIR Act Inventory report is to be prepared and posted to the Department's FAIR Act Inventory Web site within five (5) business days following the next update cycle.

Signed in Washington, DC this 29th day of June, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. E6–10542 Filed 7–5–06; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate With Changes an Expired Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

DATES: Written comments on this notice must be received by September 7, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or sent e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the Research Experiences for Undergraduates (REU) Program in the NSF Division of Engineering Education and Centers (EEC).

OMB Number: 3145–0121.

Expiration Date of Approval: One Year.

Type of request: Reinstate with changes.

Abstract: NSF has supported the REU Program since 1987. The Program was evaluated after three and five years, but not since then. The proposed project will enable NSF's Division of Engineering Education and Centers (EEC) to learn about the activities, outcomes, and impacts of the REU awards made by that Division, as well as lessons learned to improve the results of future REU awards. Two types of REU awards will be studied, REU sites and REU supplements. REU Sites awards fund groups of undergraduates to work with faculty members and graduate students at an institution. Half of the undergraduates in an REU site must come from other institutions. EEC also makes REU Supplement awards to NSF-funded Engineering Research Centers for comparable similar for undergraduates.

The proposed study will be very similar to the two previous evaluations. It will focus on undergraduate REU participants and the faculty members who are responsible for the REU awards during 2003–06, and will examine in detail for the first time the activities, outcomes, and impacts of REU awards made in a single NSF division (EEC). The REU program officers in EEC want to learn in depth about the REU Site and ERC REU Supplements awards from former REU students and awardees, any differences between the Sites and ERC Supplements, and lessons learned for subsequent proposal review and advising prospective PIs. Information will also be used for EEC Program reporting requirements. The study will examine (1) the role of the REU program in aiding participating undergraduates in a decision to pursue graduate education or careers in engineering; and (2) the relationship between how REU activities are structured and managed and participants' subsequent education and career decisions and actions.

The survey data collection will be done on the World Wide Web.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 4,525.

Estimated Total Annual Burden on Respondents: 2,262.5 hours (4,525 respondents at 30 minutes per response).

Frequency of Response: One time.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: June 28, 2006.

Catherine J. Hines,

Acting Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–6007 Filed 7–5–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Reinstate With Changes an Expired Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF

will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

DATES: Written comments on this notice must be received by September 7, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the National Science Foundation—National Institutes for Health Bioengineering and Bioinformatics Summer Institutes (BBSI) Program.

OMB Number: 3145–0121.

Expiration Date of Approval: One year.

Type of Request: Reinstate and modify.

Abstract: The National Science Foundation (NSF) and the National Institute of Bioinformatics and Bioengineering (NIBIB), a new component of the National Institutes of Health, established a jointly funded program run by NSF called the Bioengineering and Bioinformatics Summer Institutes (BBSI) Program to begin creating a supply of professionals trained in bioengineering and bioinformatics. This workforce initiative complements research and education efforts in these fields funded by both agencies and constitutes a high profile effort to meet the anticipated human resource needs for bioengineering and bioinformatices.

The program is designed to provide students majoring in the biological sciences, computer sciences, engineering, mathematics, and physical sciences with well planned interdisciplinary experiences in bioengineering or bioinformatics research and education, in very active 'Summer Institutes'; thereby increasing the number of young people considering careers in bioengineering and bioinformatics at the graduate level and beyond.

NIBIB and NSF's Division of Engineering Education and Centers (EEC) wish to learn whether the BBSI Program as originally conceived is achieving its objectives and program-level outcomes, and to collect lessons learned for improvement of program design and implementation. This short-term evaluation is expected to provide information on what educational and career decisions have ben affected by participation in a Summer Institute, what elements of the students' BBSI affect student outcomes, and how the program can be improved, e.g., through changes in specific program-wide design components, expected outcomes, proposal review criteria, etc.

The survey data collection will be done on the World Wide Web.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 800.

Estimated Total Annual Burden on Respondents: 400 hours (880 respondents at 30 minutes per response).

Frequency of Response: Once.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Dated: June 30, 2006.

Catherine J. Hines,

Acting Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–6008 Filed 7–5–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 244, Registration Certificate—Use of Depleted Uranium under General License.

3. *The form number if applicable:* NRC Form 244.

4. *How often the collection is required:* On occasion. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. Information on NRC Form 244 is collected and evaluated on a continuing basis as events occur.

5. *Who will be required or asked to report:* Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).

6. *An estimate of the number of annual responses:* 5 (2 NRC licensees and 3 Agreement State licensees).

7. *The estimated number of annual respondents:* 5 (2 NRC licensees and 3 Agreement State licensees).

8. *The number of hours needed annually to complete the requirement or request:* 5 (1 hour per response—2 hours for NRC licensees and 3 hours for Agreement State licensees).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 40 establishes requirements for licenses for the receipt, possession, use and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by section 40.25. The registration certification information required by NRC Form 244 is necessary to permit the NRC to make a determination on whether the possession, use, and transfer of depleted uranium source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

A copy of the final supporting statement may be viewed free of charge

at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 7, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. John A. Asalone, Office of Information and Regulatory Affairs (3150–0031), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 29th day of June, 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–10523 Filed 7–5–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–7 and 50–255; License No. DPR–20]

Nuclear Management Company, LLC; Consideration of Request for Action Under 10 CFR 2.206

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt and consideration of request for action under 10 CFR 2.206.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1396; Fax number: (301) 415–8555: E-mail: *Irw@nrc.gov*.

Introduction

Notice is hereby given that by petition dated April 4, 2006, Mr. Terry J. Lodge (Counsel for Petitioners) has requested that the Nuclear Regulatory Commission (NRC) take action with regard to the Nuclear Management Company, LLC (NMC) Palisades Nuclear Plant (PNP). The petitioners' request that the NRC take enforcement action against PNP by condemning and stopping the use of the two independent spent fuel storage installation (ISFSI) concrete pads, constructed in 1992 and 2003, which hold dry spent fuel storage casks at the plant site.

Request

As the basis for the request, the petitioners state that both ISFSI concrete pads at PNP do not conform to NRC requirements for earthquake stability standards and pose a distinct hazard in the event of an earthquake.

The request concerning slope stability of the 2003 concrete pad is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Spent Fuel Project Office within the Office of Nuclear Material Safety and Safeguards. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. Representatives of Mr. Lodge spoke with the Petition Review Board on April 26, 2006, to discuss the petition. The results of that discussion were considered in the Board's determination regarding condemning and stopping the use of the two ISFSI concrete pads and in establishing a schedule for the review of the petition. By letter dated June 27, 2006, the Spent Fuel Project Office Deputy Director accepted the petition for review in part, specifically with respect to slope stability of the concrete pad constructed in 2003.

Further Information

A copy of the petition may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. This document may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to the NRC's Agencywide Documents Access and Management System (ADAMS) or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 27th day of June, 2006.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–10525 Filed 7–5–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, CA, the City of Anaheim, CA; San Onofre Nuclear Generating Station, Units 2 and 3; Exemption

1.0 Background

Southern California Edison Company (the licensee) is the holder of Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station, Unit 2 and Unit 3 (SONGS 2 and 3), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in San Diego County, California.

2.0 Request/action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Appendix G, which is invoked by 10 CFR 50.60, requires that pressure-temperature (P-T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states that ''[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions,'' and ''[t]he pressure-temperature limits identified as 'ASME [American Society for Mechanical Engineers] Appendix G limits' in Table 3 require that the limits must be at least as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code [Boiler and Pressure Vessel Code].'' Part 50 of Title 10 of the Code of Federal Regulations, Appendix G, also specifies that the editions and addenda of the ASME Code, Section XI, which are incorporated by reference in 10 CFR 50.55a, apply to the requirements in 10 CFR Part 50,

Appendix G. In the 2005 Edition of the Code of Federal Regulations, the 1977 Edition through the 2003 Addenda of the ASME Code, Section XI are incorporated by reference in 10 CFR 50.55a. Finally, 10 CFR 50.60(b) states that, ''[p]roposed alternatives to the described requirements in Append[ix] G * * * of this part or portions thereof may be used when an exemption is granted by the Commission under [10 CFR 50.12].''

In the licensee's January 28, 2005, license amendment request to implement a pressure-temperature limits report (PTLR) for SONGS 2 and 3, the licensee identified Combustion Engineering (CE) Owners Group Topical Report NPSD–683–A, ''The Development of a RCS [Reactor Coolant System] Pressure and Temperature Limits Report for the Removal of P-T Limits and LTOP [low temperature overpressure protection] Setpoints from the Technical Specifications,'' as the PTLR methodology that would be cited in the administrative control section of the SONGS 2 and 3 Technical Specifications governing PTLR content. CE NPSD–683–A refers to an NRC-approved version of Topical Report CE NPSD–683. The NRC staff evaluated the specific PTLR methodology in CE NPSD–683, Revision 6. This evaluation was documented in the NRC safety evaluation (SE) of March 16, 2001, which specified additional licensee actions that are necessary to support a licensee's adoption of CE NPSD–683, Revision 6. The final approved version of this report was reissued as CE NPSD–683–A, Revision 6, which included the NRC SE and the required additional action items as an attachment to the report. One of the additional specified actions stated that if a licensee proposed to utilize the methodology in CE NPSD–683, Revision 6, for the calculation of flaw stress intensity factors due to membrane stress from pressure loading (K_{IM}), an exemption was required since the methodology for the calculation of K_{IM} values in CE NPSD–683, Revision 6, could not be shown to be conservative with respect to the methodology for the determination of K_{IM} provided in editions and addenda of the ASME Code, Section XI, Appendix G, through the 2003 Addenda. Therefore, in connection with the licensee's January 28, 2005, license amendment request, as supplemented by its letter dated January 12, 2006, the licensee also submitted an exemption request, consistent with the requirements of 10 CFR 50.60, to apply the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, as part of the SONGS 2 and 3 PTLR methodology.

During the NRC staff's review of CE NPSD–683, Revision 6, the NRC staff evaluated the K_{IM} calculational methodology of CE NPSD–683, Revision 6, versus the methodologies for K_{IM} calculation given in the ASME Code, Section XI, Appendix G. In the staff's March 16, 2001 SE, the staff noted, ''[t]he CE NSSS [nuclear steam supply system] methodology does not invoke the methods in the 1995 edition of Appendix G to the Code for calculating K_{IM} factors, and instead applies FEM [finite element modeling] methods for estimating the K_{IM} factors for the RPV shell * * * the staff has determined that the K_{IM} calculation methods apply FEM modeling that is similar to that used for the determination of the K_{IT} factors [as codified in the ASME Code, Section XI, Appendix G]. The staff has also determined that there is only a slight non-conservative difference between the P–T limits generated from the 1989 edition of Appendix G to the Code and those generated from CE NSSS methodology as documented in Evaluation No. 063–PENG–ER–096, Revision 00. The staff considers that this difference is reasonable and that it will be consistent with the expected improvements in P-T generation methods that have been incorporated into the 1995 edition of Appendix G to the Code.''

In summary, the staff concluded in its March 16, 2001, SE that the calculation of K_{IM} using the CE NPSD–683, Revision 6, methodology would lead to the development of P-T limit curves, which may be slightly non-conservative with respect to those which would be calculated using the ASME Code, Section XI, Appendix G, and that such a difference was to be expected with the development of more refined calculational techniques. Furthermore, the staff concluded in its March 16, 2001, SE that P-T limit curves that would be developed using the methodology of CE NPSD–683, Revision 6, would be adequate for protecting the RPV from brittle fracture under all normal operating and hydrostatic/leak test conditions.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

This exemption results in changes to the plant by allowing the use of an alternative methodology for calculating flaw stress intensity factors in the reactor pressure vessel due to membrane stress from pressure loadings in lieu of meeting the requirements in 10 CFR 50.60. As stated above, 10 CFR 50.12 allows NRC to grant exemptions from the requirements of 10 CFR Part 50. In addition, the granting of the exemption will not result in violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

The underlying purpose of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, is to ensure that appropriate pressure-temperature limits and the minimum permissible temperature are established for the reactor pressure vessel under normal operating and hydrostatic or leak rate conditions. The licensee's alternative methodology for establishing the P-T limits and low-temperature overpressure protection setpoints are described in Combustion Engineering Owners' Topical Report NPSD–683–A, and has been approved by the NRC staff. Based on the above, no new accident precursors are created by using the alternative methodology, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. In addition, the licensee will use an NRC-approved methodology for establishing P-T limits and minimum permissible temperatures for the reactor vessel. Therefore, there is no undue risk to the public health and safety.

The exemption results in changes to the plant by allowing an alternative methodology for calculating flaw stress intensity factors in the reactor vessel. This change to the calculation of stresses in the reactor vessel material has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of SONGS 2 and 3 with P-T limit curves developed in accordance with the ASME Code, Section XI, Appendix G, without the authorization to utilize the alternative K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, is not necessary to achieve the underlying purpose of 10 CFR Part 50, Appendix G. Application of the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, in lieu of the calculational methodology specified in the ASME Code, Section XI, Appendix G, provides an acceptable alternative evaluation

procedure, which will continue to meet the underlying purpose of 10 CFR Part 50, Appendix G. The underlying purpose of the regulations in 10 CFR Part 50, Appendix G, is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

Based on the staff's March 16, 2001, SE regarding CE NPSD–683, Revision 6, and the licensee's rationale to support the exemption request, the staff accepts the licensee's determination that an exemption would be required to approve the use of the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6. The staff concludes that the application of the technical provisions of the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, by SONGS 2 and 3 provides sufficient margin in the development of RPV P-T limit curves such that the underlying purpose of the regulations (10 CFR Part 50, Appendix G) continues to be met. Therefore, the NRC staff concludes that the exemption requested by the licensee is justified based on the special circumstances of 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR Part 50, Appendix G, and ASME Code, Section XI, Appendix G, the staff concludes that application of the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, as described, would provide an adequate margin of safety against brittle failure of the RPV. Therefore, the staff concludes that the exemption is appropriate under the special circumstances of 10 CFR 50.12(a)(2)(ii), and that the application of the technical provisions of the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, should be approved for use in the SONGS 2 and 3 PTLR methodology.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Southern California Edison Company an exemption from the requirements of 10 CFR Part 50, Appendix G, to allow application of the K_{IM} calculational methodology of CE NPSD–683–A, Revision 6, in establishing the PTLR methodology for SONGS 2 and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (71 FR 19553; dated April 14, 2006).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of June 2006.

For the Nuclear Regulatory Commission.

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–10529 Filed 7–5–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 20a–1, SEC File No. 270–132, OMB Control No. 3235–0158.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval. The title of the collection of information is ''Rule 20a–1 under the Investment Company Act of 1940, Solicitation of Proxies, Consents and Authorizations.''

Rule 20a–1 (17 CFR 270.20a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by a registered investment company (''fund'') be in compliance with Regulation 14A (17 CFR 240.14a–1 *et seq.*), Schedule 14A (17 CFR 240.14a–101), and all other rules and regulations adopted under section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)). It also requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for fund proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that funds file approximately 1,565 proxy solicitations annually with the Commission. That figure includes multiple filings by some funds. The total annual reporting and recordkeeping burden of the collection of information is estimated to be approximately 166,203 hours (1,565 responses × 106.2 hours per response).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or via e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 20, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–10491 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54063]

Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 608(e) Thereunder Extending a De Minimis Exemption for Transactions in Certain Exchange-Traded Funds From the Trade-Through Provisions of the Intermarket Trading System

June 28, 2006.

This order extends, through February 4, 2007, a *de minimis* exemption to the provisions of the Intermarket Trading System Plan (''ITS Plan''),[1] a national market system plan,[2] governing intermarket trade-throughs that currently is due to expire on June 28, 2006. The *de minimis* exemption was originally issued by the Commission on August 28, 2002 [3] and extended on May 30, 2003,[4] on March 3, 2004,[5] on December 3, 2004,[6] and on September 6, 2005.[7]

Specifically, this order continues the *de minimis* exemption from compliance with Section 8(d)(i) of the ITS Plan with respect to two specific exchange-traded funds (''ETFs''), the Dow Jones Industrial Average ETF (''DIA'') and the Standard & Poor's 500 Index ETF (''SPY'').[8] By its terms, the September 2005 Order continued the exemption from the trade-through provisions of the ITS Plan of any transactions in the two ETFs that are effected at prices at or within three cents away from the best bid and offer quoted in the Consolidated Quote System (''CQS'') through June 28, 2006.

In the Commission's previous orders to issue and extend the *de minimis* exemption,[9] the Commission discussed its basis for determining that the *de minimis* exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. In the September 2005 Order, the Commission further noted that:

> In March 2004 and in May 2003, the Commission extended the three cent *de minimis* exemption for additional nine-month periods, in order to assess trading data associated with the *de minimis* exemption and to consider whether to adopt the *de minimis* exemption on a permanent basis, to adopt some other alternative solution, or to allow the exemption to expire. As a result of its review of trading data associated with the *de minimis* exemption, the Commission has proposed, as part of its market structure initiatives, Regulation NMS under the Act, which would include a new rule relating to trade-throughs.

On April 6, 2005, the Commission approved Regulation NMS under the Act.[10] In Regulation NMS, the Commission adopted an approach that, among other things, protects only automated quotations and excludes manual quotations from trade-through protection, and renders the *de minimis* exemption unnecessary. Given the significant systems and other changes necessary to implement Rule 610 and Rule 611,[11] the Commission originally established delayed compliance dates for Rule 610 and Rule 611, the first of which was scheduled to begin on June 29, 2006.[12] In the September 2005 Order, the Commission stated that until Regulation NMS is implemented, the reasons for maintaining the *de minimis* exemption in effect continue to be valid, and thus the Commission extended the *de minimis* exemption though June 28, 2006, which was the date before the initial compliance date for Rule 610 and Rule 611.

On May 18, 2006, the Commission extended the compliance dates for Rule 610 and Rule 611 to give trading centers additional time to finalize the development of their new or modified trading systems, and to give the securities industry sufficient time to establish the necessary access to such trading systems.[13] The initial compliance date was extended to a series of five dates, beginning on October 16, 2006, for different functional stages of compliance, with February 5, 2007 (the ''Trading Phase Date'') being the final date for full operation of Regulation NMS-compliant trading systems for initial trade-through protection under Rule 611, as described in the NMS Extension Release.

Therefore, to maintain the status quo and avoid requiring market participants to make short-term trading or programming changes pending the extended implementation period for Rule 610 and Rule 611 of Regulation NMS, it is appropriate to extend the *de minimis* exemption through February 4, 2007, the day before the Trading Phase Date.[14] The Commission emphasizes, as

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[1] The self-regulatory organizations (''SROs'') participating in the ITS Plan include the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the National Stock Exchange, Inc. (formerly the Cincinnati Stock Exchange, Inc.), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the ''participants''). *See* Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

[2] Securities Exchange Act of 1934 (''Act'') Rule 608(c) (formerly Rule 11Aa3–2(d)), 17 CFR 242.608(c), promulgated under Section 11A, 15 U.S.C. 78k–1, of the Act requires each SRO to comply with, and enforce compliance by its members and their associated persons with, the terms of any effective national market system plan of which it is a sponsor or participant. Rule 608(e) (formerly Rule 11Aa3–2(f)), 17 CFR 242.608(e), under the Act authorizes the Commission to exempt, either unconditionally or on specified terms and conditions, any SRO, member of an SRO, or specified security from the requirement of the rule if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

[3] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) (the ''August 2002 Order''). The August 2002 Order granted relief through June 4, 2003.

[4] *See* Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003) (the ''May 2003 Order''). The May 2003 Order granted relief through March 4, 2004.

[5] *See* Securities Exchange Act Release No. 49356 (March 3, 2004), 69 FR 11057 (March 9, 2004) (the ''March 2004 Order''). The March 2004 Order granted relief through December 4, 2004.

[6] *See* Securities Exchange Act Release No. 50795 (December 3, 2004), 69 FR 71445 (December 9, 2004) (the ''December 2004 Order''). The December 2004 Order granted relief through September 4, 2005.

[7] *See* Securities Exchange Act Release No. 52382 (September 6, 2005), 70 FR 53695 (September 9, 2005) (the ''September 2005 Order''). The September Order granted relief through June 28, 2006.

[8] The Commission limited the *de minimis* exemption to these two securities because they share certain characteristics that may make immediate execution of their shares highly desirable to certain investors. In particular, trading in the two ETFs is highly liquid and market participants may value an immediate execution at a displayed price more than the opportunity to obtain a slightly better price. Unlike prior orders, the December 2004 and September 2005 extensions of the *de minimis* exemption applied only to the DIA and the SPY, and not the QQQ, because, on December 1, 2004, trading of the QQQ transferred from the American Stock Exchange to Nasdaq, and thus trades in the QQQ ceased to be subject to the trade-through provisions of the ITS Plan. Accordingly, an exemption for the QQQ was no longer necessary. *See* December 2004 Order and September 2005 Order.

[9] *See supra* notes 3 to 7.

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[11] Rule 610 generally prohibits national securities exchanges and national securities associations from imposing unfairly discriminatory terms that prevent or inhibit access to quotations, and establishes a limit on access fees, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations. Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception.

[12] *See supra* note 10.

[13] Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30037 (May 24, 2006) (''NMS Extension Release'').

[14] The Commission expects most trading centers to be operating consistent with the requirements of Rule 611 by the Trading Phase Date.

it did in the previous orders,[15] that the *de minimis* exemption does not relieve brokers and dealers of their best execution obligations under the federal securities laws and SRO rules.

Accordingly, it is ordered, pursuant to Section 11A of the Act and Rule 608(e) thereunder,[16] that participants of the ITS Plan and their members are hereby exempt from Section 8(d) of the ITS Plan during the period covered by this Order with respect to transactions in DIAs and SPYs that are executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS. This Order extends the *de minimis* exemption from June 29, 2006 through February 4, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–10493 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54066; File No. SR–BSE–2006–24]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Allows for No Minimum Size Order Requirement for the Price Improvement Period Process on the Boston Options Exchange

June 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2006, the Boston Stock Exchange, Inc. (''BSE'' 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 BSE. The Exchange has designated the proposed rule change as a ''non-controversial'' 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 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 text of the proposed rule change is below. Proposed new language is *underlined*; proposed deletions are in [brackets].

* * * * *

Chapter V, Section 18

Supplementary Material to Section 18

.01 During the extended Pilot Period [from August 7, 2005 to July 18, 2006], there will be no minimum size requirement for Customer Orders to be eligible for the PIP process. During this extended Pilot Period, BOXR will continue to submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is meaningful competition for all size PIP orders, that there is significant price improvement for all orders executed through the PIP, and that there is an active and liquid market functioning on BOX outside of the PIP mechanism. Any data which is submitted to the Commission by BOXR will be provided on a confidential basis. *The Pilot Period shall expire on July 18, 2007.*

.02 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend a Pilot Program under the Rules of the Boston Options Exchange (''BOX'') for an additional year. The Pilot Program allows BOX to have no minimum size requirement for orders entered into the Price Improvement Period (''PIP'') process.[5] The proposed rule change retains the text of Supplementary Material .01 to Section 18 of Chapter V of the BOX Rules and seeks to extend the operation of the PIP Pilot Program until July 18, 2007.

The Exchange notes that the PIP Pilot Program provides small customer orders with benefits not available under the rules of other exchanges. One of the important factors of the PIP Pilot Program is that it guarantees members the right to trade with their customer orders that are less than 50 contracts. In particular, any order entered into the PIP is guaranteed an execution at the end of the auction at a price at least a penny better than the national best bid or offer.

In further support of this proposed rule change, and as required by the Original PIP Pilot Program Approval Order, the Exchange represents that it has been submitting to the Commission a monthly PIP Pilot Program Report, offering detailed data from and analysis of the PIP Pilot Program.

2. Statutory Basis

The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the Pilot Program for another year. The Exchange represents that the proposed rule change is designed to provide investors with real and significant price improvement regardless of the size of the order. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to provide price improvement to any order, which is consistent with the public interest and protection of investors from a best execution standpoint. Additionally, the Exchange believes that price improvement to any size order creates competition for the best execution of all orders, without unduly burdening competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[15] *See supra* notes 3 to 7.

[16] 17 CFR 242.608(e).

[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 Pilot Program is currently set to expire on July 18, 2006. *See* Securities Exchange Act Release No. 52149 (July 28, 2005), 70 FR 44704 (August 3, 2005). *See also* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2768 (January 20, 2004) (''Original PIP Pilot Program Approval Order'').

[6] 15 U.S.C. 78f(b).

[7] 7 15 U.S.C. 78f(b)(5).

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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the foregoing rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder [9] because the rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative for 30 days from the day 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. The Exchange asserts that this proposed rule filing does not raise any additional or substantive issues from those raised when the Exchange sought to implement the Pilot Program. The Exchange also asserts that the information provided in the Pilot Program Reports supports the representations made at that time.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2006–24 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–BSE–2006–24. 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 BSE. 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–BSE–2006–24 and should be submitted on or before July 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10533 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54067; File No. SR–CBOE–2006–57]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend CBOE Rule 8.7 Relating to Bid/Ask Differentials

June 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The CBOE has filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 8.7, ''Obligations of Market-Makers,'' relating to bid/ask differentials in Hybrid and Hybrid 2.0 classes. The text of the proposed rule change appears below. Additions are *italicized.*

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 8.7—Obligations of Market-Makers

Rule 8.7. (a) No change.

(b) No change.

(i)–(iii) No change.

(iv) To price options contracts fairly by, among other things, bidding and/or offering in the following manner:

(A) No change.

(B) No change.

(C) Option Classes Trading on the Hybrid Trading System and Hybrid 2.0 Platform. Except as provided in subparagraphs (i) and (ii) below, option classes trading on the Hybrid Trading System and the Hybrid 2.0 Platform may be quoted electronically with a difference not to exceed $5 between the bid and offer regardless of the price of the bid. The provisions of Rule 8.7(b)(iv)(A) shall apply to any quotes given in open outcry in Hybrid classes and Hybrid 2.0 classes.

i. The $5 bid/ask differential stated in subparagraph (C) above shall not apply to *at-the-money series or* in-the-money series where the quote width on the primary market of the underlying security, or the quote width calculated by the Exchange or its agent for various indices pursuant to Interpretation .08, is wider than $5. For these series, the bid/ask differential may be as wide as the quote width on the primary market of the underlying security or calculated by the Exchange or its agent, as applicable.

[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).

For purposes of this subparagraph (C)(i), ''in-the-money series'' are defined as follows: for call options, all strike prices below the offer or last sale in the underlying security (whichever is higher); and for put options, all strike prices above the bid or last sale in the underlying security (whichever is lower); and

ii. No change.

(c)–(e) No change.

* * * *Interpretations and Policies:*

.01–.13 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE proposes to amend CBOE Rule 8.7(b)(iv)(C)(i) relating to bid/ask differentials in the Hybrid Trading System and Hybrid 2.0 Platform classes. Specifically, the CBOE proposes to revise the text of CBOE Rule 8.7(b)(iv)(C)(i) to include an interpretation of the meaning of ''in-the-money'' series and to include ''at-the-money'' series within the provisions of that paragraph.

Recently, the CBOE amended its Rule 8.7 to provide, among other things, an exception to the general requirement that option classes trading on the Hybrid Trading System and the Hybrid 2.0 Platform may be quoted electronically with bid/ask differentials not to exceed $5 between the bid and offer regardless of the price of the bid.[5] One exception to this general requirement is that the $5 bid/ask differential does not apply to in-the-money series where the quote width on the primary market of the underlying security, or the quote width calculated by the Exchange or its agent for various indices pursuant to Interpretation .08 of CBOE Rule 8.7, is wider than $5. For these in-the-money series, the bid/ask differential may be as wide as the quote width on the primary market of the underlying security or the quote width calculated by the Exchange or its agent, as applicable.

The CBOE proposes to include in the text of CBOE Rule 8.7(b)(iv)(C)(i) an interpretation of the meaning of ''in-the-money'' series. The Exchange proposes that, for call options, ''in-the-money'' series include all strike prices below the offer or last sale in the underlying security, whichever is higher, and for put options, ''in-the-money'' series include all strike prices at or above the bid or last sale in the underlying security, whichever is lower. The CBOE believes that its proposed interpretation is consistent with the definition of ''in-the-money'' series included in the Options Disclosure Document (''ODD''), ''Characteristics and Risks of Standardized Options.''[6]

The CBOE also proposes to amend paragraph (b)(iv)(C)(i) of CBOE Rule 8.7 to state that the $5 bid/ask differential also will not apply to at-the-money series where the quote width on the primary market of the underlying security, or the quote width calculated by the Exchange or its agent for various indices pursuant to Interpretation .08 of CBOE Rule 8.7, is wider than $5. The Exchange proposes that, for these at-the-money series, the bid/ask differential may be as wide as the quote width on the primary market of the underlying security or the quote width calculated by the Exchange or its agent, as applicable.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act[8] that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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. In addition, as required under Rule 19b–4(f)(6)(iii),[9] the CBOE provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] *See* Securities Exchange Act Release No. 53229 (February 6, 2006), 71 FR 7095 (February 10, 2006) (notice of filing and immediate effectiveness of File No. SR–CBOE–2006–12).

[6] In the ODD, ''in-the-money'' series are defined as: ''A call option is said to be *in the money* if the current market value of the underlying interest is above the exercise price of the option. A put option is said to be *in the money* if the current market value of the underlying interest is below the exercise price of the option.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–57 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2006–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2006–57 and should be submitted on or before July 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10530 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54065; File No. SR–CBOE–2006–54]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Retroactively Credit Certain DPM Linkage-Related Transaction Fees

June 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2006, the Chicago Board Options Exchange, Incorporated (''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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to retroactively credit Designated Primary Market-Makers (''DPMs'') for certain fees they incur in executing orders under the Intermarket Options Linkage Plan (''Linkage''). The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the CBOE Fees Schedule to retroactively establish certain fee relief that was provided prospectively in a previous CBOE rule change filing, SR–CBOE–2006–44 (''Previous Filing'').[3]

In the Previous Filing, the Exchange amended Section 21 of the CBOE Fees Schedule to enhance the credits provided to DPMs under the DPM Linkage Fees Credit Program (''Program''). Under the enhanced Program established by the Previous Filing, the Exchange credits DPMs for certain fees they incur related to the execution of: (i) Outbound principal acting as agent (''P/A'') orders; and (ii) outbound Principal orders on behalf of orders that are for the account of a broker-dealer (''P orders''). The purpose of the Program is to offset the additional costs DPMs incur in routing orders to other exchanges in order to obtain the National Best Bid or Offer (''NBBO'').

The Previous Filing established the enhanced Program as of May 18, 2006. In this filing, the Exchange proposes to extend this fee relief retroactively back to all applicable transactions occurring since May 1, 2006, a total of 13 business days.

2. Statutory Basis

The Exchange states that the proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received

[3] *See* Securities Exchange Act Release No. 53866 (May 25, 2006), 71 FR 31237 (June 1, 2006) (Notice of Filing and Immediate Effectiveness of File No. SR–CBOE–2006–44).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2006–54 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–2006–54. 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–CBOE–2006–54 and should be submitted by July 27, 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 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act,[7] in that, by retroactively crediting DPMs for certain fees they incur in executing Linkage orders, the proposed rule change should help to ensure the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members. As noted above, the Exchange recently established the proposed fees on a going-forward basis.[8]

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing thereof in the **Federal Register**. The proposal would allow the Exchange to apply the Program retroactively, for 13 additional business days. The Commission did not receive any comments regarding the Previous Filing, and therefore believes that retroactively crediting DPMs for certain fees they incur in executing Linkage orders would not raise any new or novel regulatory issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[10] that the proposed rule change (SR–CBOE–2006–54) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10534 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

[6] 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).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 53866, *supra* at note 3.

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54064; File No. SR–CBOE–2006–59]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Extend the Options Intermarket Linkage Fees Pilot Program

June 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 15, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared 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 its Fees Schedule to extend until July 31, 2007 the Options Intermarket Linkage (''Linkage'') fee pilot program. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange's Office of the Secretary, and at the Exchange's Web site (*http://www.cboe.com*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change as amended and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's fees for Principal (''P'') and Principal Acting as Agent (''P/

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

A'') orders [3] are operating under a pilot program scheduled to expire on July 31, 2006.[4] The Exchange proposes to amend its Fees Schedule to extend the pilot program until July 31, 2007.[5]

The Exchange assesses its members the following Linkage order transaction fees: (i) $.24 per contract for equity, QQQQ and SPDR options; (ii) $.26 per contract for DIA options; (iii) $.35 or $.20 per contract, depending on the premium, for OEF options and $.45 or $.25 per contract, depending on the premium, for other index options; (iv) $.30 per contract RAES access fee, if a Linkage order is executed in whole or in part on RAES; and (v) $.10 per contract license fee on transactions in MNX and NDX options.[6] Satisfaction orders are not assessed Exchange fees.

The Exchange believes that extension of the Linkage fee pilot program until July 31, 2007 will give the Exchange and the Commission further opportunity to evaluate the appropriateness of Linkage fees.

2. Statutory Basis

The Exchange states 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)(4) of the Act [8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange with respect to this proposed rule change.

III. Date of Effectiveness of the Proposed Rule

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2006–59 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–2006–59. 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–CBOE–2006–59 and should be submitted by July 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10535 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

[3] Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (''Plan'') and CBOE Rule 6.80(12), which tracks the language of the Plan, a ''Linkage Order'' means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders: (i) A ''P/A Order,'' which is an order for the principal account of a specialist (or equivalent entity an another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) a ''P Order,'' which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and (iii) a ''Satisfaction Order,'' which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[4] *See* Securities Exchange Act Release No. 52073 (July 20, 2005), 70 FR 43474 (July 27, 2005), (SR–CBOE–2005–54).

[5] The Exchange also proposes to amend Section 21 of the Fees Schedule to change the Linkage fees pilot expiration date included in that section.

[6] *See* CBOE Fees Schedule, Footnote 15.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54058; File No. SR–NASD–2006–073]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Amendment of NASD Interpretive Material 2210–4 To Require Certain Member Firms To Provide a Hyperlink to the NASD's Internet Home Page

June 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On June 26, 2006, NASD filed with the Commission 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Interpretive Material (''IM'') 2210–4 to require a member firm or a person associated with a member firm that refers, on its Internet Web site, to the firm's membership in NASD to provide a hyperlink to NASD's Web site. Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

IM–2210–4. Limitations on Use of NASD's Name

Members may indicate NASD membership in conformity with Article XV, Section 2 of the NASD By-Laws in one or more of the following ways:

(1) through (2). No change.

(3) on a member's internet Web site provided that the member provides a hyperlink to NASD's internet home page, www.nasd.com, in close proximity to the member's most prominent indication of NASD membership. A member is not required to provide more than one such hyperlink on its Web site. This provision also shall apply to an internet Web site relating to the member's investment banking or securities business maintained by or on behalf of any person associated with a member.

* * * * *

(b) Not applicable.

(c) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, many broker-dealers refer to their membership in NASD on their internet Web sites, often in a description of the firm or in an ''about us'' section. The proposed rule change would require a firm, when referencing membership in NASD on its Web site, to include an accompanying hyperlink to NASD's Internet home page, *http://www.nasd.com.* The proposed rule change also would apply to an Internet Web site relating to a firm's investment banking or securities business that is maintained by or on behalf of any person associated with the firm.[4] The proposed rule change would require a firm (and persons associated with a firm where applicable) to provide a hyperlink in close proximity to the most prominent indication of the firm's membership in NASD.[5] However, the proposed rule change would not create an independent obligation requiring a firm (or persons associated with a firm where applicable) to refer to the firm's NASD membership on an Internet Web site. The proposed rule change only would apply to the extent that a firm or a person associated with a firm chooses to represent on its Web site that the firm is a member of NASD.

The proposed rule change is intended to help investors understand the significance of a firm being an NASD member and also is designed to facilitate access to the information on *http://www.nasd.com.* NASD believes that facilitating investor access to NASD's Web site will enhance investor protection and lead to better educated and informed investors. The proposed rule change is similar to a rule adopted by the Securities Investor Protection Corporation (''SIPC''), which requires that its members provide a live hyperlink to SIPC's Web site, *http://www.SIPC.org,* when referring to membership in SIPC.[6]

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 180 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Sections 15A(b)(6) of the Act,[7] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that facilitating investor access to NASD's Web site will lead to better educated and informed investors and help investors understand the significance of NASD membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by NASD.

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 NASD 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–NASD–2006–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

[4] This requirement is intended to capture, among other things, situations where a person associated with an NASD member firm maintains its own Internet Web site or ''home page'' that relates to a member's investment banking or securities business. For example, NASD understands that independent contractors or their firms sometimes maintain a separate home page for each independent contractor for marketing purposes.

[5] While a member would be free to provide hyperlinks relating to subsequent or additional references to NASD on its Web site, it would not be required to provide more than one hyperlink. In addition, a member would be permitted to make the word NASD itself a live hyperlink or to provide a separate hyperlink to NASD's home page so long as it is in ''close proximity'' to the member's most prominent indication of its NASD membership.

[6] *See* Article 11, Section 4 of SIPC Bylaws.

[7] 15 U.S.C. 78*o*–3(b)(6).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–073. 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submission should refer to File Number SR–NASD–2006–073 and should be submitted on or before July 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10531 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54070; File No. SR–Phlx–2005–73)]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Exchange's Obvious Error Rule

June 29, 2006.

I. Introduction

On November 14, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 1092 with respect to: (1) the definition of ''obvious error'' and (2) the definition of ''Theoretical Price.'' On November 18, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change.[3] On April 6, 2006, the Phlx submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on May 15, 2006.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Phlx proposes to amend its Obvious Error Rule, Phlx Rule 1092. Currently, Phlx Rule 1092(a) defines ''obvious error'' as the execution price of a transaction that is higher or lower than the Theoretical Price (if the Theoretical Price is less than $3.00) for the series by an amount of 35 cents or more, or, during unusual market conditions (*i.e.*, the Exchange has declared an unusual market condition status for the option in question), by an amount of 50 cents or more. Where the Theoretical Price is $3.00 or more, ''obvious error'' is defined as the execution price of a transaction that is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the allowable maximum bid/ask spread for the series, so long as the amount is 50 cents or more, and three times the allowable bid/ask spread during unusual market conditions.

The proposed rule change would revise the definition of ''obvious error'' by deeming an ''obvious error'' to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for a series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2	$.25
$2 to $5	.40
Above $5 to $10	.50
Above $10 to $20	.80
Above $20	1.00

The Exchange believes that the proposed new definition of ''obvious error'' would facilitate the efficient determination by Floor Officials regarding whether a trade resulted from an obvious error by setting minimum amounts by which the transaction price differs from the Theoretical Price without requiring such Floor Officials to conduct an inquiry into the volume of all exchanges each time they review a transaction under the rule. The proposed definition of ''obvious error'' would apply during both normal and unusual market conditions, which in the Exchange's view would further streamline the Floor Officials' process of determining whether an obvious error exists.[6]

Phlx Rule 1092(b) defines ''Theoretical Price'' as the last bid or offer, just prior to the transaction, on the exchange that has the most total volume in that option over the most recent 60 calendar days; or, if there are no quotes for comparison purposes, as determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department. The proposed rule change would revise the definition of ''Theoretical Price'' as, respecting series traded on at least one other options exchange, the mid-point of the National Best Bid and Offer (''NBBO'') just prior to the transaction.

According to the Exchange, currently all options exchanges, including the Phlx, have rules permitting specialists and market makers to disseminate electronic quotations with a bid/ask differential of up to $5.00, regardless of the price of the bid.[7] For the most part, the Phlx believes that such quotations do not reflect the NBBO. Under current Phlx Rule 1092, the Theoretical Price, defined as the last bid or offer just prior to the transaction on the market with the highest volume, could differ from the NBBO by a significant amount if the bid/ask differential on such market in the series is $5.00 wide. To account for this potential discrepancy between the Theoretical Price as established by rule

[8] 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 corrected technical errors in the proposed rule text.

[4] Amendment No. 2 deleted the proposed revisions to Phlx Rule 1092(c) that related to an erroneous print disseminated by the underlying market that is later cancelled or corrected by the underlying market and an erroneous quote in the underlying market. Thus, the Exchange does not propose to make any changes to Phlx Rule 1092(c).

[5] Securities Exchange Act Release No. 53776 (May 9, 2006).

[6] The Commission recently approved the Exchange's proposal to establish the position of neutral Referee who, among other things, would review Floor Officials' obvious error rulings. *See* Securities Exchange Act Release No. 53548 (March 24, 2006), 71 FR 16389 (March 31, 2006) (SR–Phlx–2005–42).

[7] *See, e.g.*, Exchange Rule 1014(c)(i)(A)(2).

and the actual NBBO, the proposal would revise the definition of the term ''Theoretical Price'' to mean the mid-point of the NBBO just prior to the transaction. The Exchange believes that this new definition should provide Exchange Floor Officials with a more accurate measure of the price on which to base their determination that a transaction resulted from an obvious error. The Exchange also proposes to delete Commentary .02 to Phlx Rule 1092 from the Rule.[8] This Commentary sets forth how Theoretical Price would be determined under current Phlx Rule 1092(c).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[9] and, in particular, the requirements of Section 6(b) of the Act[10] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] in that the proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and protects investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an ''obvious error'' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Phlx's proposal would provide specific and objective numerical criteria to be used by Floor Officials to determine whether a particular transaction involved an obvious error. In addition, the Exchange's proposal to base the definition of Theoretical Price on the midpoint of the NBBO would ensure that the Phlx's obvious error rule is consistent with the Options Intermarket Linkage Plan, which requires exchanges to avoid trade-throughs. Accordingly, the Commission finds that the Exchange's proposal is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2005–73), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–10532 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

[8] Phlx Rule 1092(b) would retain the provision that if there are no quotes for comparison purposes, two Floor Officials and designated personnel in the Exchange's Market Surveillance Department would determine Theoretical Price.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 5462]

Memorandum of Agreement Between the U.S. Department of State and the Colorado Department of Human Services Regarding Performance of Duties as an Accrediting Entity Under the Intercountry Adoption Act of 2000

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State (the Department) is the lead Federal agency for implementation of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (IAA). Among other things, the IAA gives the Secretary of State responsibility for the accreditation of agencies and approval of persons to provide adoption services under the Convention. The IAA requires the Department to enter into agreements with one or more qualified entities under which such entities will perform the tasks of accrediting agencies and approving persons, monitoring compliance of such agencies and persons with applicable requirements, and other related duties set forth in section 202(b) of the IAA. This notice is to inform the public that on June 29, 2006, the Department exercised its authority under the IAA and entered into an agreement with the Colorado Department of Human Services under which the Department designated the Colorado Department of Human Services as an accrediting entity. In its role as an accrediting entity, the Colorado Department of Human Services will be accrediting or approving qualified adoption service providers located in and licensed by the State of Colorado to enable them to provide adoption services in cases subject to the Convention once the Convention enters into force for the United States. As the U.S. Central Authority for the Convention, the Department will monitor the performance of the Colorado Department of Human Services and approve fees charged by it as an accrediting entity. The text of the Memorandum of Agreement, signed on June 29, 2006 by Maura Harty, Assistant Secretary for Consular Affairs, U.S. Department of State and signed on June 13, 2006 by Marva Livingston Hammons, Executive Director, Department of Human Services, State of Colorado, is included at the end of this Notice. Also included at the end of the Memorandum of Agreement is its Attachment 1, Colorado Revised Statutes § 26–6–104(6.5).

FOR FURTHER INFORMATION CONTACT: Mikiko Stebbing at 202–736–9086. Hearing or speech-impaired persons may use the Telecommunications Devices for the Deaf (TDD) by contacting the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department, pursuant to section 202(a) of the IAA, must enter into an agreement with at least one qualified entity and designate it as an accrediting entity. Accrediting entities may be (1) nonprofit private entities with expertise in developing and administering standards for entities providing child welfare services; or (2) State adoption licensing bodies that have expertise in developing and administering standards for entities providing child welfare services and that accredit only agencies located in that State. Colorado's Department of Human Services is a State adoption licensing body with expertise in developing and administering standards for entities providing child welfare services and only accredits agencies located in the State of Colorado. The final rule on accreditation of agencies and approval of persons (22 CFR Part 96) was published in the **Federal Register** (71 FR 8064–8066, February 15, 2006) and became effective on March 17, 2006. The final rule establishes the regulatory framework for the accreditation and approval function and provides the standards that the designated accrediting entities will follow in

accrediting or approving adoption service providers.

Memorandum of Agreement Between the U.S. Department of State, Bureau of Consular Affairs and the Colorado Department of Human Services

Parties & Purpose of the Agreement

The Department of State, Bureau of Consular Affairs (Department) and the Colorado Department of Human Services (Colorado), with its principal office located at 1575 Sherman Street, Denver, CO 80203–1714, hereinafter the ''Parties'', are entering into this agreement for the purpose of designating Colorado as an accrediting entity under the Intercountry Adoption Act of 2000 (IAA), Public Law 106–279 and 22 CFR Part 96.

Authorities

The Department enters into this agreement pursuant to Sections 202 and 204 of the IAA, 22 CFR Part 96, and Delegation of Authority 261. Colorado has full authority to enter into this MOA pursuant to Colorado Revised Statutes § 26–6–104(6.5), a copy of which is attached hereto as Attachment 1. The Executive Director of the Colorado Department of Human Services is authorized to sign on Colorado's behalf.

Definitions

For purposes of this memorandum of agreement, terms used here that are defined in 22 CFR 96.2 shall have the same meaning as they have in 22 CFR 96.2. In addition, the terms ''transitional application deadline'' (TAD) and ''deadline for initial accreditation or approval'' (DIAA) shall have the meaning given them in 22 CFR 96.19 and ''uniform notification date'' (UND) shall have the meaning given it in 22 CFR 96.58.

The Parties agree as follows:

Article 1—Designation and Jurisdiction of the Accrediting Entity

The Department hereby designates Colorado as an accrediting entity and thereby authorizes it to accredit (including temporarily accredit) agencies and approve persons that are located in Colorado and that are licensed as a child placement agency in the State of Colorado, in accordance with the procedures and standards set forth in 22 CFR Part 96, and to perform all of the accrediting entity functions set forth in 22 CFR 96.7.

Article 2—Accreditation Responsibilities and Duties of the Accrediting Entity

(1) Colorado agrees to perform all accrediting entity functions set forth in 22 CFR 96.7(a) and to perform its functions in accordance with the Convention, the IAA, Part 96 of 22 CFR and any other applicable regulations, and as additionally specified in this agreement. In performing these functions, Colorado will operate under policy direction from the Department regarding U.S. obligations under the Convention and regarding the functions and responsibilities of an accrediting entity.

(2) Colorado will take appropriate staffing, funding, and other measures to allow it to carry out all of its functions and fulfill all of its responsibilities, and will use the Adoptions Tracking System and the Hague complaint registry (ATS/HCR) as directed by the Department, including by updating required data fields in a timely fashion.

(3) In carrying out its accrediting entity functions Colorado will:

(a) Prepare to accept applications by the TAD by expending its own funds and other resources for materials development, staff training, travel and meeting attendance in advance of receiving any fees for its services as an accrediting entity;

(b) Make decisions on accreditation and approval in accordance with the procedures set forth in 22 CFR Part 96 and using only the standards in subpart F of 22 CFR Part 96 and the substantial compliance weighting system approved by the Department pursuant to Article 3, paragraph 5, below;

(c) Make decisions on temporary accreditation in accordance with the procedures and standards in subpart N of 22 CFR Part 96 and the procedures presented to the Department pursuant to Article 3, paragraph 3, subsection (a), below;

(d) Charge applicants for accreditation, approval, or temporary accreditation only fees approved by the Department pursuant to Article 3, paragraph 4 below;

(e) Consistent with 22 CFR 96.19 and 96.97, use its best efforts to evaluate and decide by the DIAA all applications for accreditation, temporary accreditation, or approval that were submitted by the TAD;

(f) Review complaints, including complaints regarding conduct alleged to have occurred abroad, in accordance with subpart J of 22 CFR Part 96 and the additional procedures approved by the Department pursuant to Article 3, paragraph 3, subsections (c) and (d) below. Colorado will exercise its discretion in determining which methods are most appropriate to review complaints regarding conduct alleged to have occurred abroad.

(g) Take adverse actions against accredited agencies, temporarily accredited agencies, and approved persons in accordance with subparts K and N of 22 CFR Part 96, and cooperate with the Department in any case in which the Department considers exercising its adverse action authorities because the accrediting entity has failed or refused after consultation with the Department to take what the Department considers to be appropriate enforcement action;

(h) Assume full responsibility for defending adverse actions in court proceedings, if challenged by the adoption service provider or the adoption service provider's board or officers;

(i) Refer an adoption service provider to the Department for debarment if, but only if, it concludes after investigation that the adoption service provider's conduct meets the standards for action by the Secretary set out in 22 CFR 96.85;

(j) Promptly report any change in the accreditation (including temporary accreditation) or approval status of an adoption service provider to the relevant state licensing authority.

(k) Maintain and use only the required procedures approved by the Department and those procedures presented to the Department pursuant to Article 3 of this agreement whenever they apply.

Article 3—Preparatory Tasks

(Tasks Preceding the Transitional Application Deadline)

(1) *Accreditation Materials and Training:* In coordination with any other designated accrediting entities, by a date agreed upon by the Parties, Colorado will:

(a) Develop forms, training materials, and evaluation practices;

(b) Determine whether joint training of evaluators or other personnel is practical, and, if so, assist in conducting or participate in any joint training sessions;

(c) Develop explanatory guidance to assist applicants for accreditation, temporary accreditation, and approval in achieving substantial compliance with the applicable standards.

(2) *Development of Internal Review Procedure:* Colorado will develop and present to the Department for approval, by a date agreed upon by the Parties, procedures that it will maintain and use to determine whether to terminate adverse actions against an accredited agency or approved person on the grounds that the deficiencies necessitating the adverse action have been corrected.

(3) *Development of Other Procedures:* Colorado will develop and present to the Department, by a date agreed upon by the Parties, procedures that it will maintain and use:

(a) To evaluate whether a candidate for temporary accreditation meets the applicable eligibility requirements set forth in 22 CFR 96.96;

(b) To carry out its annual monitoring duties;

(c) To review thoroughly complaints or information referred to it through the Hague Complaint Registry or from the Department directly, including procedures for obtaining complete and accurate information about conduct alleged to have occurred abroad;

(d) To review complaints that it receives about its own actions as an accrediting entity for Hague adoption service providers;

(e) To make the public disclosures required by 22 CFR 96.91; and

(f) To ensure the reasonableness of charges for the travel and maintenance of its site evaluators, such as for travel, meals and accommodations.

(4) *Fee Schedule Development:*

(a) Colorado will develop a fee schedule for accreditation, temporary accreditation, and approval services that meets the requirements of 22 CFR 96.8. Fees will be set based on the principle of recovering no more than the full cost, as defined in OMB Circular A–25 paragraph 6(d)(1), of accreditation, temporary accreditation, and approval services. Colorado will submit a fee schedule developed using this methodology together with comprehensive documentation justifying the proposed fees to the Department for approval by a date agreed upon by the Parties.

(b) The approved fee schedule can be amended with the approval of the Department.

(5) *Substantial Compliance Weighting Systems Development:*

(a) Colorado will develop a substantial compliance weighting system as described in 22 CFR 96.27, and will submit it to the Department for approval by a date agreed upon by the Parties.

(b) Colorado will develop a separate substantial compliance weighting system to be used in evaluating temporarily accredited agencies that incorporates the performance standards in 22 CFR 96.104 and will submit it to the Department for approval by a date agreed upon by the Parties.

(c) In developing the systems described in paragraphs (a) and (b) of this section, Colorado will coordinate with any other accrediting entities, and consult with the Department to ensure consistency between the systems used by accrediting entities. These systems can be amended with the approval of the Department.

Article 4—Initial Accreditation (Including Temporary Accreditation) and Approval Tasks

(1) The Department will consult with Colorado and all other accrediting entities before establishing the transitional application deadline (TAD), the uniform notification date (UND), and the deadline for initial accreditation or approval (DIAA).

(2) Within an agreed number of days following the TAD, Colorado will make public the names and addresses of agencies and persons that have applied to be accredited (including temporarily accredited) or approved, provide a mechanism for the public to comment on applicants, and consider comments received from the public in its decisions on applicants. With respect to additional applications received prior to entry into force of the Convention, Colorado will make the names of such applicants public within an agreed number of days following receipt. Colorado will consider any public comments in its decisions on the additional applicants.

(3) In conformity with 22 CFR 96.58, Colorado will not release its accreditation (including temporary accreditation) and approval decisions prior to the UND.

Colorado will prepare the list of decisions to be announced on the UND and transmit the information as directed by the Department. Colorado will immediately notify the Department of any corrections, so that the Department may rely upon this list in compiling the list of initially accredited and approved adoption service providers that it will deposit with the Permanent Bureau of the Hague Conference on Private International Law.

Article 5—Data Collection, Reporting and Records

(1) *Adoptions Tracking System/Hague Complaint Registry (ATS/HCR):*

(a) Colorado will maintain and fund a computer and internet connection for use with the ATS/HCR that meets system requirements set by the Department;

(b) The Department will provide software or access tokens needed by individuals for secure access to the ATS/HCR and facilitate any necessary training in use of the ATS/HCR;

(c) Colorado will ensure that only individuals that the Department has approved for access have access to the ATS/HCR and to any secure access tokens or passwords.

(2) *Annual Report:* Colorado will report on dates agreed upon by the Parties, in the format specified by the Department, the information required in 22 CFR 96.93 as provided in that section through ATS/HCR.

(3) *Additional Reporting:* Colorado will provide any additional status reports or data as required by the Department, and in the format required by the Department.

(4) *Accrediting Entity Records:* Colorado will retain all records related to its accreditation functions and responsibilities for a minimum of six years after their creation, or until any litigation, claim or audit related to the records filed or noticed within the six year period is finally terminated, whichever is longer.

Article 6—Department Oversight and Monitoring

(1) *Accrediting Entity Obligations:* To facilitate oversight and monitoring by the Department, Colorado will:

(a) Provide copies of its forms and other materials to the Department and give Department personnel the opportunity to participate in any training sessions for its evaluators or other personnel;

(b) Allow the Department to inspect all records relating to its accreditation functions and responsibilities and provide to the Department copies of such records as requested or required for oversight, including to evaluate renewal or maintenance of the accrediting entity's designation, and for purposes of transferring adoption service providers to another accrediting entity;

(c) Submit to the Department by a date agreed upon by the Parties an annual declaration signed by the Licensing Administrator confirming that Colorado is complying with the IAA, 22 CFR Part 96, any other applicable regulations, and this agreement in carrying out its functions and responsibilities;

(d) Make appropriate senior-level officials available to attend a yearly performance review meeting with the Department;

(e) Immediately report to the Department events which have a significant impact on its ability to perform its functions and responsibilities as an accrediting entity, including financial difficulties, changes in key personnel or other staffing issues, State legislative or regulatory changes; legal or disciplinary actions against Colorado and conflicts of interest;

(f) Notify the Department of any requests for information that it receives from Central Authorities of other Hague signatories, or any other foreign government authorities (except for routine requests concerning accreditation, temporary accreditation, or approval status or other information publicly available under subpart M of Part 96), and consult with the Department before releasing information;

(g) Consult immediately with the Department about any issue or event that may affect compliance with the IAA or U.S. compliance with obligations under the Convention.

(2) *Departmental Approval Procedures:* In all instances in which the Department must approve a policy, system, fee schedule, or procedure before Colorado can bring it into effect or amend it, Colorado will submit the policy, system, fee schedule, or procedure or amendment in writing to the Department's AE Liaison via email where possible. The AE Liaison will be responsible for coordinating the Department's approval process and arranging any necessary meetings or telephone conferences with Colorado. Formal approval by the Department will be conveyed in writing by the Deputy Assistant Secretary for Overseas Citizens Services or her or his designee.

(3) *Suspension or Cancellation:* When the Department is considering suspension or cancellation of Colorado's designation:

(a) The Department will notify Colorado in writing of the identified deficiencies in its performance and the time period in which the Department expects correction of the deficiencies;

(b) Colorado will respond in writing to either explain the actions that it has taken or plans to take to correct the deficiencies or to demonstrate that the Department's concerns are unfounded within 10 business days;

(c) Upon request, the Department will also meet with the accrediting entity by teleconference or in person;

(d) If the Department, in its sole discretion, is not satisfied with the actions or explanation of Colorado, it will notify Colorado in writing of its decision to suspend or cancel Colorado's designation and this agreement;

(e) Colorado will stop or suspend its actions as an accrediting entity as directed by the Department in the notice of suspension or cancellation, and cooperate with any Departmental instructions in order to transfer adoption service providers it accredits (including temporarily accredits) or approves to another accrediting entity, including by transferring a reasonable allocation of collected fees for the remainder of the accreditation or approval period of such adoption service providers.

(4) *Complaint Procedures:* By a date agreed upon by the Parties, the Parties will agree upon procedures for handling complaints against the accrediting entity received by the Department or referred to the Department because the complainant was not satisfied with the accrediting entity's resolution of the complaint. These complaint procedures may be incorporated into the Department's general procedures for handling instances in which the Department is considering whether a deficiency in the accrediting entity's performance may warrant suspension or cancellation of its designation.

Article 7—Other Issues Agreed by the Parties

(1) *Conflict of interest:* Colorado shall disclose to the Department the name of any organization of which it is a member that also has as members intercountry adoption service providers. Colorado shall demonstrate to the Department that it has procedures in place to prevent any such membership from influencing its actions as an accrediting entity and shall maintain and use these procedures.

(2) *Liability:* Colorado agrees to maintain sufficient resources to defend challenges to its actions as an accrediting entity, and to inform the Department immediately of any events that may affect its ability to defend itself. Colorado agrees that it will consult with the Department immediately if it becomes aware of any legal proceedings related to its acts as an accrediting entity, or of any legal proceedings not related to its acts as an accrediting entity that may threaten its ability to continue to function as an accrediting entity.

Article 8—Liaison Between the Department and the Accrediting Entity

(1) Colorado's principal point of contact for communications relating to its functions and duties as an accrediting entity will be the Licensing Administrator in the Department of Human Services. The Department's principal point of contact for communication is the Accrediting Entity Liaison officer in the Office of Children's Issues, Bureau of Consular Affairs, U.S. Department of State.

(2) The parties will keep each other currently informed in writing of the names and contact information for their principal points of contact. As of the signing of this Agreement, the respective principal points of contact are as set forth in Attachment 2.

Article 9—Certifications and Assurances

(1) Colorado certifies that it will comply with all requirements of applicable State and Federal law.

(2) Colorado certifies that it satisfies all of the accrediting entity performance criteria set forth in 22 CFR 96.6 and agrees to continue to do so throughout the duration of its designation.

(3) Colorado agrees to indemnify the Department and any persons acting on its behalf and to hold them harmless from any claim, loss or other liability that is caused by Colorado's fault or negligence in connection with performing duties under this Agreement. Any negligence or alleged negligence by the Department or persons acting on its behalf shall not preclude a claim for indemnification.

Article 10—Agreement, Scope, and Period of Performance

(1) *Scope:*

(a) This agreement is not intended to have any effect on any activities of Colorado that are not related to its functions as an accrediting entity for adoption service providers providing adoption services in intercountry adoptions under the Hague Convention.

(b) Nothing in this agreement shall be deemed to be a commitment or obligation to provide any Federal funds. The Department, consistent with the IAA, may not provide any funds to the accrediting entity for the performance of accreditation and approval functions.

(c) All accrediting entity functions and responsibilities authorized by this agreement are to occur only during the duration of this agreement.

(d) Nothing in this agreement shall release Colorado from any legal requirements or responsibilities imposed on the accrediting entity by the IAA, 22 CFR Part 96, or any other applicable laws or regulations.

(2) *Duration:* Colorado's designation as an accrediting entity and this agreement shall remain in effect for five years from signature, unless terminated earlier by the Department in conjunction with the suspension or cancellation of the designation of Colorado. The Parties may mutually agree in writing to extend the designation of the accrediting entity and the duration of this agreement. If either Party does not wish to renew the agreement, it must provide written notice no less than one year prior to the termination date, and the Parties will consult to establish a mutually agreed schedule to transfer adoption service

providers to another accrediting entity, including by transferring a reasonable allocation of collected fees for the remainder of the accreditation or approval period of such adoption service providers.

(3) *Severability:* To the extent that the Department determines, within its reasonable discretion, that any provision of this agreement is inconsistent with the Convention, the IAA, the regulations implementing the IAA or any other provision of law, that provision of the agreement shall be considered null and void and the remainder of the agreement shall continue in full force and effect as if the offending portion had not been a part of it.

(4) *Entirety of Agreement:* This agreement is the entire agreement of the Parties and may be modified only upon written agreement of the Parties.

Attachment 1—Colorado Revised Statutes: Title 26 Human Services Code: Article 6 Child Care Centers: Part 1 Child Care Licensing

26–6–104. Licenses—Out-of-State Notices and Consent

(6.5) On and after July 1, 2005, and subject to designation as a qualified accrediting entity as required by the ''Intercountry Adoption Act of 2000'', 42 U.S.C. 14901 *et seq*., the state department may license and accredit a child placement agency for purposes of providing adoption services for convention adoptions pursuant to the ''Intercountry Adoption Act of 2000'', 42 U.S.C. 14901 *et seq.* The state board of human services may adopt rules consistent with federal law governing the procedures for adverse actions regarding accreditation, which procedures may vary from the procedures set forth in the ''State Administrative Procedure Act'', article 4 of title 24, C.R.S.

Dated: June 29, 2006.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. E6–10573 Filed 7–5–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 5454]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 1:30 p.m. to 4:30 p.m. on Monday, July 24, 2006, in Room 1107, U.S. Department of State, 2201 C Street, NW., Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic and Business Affairs Daniel S. Sullivan and Committee Chairman R. Michael Gadbaw. The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. Items on the agenda for this meeting include: (1) International Energy Issues and (2) Intellectual Property Rights Enforcement.

This meeting is open to the public as seating capacity allows. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by July 20, 2006, their name, professional affiliation, valid government-issued ID number (*i.e.*, U.S. government ID (agency), U.S. military ID (branch), passport (country), or drivers license (state)), date of birth, and citizenship to La Keisha Barner by fax (202) 647–5936, e-mail (*BarnerLR@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, passport, or U.S. Government identification card. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

For additional information, contact David Freudenwald, Office of Economic Policy and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–2231 or *FreudenwaldDJ@state.gov.*

Dated: June 29, 2006.

Laura Faux-Gable,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E6–10553 Filed 7–5–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

[Docket Number FHWA–2005–22986]

Notice of Public Meetings on Notice of Proposed Rulemaking (NPRM) for Statewide and Metropolitan Planning Requirements

AGENCIES: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the dates, times, and locations of six public meetings and a national Webcast to be held in July and August 2006 concerning a Notice of Proposed Rulemaking (NPRM) on Statewide and Metropolitan Planning Requirements. Presentations delivered at these meetings will describe the provisions of the NPRM jointly issued by the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) on June 9, 2006 to provide guidance on implementing the planning provisions of Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), the Federal surface transportation law.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: For FTA, Effie S. Stallsmith, Office of Planning and Environment, at *Effie.Stallsmith@dot.gov* or 202–366–5653, or Christopher Van Wyk, Office of Chief Counsel, 202–366–1733. For FHWA, Robert Ritter, Office of Planning, 202–493–2139. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for FTA are from 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Office hours for FHWA are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The meetings listed below will provide a forum for FTA and FHWA staffs to make oral presentations on the Notice of Proposed Rulemaking (NPRM) for Statewide and Metropolitan Planning. Additionally, the sessions are intended to encourage interested parties and stakeholders to submit their comments directly to the official docket by the close of the public comment period on September 7, 2006, per the instructions found in the NPRM at 71 FR 33510 (June 9, 2006).

I. Meetings

The following are the 2006 Statewide and Metropolitan Planning NPRM public outreach session meeting dates and addresses:

1. Wednesday, July 19, 2006, 1 p.m. to 4 p.m. eastern standard time, Atlanta, GA—Sam Nunn Atlanta Federal Center (auditorium), 61 Forsyth Street, SW., Atlanta, GA 30303.

2. Friday, July 21, 2006, 9 a.m. to 12 p.m. eastern standard time, New York, NY—Alexander Hamilton U.S. Custom House (auditorium), One Bowling Green, New York City, NY 10004.

3. Monday, July 24, 2006, 1 p.m. to 4 p.m. central standard time, Kansas City,

MO—Radisson Hotel and Suites Kansas City-City Center, 1301 Wyandotte, Kansas City, MO 64105.

4. Tuesday, August 1, 2006, 9 a.m. to 12 p.m. Pacific standard time, San Francisco, CA—Metropolitan Transportation Commission Building (auditorium), MetroCenter, 101 Eighth Street, Oakland, CA 94607.

5. Monday, August 7, 2006, 1 p.m. to 4 p.m. central standard time, Chicago, IL—Harold Washington Library Center (Multipurpose Room–B), 400 South State Street, Chicago, Illinois 60605.

6. Wednesday, August 9, 2006, 1 p.m. to 4 p.m. eastern standard time, Cambridge, MA—John A. Volpe National Transportation Systems Center (auditorium), 55 Broadway, Cambridge, MA 02142.

II. Presentations and Comment Format

Generally, there will be at least two speakers delivering a presentation of approximately 1.5 hours. Meeting participants should arrive early since each meeting is anticipated to begin promptly at the appointed time.

A. Questions and Comments

Meeting attendees will have an opportunity to pose questions to the speakers and to the group as a whole. It is the responsibility of individuals who wish for their comments to become part of the official public record to submit their comments directly to the U.S. Docket via postal mail, fax, or through the online Docket Management System (DMS) by September 7, 2006. For instructions on how to submit comments to the docket (Docket Number FHWA–2005–22986), please refer to the NPRM located at 71 FR 33510 (June 9, 2006).

B. Registration

Registration is not required for public meetings. However, in order to ensure adequate space and materials, participants are encouraged to register for one or more events online at *http://www.environment.fta.dot.gov/nprm/register.asp*.

III. Security, Building, and Parking Guidelines

Some meetings are held in Federal government buildings; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. In order to gain access to the building and grounds, participants must display government-issued photo identification. Persons without proper identification may be denied access.

Proper identification is required to access to following four meetings:

1. Atlanta—Sam Nunn Atlanta Federal Center (auditorium), 61 Forsyth Street, SW., Atlanta, GA 30303.

2. New York—Alexander Hamilton U.S. Custom House (auditorium), One Bowling Green, New York City, NY 10004.

3. San Francisco—Metropolitan Transportation Commission Building (auditorium), MetroCenter, 101 Eighth Street, Oakland, CA 94607.

4. Cambridge—John A. Volpe National Transportation Systems Center (auditorium), 55 Broadway, Cambridge, MA 02142.

Security measures may also include inspection of vehicles, inside and out, at the entrance to the grounds. In addition, persons entering Federal buildings must pass through a metal detector. All items are subject to inspection.

IV. Special Accommodations

All locations are ADA-accessible and sign language interpreters will be present at each meeting. Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, may indicate this on the online registration form or by calling Paul Christner at 617–494–3142.

V. Online Event

In addition to the NPRM outreach sessions, FHWA and FTA will conduct a national Webcast on July 13, 2006 from 1 p.m. to 3 p.m. eastern standard time. The Webcast will include a presentation on the NPRM, and participants will have an opportunity to submit questions electronically. Interested parties may learn more and register for the event, which is hosted by the Center for Transportation and the Environment, at *http://itre.ncsu.edu/cte/TechTransfer/Teleconferences/2006schedule.asp*.

Authority: 49 U.S.C. 5303–5304; 49 CFR 1.51.

Issued on the 30th of June 2006.

Sandra K. Bushue,

Deputy Administrator, Federal Transit Administration.

J. Richard Capka,

Administrator, Federal Highway Administration.

[FR Doc. 06–6023 Filed 7–5–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

Pursuant to the Government in the Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b).

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIMES AND DATES: July 13, 2006, 1 p.m. to 5 p.m., and July 14, 2006, 8 a.m. to 12 p.m.

PLACE: Hilton Chicago O'Hare Airport, O'Hare International Airport, Chicago, IL 60666.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: An overview of the Unified Carrier Registration Plan and Agreement requirements set forth under section 4305 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, August 10, 2005); and the administrative functioning of the Board.

FOR FURTHER INFORMATION CONTACT: Mr. William Quade, (202) 366–2172, Director, Office of Safety Programs, FMCSA, or Mr. Bryan Price, (412) 395–4816, Transportation Specialist, FMCSA Pennsylvania Division Office, office hours are from 8 a.m. to 5 p.m., e.t. Monday through Friday except Federal holidays.

Dated: July 3, 2006.

William Quade,

Office Director, Safety Programs.

[FR Doc. 06–6054 Filed 7–3–06; 2:08 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34893]

The Chicago, Lake Shore and South Bend Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company

The Chicago, Lake Shore and South Bend Railway Company (CLS&SB), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to purchase and operate lines currently owned by Norfolk Southern Railway Company (NSR). The lines consist of approximately 3.2 miles of railroad between milepost UV0.0 and milepost UV2.8, and between milepost ZO9.48 and milepost ZO9.9, including any ownership interest in the spur leading

to the University of Notre Dame near South Bend, IN.[1]

CLS&SB certifies that its projected annual revenues as a result of the transaction will not exceed those that would quality it as a Class III rail carrier and will not exceed $5 million.

The transaction was scheduled to be consummated on or after June 21, 2006, the effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34893, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 29, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–10540 Filed 7–5–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program; Rebuttal of Controlling Influence Submissions

AGENCY: Departmental Offices, Terrorism Risk Insurance Program Office, Department of 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 Terrorism Risk Insurance Program Office is seeking comments regarding Rebuttal of Controlling Influence Submissions.

DATES: Written comments should be received on or before September 5, 2006 to be assured of consideration.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''PRA Comments—Rebuttal of Controlling Influence Submissions''. Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments may also be submitted through the Federal eRulemaking Portal: *http://www.regulations.gov*. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Title: Terrorism Risk Insurance Program—Rebuttal of Controlling Influence Submissions.

OMB Number: 1506–0190.

Abstract: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297) (and unchanged by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144) authorize the Department of Treasury to administer and implement the temporary Terrorism Risk Insurance Program established by the Act. The definition of control in section 102(3) of the Act provides for Treasury to determine whether an insurer directly or indirectly exercises a controlling influence over the management or policies of another insurer. Among other things, if one insurer controls another insurer, then the insurers are deemed ''affiliates'' under the Program and their direct earned premium must be consolidated for purposes of calculating the ''insurer deductible''. The ''insurer deductible, in turn, forms the basis for ascertaining federal payments made by Treasury under the Act. Treasury promulgated procedures at 31 CFR 50.8 for an insurer to follow in seeking to rebut a regulatory presumption of ''controlling influence'' over another insurer. These procedures require insurers to provide Treasury necessary information to determine whether a ''controlling influence'' exists, and if it does, whether it has been rebutted. No assurance of confidentiality has been provided, although applicable exemptions under the Freedom of Information Act could apply, *e.g.*, to any confidential business or trade secret material submitted.

Current Actions: No changes are being made at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 400 hours.

Request for Comments: 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. 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.

Dated: June 30, 2006.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. E6–10552 Filed 7–5–06; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee July 2006 Public Meeting

Summary: Pursuant to United States Code, Title 31, section 5135 (b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee

[1] On June 26, 2006, the City of South Bend, IN, filed a letter-petition seeking revocation of this exemption. CLS&SB filed a reply on that same date. The revocation request will be handled in a subsequent Board decision.

(CCAC) public meeting scheduled for July 19, 2006.

Date: July 19, 2006.

Time: 10 a.m. to 2 p.m.

Location: The United States Mint; 801 Ninth Street, NW.; Washington, DC; Second floor.

Subject: Review of designs for the 2007 Little Rock Central High School Desegregation 50th Anniversary Commemorative Coin, the Tuskegee Airmen Congressional Gold Medal, and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

For Further Information Contact: Cliff Northup, United States Mint Liaison to the CCAC; 801 Ninth Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration or addressing the CCAC at the Public Forum is invited to submit request and/or materials by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: June 30, 2006.

Gloria C. Eskridge,

Acting Deputy Director, United States Mint.

[FR Doc. E6–10643 Filed 7–5–06; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committe; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting for July 21, 2006, at the Orlando World Center Marriott Resort and Convention Center, 8701 World Center Drive, Orlando, FL. The meeting will take place from 8 a.m. to 1 p.m. in the North Tower, The Keys Ballroom Salon. This meeting will coincide with the Department of Defense Worldwide Education Symposium and will be open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under Chapters 30, 32, 34, or 35 of title 38, United States Code and under Chapters 1606 and 1607 of title 10, United States Code.

The meeting will begin with opening remarks by Ms. Sandra Winborne, Committee Chair. There will be a presentation on the usage of the license and certification test reimbursement benefit followed by a discussion of old business. Statements from the public will be heard at 11 a.m., prior to a discussion of new business.

Interested persons may file written statements to the Committee before the meeting, or within 10 days after the meeting, with Ms. Stacey St. Holder, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Anyone wishing to attend the meeting should contact Ms. Stacey St. Holder or Mr. Robyn Noles at (202) 273–7187.

Dated: June 27, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–6002 Filed 7–5–06; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for July 13–14, 2006, in the Oasis Room of the Almas Temple, 1315 K Street, NW., Washington, DC. The meeting will begin each day at 8:30 a.m. On July 13 the meeting will end at 4:15 p.m., and on July 14 the meeting will end at 3 p.m. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for the meeting on July 13 will include updates on the progress of the studies being conducted by the Institute of Medicine (IOM) and the Center for Naval Analyses (CNA). IOM will present a report of its Committee review of PTSD diagnosis and assessment. There will be additional presentations related to PTSD, post-deployment health and eligibility verification. The agenda for the meeting on July 14 will include an expanded discussion of quality of life and follow-up reporting on additional programs serving seriously injured and disabled veterans and service members.

Interested persons may attend and present oral statements to the Commission. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may provide written comments for review by the Commission prior to the meeting, by e-mail to *veterans@vetscommission.intranets.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: June 28, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–5989 Filed 7–5–06; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 71, No. 129

Thursday, July 6, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Citizen's Health Care Working Group Interim Recommendations

Correction

In notice document 06–5379 beginning on page 34369 in the issue of Wednesday, June 14, 2006, make the following corrections:

1. On page 34370, in the first column, under the heading **Preamble**, in the first paragraph, in the ninth line, ''pried'' should read ''priced''.

2. On the same page, in the same column, under the same heading, in the second paragraph, in the third line, ''impeded'' should read ''impede''.

3. On the same page, in the second column, in the first indented paragraph, in the 11th line, ''experience'' should read ''experienced''.

4. On the same page, in the third column, in the third line from the bottom of the page, ''as'' should read ''at''.

5. On page 34371, in the first column, in the first indented paragraph, in the fifth line, ''312'' should read ''31''.

6. On page 34372, in the second column, in the first bulleted paragraph, in the second line, ''preventived'' should read ''preventive''.

7. On page 34373, in the first column, in the third line from the bottom of the column, ''not'' should read ''no''.

[FR Doc. C6–5379 Filed 7–5–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
July 6, 2006

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; National Stock Exchange; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54044; File No. SR–NSX–2006–08]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend Its Trading Rules To Provide for a Strict Price-Time Priority Market and Other Related Changes

June 26, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2006, the National Stock Exchange SM(''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NSX. On June 22, 2006, the Exchange submitted 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 Exchange is proposing to amend Chapter 11 of the Exchange Rules (relating to Trading Rules) in order to incorporate a strict price-time priority automatic execution trading model to replace the Exchange's current market structure. In connection with the changes to its Trading Rules, the Exchange is also proposing to include certain new definitions and general provisions in the Exchange Rules, to move rules relating to exchange products to another new chapter of the Exchange Rules, and to make certain other technical changes in connection with the new trading system. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

RULES OF NATIONAL STOCK EXCHANGE, INC.

* * * * *

CHAPTER I. Adoption, Interpretation and Application of Rules, and Definitions

* * * * *

Rule 1.4. [Reserved.] *Effective Time*

(a) All Exchange Rules shall be effective when approved by the Commission in accordance with the Act and the rules and regulations thereunder, except for those Rules that are effective upon filing with the Commission in accordance with the Act and the rules thereunder and except as otherwise specifically provided in this Rule 1.4 or elsewhere in these Rules.

(b) Rule 11.11(c)(7)(iv) (relating to Sweep Orders) shall not become effective until the compliance date for Rule 611 of Regulation NMS under the Act (''Regulation NMS'').

(c) Prior to the compliance date for the appropriate sections of Regulation NMS, the following Rules shall only apply to quotations for securities subject to the Intermarket Trading System Plan:

(i) The second sentence of the lead-in to Rule 11.15 (Order Execution); and

(ii) Rule 11.22 (Locking or Crossing Quotations in NMS Stocks).

Rule 1.5. Definitions

A.

(1) No change.

Authorized Trader

(2) The term ''Authorized Trader'' or ''AT'' shall mean a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her ETP Holder or Sponsored Participant.

B.–K. No change.

L. [Reserved.]

Listing Exchange

(1) The term ''Listing Exchange'' shall mean the national securities exchange or association on which a security is listed.

M. [Reserved.]

Market Maker

(1) The term ''Market Maker'' shall mean an ETP Holder that acts as a Market Maker pursuant to Chapter XI.

Market Maker Authorized Trader

(2) The term ''Market Maker Authorized Trader'' or ''MMAT'' shall mean an authorized trader who performs market making activities pursuant to Chapter XI on behalf of a Market Maker.

N. [Reserved.]

NSX Book

(1) The term ''NSX Book'' shall mean the System's electronic file of orders.

O. No change.

P.

(1) No change.

Protected NBBO

(2) The term ''Protected NBBO'' shall mean the national best bid or offer that is a protected quotation.

Protected Quotation

(3) The term ''protected quotation'' means a bid or offer in a stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to a national market system plan approved by the Commission; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange or association.

Q. [Reserved.]

Qualified Clearing Agency

(1) The term ''Qualified Clearing Agency'' means a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange.

R. [Reserved.]

Regular Trading Hours

(1) The term ''Regular Trading Hours'' means the time between 8:30 a.m. and 3:00 p.m. Central Time.

S.

Sponsored Participant

(1) The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to Rule 11.9.

Sponsoring ETP Holder

(2) The term ''Sponsoring ETP Holder'' shall mean a broker-dealer that has been issued an ETP by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the System. The Sponsoring ETP Holder shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.

Statutory Disqualification

(3) The term ''statutory disqualification'' shall mean any statutory disqualification as defined in the Act.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 inserted a new NSX Rule 2.11 relating to NSX Securities, LLC in the Exchange's rules. Amendment No. 1 also revised NSX Rules 11.3(b) and 11.12 relating to crosses, Midpoint Crosses, and Clean Crosses, to reflect the delayed compliance date for Rule 611 of Regulation NMS under the Act and to add a requirement that Clean Crosses have an aggregate value of at least $100,000. In addition, Amendment No. 1 made corresponding changes to Item 3 of the proposed rule change to reflect these additional rule changes and also made additional minor clarifying edits.

System

(4) The term ''System'' shall mean the electronic securities communications and trading facility designated by the Board through which orders of Users are consolidated for ranking and execution.

T. [Reserved.]

Top of Book

(1) The term ''Top of Book'' shall mean the best-ranked order to buy (or sell) in the NSX Book as ranked pursuant to Rule 11.14.

U. [Reserved.]

User

(1) The term ''User'' shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9.

UTP Security

(2) The term ''UTP Security'' shall mean any security that is not listed on the Exchange but is traded on the Exchange pursuant to unlisted trading privileges.

V.–Z. No change.

* * * * *

CHAPTER II. ETP Holders of the Exchange

* * * * *

Rule 2.4. Restrictions

(a)–(e) No change.

Interpretations and Policies

.01–.02 No change.

[.03 An Exchange member may only give-up its own or another Exchange member's clearing number when executing a transaction on the Exchange; provided, however, that a member may give-up a non-member's clearing number when executing a transaction on the Exchange if (i) the non-member (a) is a registered broker-dealer and is a self-clearing member of the National Securities Clearing Corporation (''NSCC'') and (b) consents to the disciplinary jurisdiction of the Exchange and agrees to adhere to all applicable Exchange By-Laws and Rules; and (ii) the executing member's guaranteeing clearing firm, who must be an Exchange member, agrees to accept financial responsibility for all transactions given-up to the non-member, including but not limited to, responsibility to clear and settle the non-member's trades in the event that the non-member or the NSCC does not accept any such trades].

* * * * *

Rule 2.11 NSX Securities, LLC

For so long as NSX Securities, LLC (''NSX Securities'') is affiliated with the Exchange and is providing outbound routing of orders from the Exchange to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers (collectively, ''Trading Centers'') (such function of NSX Securities is referred to as the ''Outbound Router''), each of the Exchange and NSX Securities shall undertake as follows:

1. The Exchange will regulate the Outbound Router function of NSX Securities as a facility (as defined in Section 3(a)(2) of the Act), subject to Section 6 of the Act. In particular, and without limitation, under the Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to the NSX Securities Outbound Router function and NSX Securities will be subject to exchange non-discrimination requirements.

2. The National Association of Securities Dealers (''NASD''), a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d–1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.

3. An ETP Holder's use of NSX Securities to route orders to another Trading Center will be optional. Any ETP Holder that does not want to use NSX Securities may use other routers to route orders to other Trading Centers.

4. NSX Securities will not engage in any business other than (a) its Outbound Router function and (b) any other activities it may engage in as approved by the Commission.

* * * * *

CHAPTER III. Rules of Fair Practice

* * * * *

Rule 3.6. Fair Dealing with Customers

(a)–(f) No change.

Interpretations and Policies

.01 [Designated Dealers] *ETP Holders* who handle customer orders on the Exchange shall establish and enforce fixed standards for queuing and executing customer orders.

* * * * *

CHAPTER V. Supervision

* * * * *

Rule 5.5. Chinese Wall Procedures

(a) An [Exchange Designated Dealer] *ETP Holder that trades for its own account in a security, acts as a Market Maker on the Exchange, or has a specialist operation on another market* (an ETP Holder engaged in any of the foregoing is referred to in this Rule 5.5 as a ''specialist'') must establish a functional separation (''Chinese Wall'') between the specialist operation and any associated or affiliated persons as appropriate to its operation. [and further] *Further, all ETP Holders must* establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorialization and documentation of procedures, substantive supervision of interdepartmental communications by the [Exchange specialist] firm's Compliance Department and procedures concerning proprietary trading when the firm is in possession of material, non-public information. The [Exchange specialist] firm must obtain the prior written approval of the Exchange that it has complied with the requirements above in establishing functional separation as appropriate to the operation and that it has established proper compliance and audit procedures to ensure the maintenance of the functional separation. A copy of these Chinese Wall procedures, and any amendments thereto, must be filed with the Exchange's Surveillance Department.

(b)–(e) No change.

* * * * *

CHAPTER XI. Trading Rules

Rule 11.1. Hours of Trading

(a) [Except as provided below, the hours of trading on the Exchange shall be from 8:30 a.m. to 3:05 p.m. local Chicago time during normal business days.

(b) Unless otherwise provided by the Board, the hours of trading for any security traded on the Exchange which is also traded on another national securities exchange or on the Nasdaq Stock Market (hereinafter ''Nasdaq'') (''dually traded'') or exchanges and Nasdaq (''multiply traded'') shall be, in addition to the hours of trading set forth in paragraph (a) of this Rule, the hours during which the security is traded on the principal exchange or Nasdaq.

(c) For purposes of this Chapter, the term ''principal exchange,'' when used with respect to a dually or multiply-traded security, shall mean the exchange or Nasdaq with the greatest trading volume in that security for the preceding calendar month.] *The Exchange shall open for the transaction of business during such hours as is*

determined by the Board, with notice to ETP Holders.

(b) The Exchange will be open for the transaction of business on business days. The Exchange will not be open for business on the following holidays: New Year's Day, Dr. Martin Luther King Jr. Day, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless otherwise indicated by the Exchange.

Rule 11.2. [Unit] *Units* of Trading

[The unit of trading of stocks on the Exchange shall be 100 shares, and the unit of trading of bonds on the Exchange shall be $1,000 original principal amount, except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq shall have a different unit of trading or when the Board of the Exchange shall provide otherwise.]

One hundred (100) shares shall constitute a ''round lot,'' any amount less than 100 shares shall constitute an ''odd lot,'' and any amount greater than 100 shares that is not a multiple of a round lot shall constitute a ''mixed lot.''

Rule 11.3. Price Variations

(a) No change.

(b) Except as provided in Rule 11.12(c) or (d), Crosses executed in accordance with Rule 11.12 must improve each side of the Top of Book by at least $0.01 per share. No Crosses may be executed in increments smaller than those permitted by Rule 11.3(a), except for Midpoint Crosses (as defined in Rule 11.2(c)), which may be executed in increments as little as one-half the minimum increment permitted by Rule 11.3(a).

Rule 11.4. [Trading Ex-Dividend, Etc.] *Securities Eligible for Trading*

[Transactions in stocks (except those made for ''cash'') shall be ex-dividend or ex-rights on the second business day preceding the record date fixed by the corporation or the date of the closing of the transfer books, except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq on which a security is traded shall have a different rule or when the Board of the Exchange shall provide otherwise. Should such record date or such closing of transfer books occur upon a day other than a business day, this Rule shall apply for the third preceding business day. Transactions in stocks made for ''cash'' shall be ex-dividend or ex-rights on the business day following said record date or date of closing of transfer books. In respect to stock dividends and/or splits which are 25% or greater, the ex-dividend date shall be the first business date following the payable date, except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq on which such a security is traded shall have a different rule or when the Board of the Exchange shall provide otherwise.]

The Exchange shall designate securities for trading. Any class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter XV of these Rules shall be eligible to become designated for trading on the Exchange. All securities designated for trading are eligible for odd-lot, round-lot and mixed-lot executions, unless otherwise indicated by the Exchange or limited pursuant to these Rules.

Rule 11.5. [Orders to be Reduced and Increased on Ex-Date] *Registration of Market Makers*

[(a) Except in the case of a dually or multiply-traded security where the principal exchange or Nasdaq on which a security is traded shall have a different rule or the Board of the Exchange shall provide otherwise, when a security is quoted ''ex-dividend,'' ''ex-distribution,'' ''ex-rights'' or ''ex-interest,'' the following kinds of orders shall be reduced in price and increased in shares, in the case of stock dividends and stock distributions which result in round lots, on the day the security sells ex: (i) Open buy orders; (ii) Open stock orders to sell (with open stop limit orders to sell, the limit, as well as the stop price, shall be reduced). The following orders shall not be reduced: (i) Open stop orders to buy; (ii) Open sell orders.

(b) The procedure to be followed in reducing the above kinds of orders shall be as follows: (i) In the case of a cash dividend disbursement, the price shall be reduced by the amount of such disbursement in an amount equal to, or a multiple of, the variation in which bids and offers are made. Should the disbursement be in an amount other than the variation in which bids and offers are made, or a multiple thereof, orders shall be reduced by the next higher variation; (ii) In the case of stock dividends or other stock distribution, open buy orders and open stop orders to sell shall be reduced in price by the proportional value of a stock dividend or stock distribution on the day a security sells ex-dividend or ex-distribution. The new price of the order is determined by dividing the price of the original order by 100% plus the percentage value of the stock dividend or stock distribution. If, as a result of this calculation, the price is not equivalent to or is not a multiple of the variation of a dollar in which bids and offers are made in the particular security, the price should be rounded to the next lower variation; (iii) In the case of reverse splits, all orders (including open sell orders and open stop orders to buy) should be cancelled.

(c) In the case of a stock dividend or stock distribution, the procedure to be followed in increasing open buy orders and open stop orders to sell shall be as follows: (i) When there is a stock dividend or stock distribution which results in one of more full shares for each share held, the number of shares in open buy orders and open stop orders to sell shall be increased accordingly; (ii) When there is a stock dividend or stock distribution on less than a one-for-one basis which thus results in fractional shares, open buy orders and open stop orders to sell shall be increased to the lowest full round lot; (iii) When there is a stock dividend or stock distribution which results in fractional shares combined with full shares, the number of shares in open buy orders and open stop orders to sell shall be increased to the lowest full round lot.

(d) Open orders held by a member prior to the day a stock sells ex-dividend, ex-distribution or ex-rights shall be reduced in price and, if the above is applicable, increased in shares by the value of the dividend or distribution of rights, unless the member is otherwise instructed by the customer from whom the orders were received. In this regard, a customer may enter a Do Not Reduce or ''DNR'' order if he does not want the price of an order reduced for cash dividends, or a Do Not Increase or ''DNI'' order if he does not want an order increased in shares for stock dividends or stock distributions.]

(a) No ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Exchange pursuant to this Rule and the Exchange has not suspended or cancelled such registration. Registered Market Makers are designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

(b) An applicant for registration as a Market Maker shall file an application in writing on such form as the Exchange may prescribe. Applications shall be

reviewed by the Exchange, which shall consider such factors including, but not limited to capital operations, personnel, technical resources, and disciplinary history. Each Market Maker must have and maintain minimum net capital of at least the amount required under Rule 15c3–1 of the Act.

(c) An applicant's registration as a Market Maker shall become effective upon receipt by the ETP Holder of notice of an approval of registration by the Exchange.

(d) The registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that:

(1) The Market Maker has substantially or continually failed to engage in dealings in accordance with Rule 11.8 or elsewhere in these Rules;

(2) The Market Maker has failed to meet the minimum net capital conditions set forth under paragraph (b) above; or

(3) The Market Maker has failed to maintain fair and orderly markets.

(e) Any registered Market Maker may withdraw its registration by giving written notice to the Exchange. The Exchange may require a certain minimum prior notice period for withdrawal, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets.

(f) Any person aggrieved by any determination under this Rule or Rules 11.6 or 11.7 below may seek review under Chapter X of Exchange Rules governing adverse action.

Rule 11.6. [Types of Trading]
Obligations of Market Maker Authorized Traders

[Issues listed on the Exchange and those admitted to unlisted trading privileges will be eligible for one of the following three types of trading:
(a) Cabinet trading;
(b) Qualified dealer trading;
(c) Multiple dealer trading.]

(a) General. MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered.

(b) Registration of Market Maker Authorized Traders. The Exchange may, upon receiving an application in writing from a Market Maker on a form prescribed by the Exchange, register a person as a MMAT.

(1) MMATs may be officers, partners, employees or other associated persons of ETP Holders that are registered with the Exchange as Market Makers.

(2) To be eligible for registration as a MMAT, a person must successfully complete the General Securities Representative Examination (Series 7) and any other training and/or certification programs as may be required by the Exchange; provided, however, the requirement to complete the Series 7 Examination may be waived by the Exchange if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application.

(3) The Exchange may require a Market Maker to provide any and all additional information the Exchange deems necessary to establish whether registration should be granted.

(4) The Exchange may grant a person conditional registration as a MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(5) A Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.

(c) Suspension or Withdrawal of Registration.

(1) The Exchange may suspend or withdraw the registration previously given to a person to be a MMAT if the Exchange determines that:

(A) The person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the By-Laws, Rules and procedures of the Exchange;

(B) The person is not properly performing the responsibilities of a MMAT;

(C) The person has failed to meet the conditions set forth under paragraph (b) above; or

(D) The Exchange believes it is in the interest of maintaining fair and orderly markets.

(2) If the Exchange suspends the registration of a person as a MMAT, the Market Maker must not allow the person to submit orders into the System.

(3) The registration of a MMAT will be withdrawn upon the written request of the ETP Holder for which the MMAT is registered. Such written request shall be submitted on the form prescribed by the Exchange.

Rule 11.7. [Cabinet Trading]
Registration of Market Makers in a Security

[Trading in securities for which there is no dealer participation may be provided through Exchange facilities. Bids and offers of members shall be registered in a book maintained for such purposes by the Exchange at a facility located in Chicago, Illinois, or elsewhere as designated by the Exchange's Board.]

(a) A Market Maker may become registered in a newly authorized security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. Registration in the security shall become effective on the first business day following the Exchange's approval of the registration, unless otherwise provided by the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider:

(1) The financial resources available to the Market Maker;

(2) The Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;

(3) The Market Maker's operational capability;

(4) The maintenance and enhancement of competition among Market Makers in each security in which they are registered;

(5) The existence of satisfactory arrangements for clearing the Market Maker's transactions;

(6) The character of the market for the security, e.g., price, volatility, and relative liquidity.

(b) Voluntary Termination of Security Registration. A Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets. A Market Maker that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action pursuant to Chapter VIII of these Rules.

(c) The Exchange may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever the Exchange determines that:

(1) The Market Maker has not met any of its obligations as set forth in these Rules; or

(2) The Market Maker has failed to maintain fair and orderly markets.

A Market Maker whose registration is suspended or terminated pursuant to this Rule 11.7(c) may seek review under Chapter X of Exchange Rules governing adverse action.

(d) Nothing in this Rule will limit any other power of the Exchange under the By-Laws, Rules, or procedures of the

Exchange with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule.

Rule 11.8. [Qualified Dealer Trading] *Obligations of Market Makers*

[(a) The Securities Committee may approve one or more Proprietary Members of the Exchange to be a ''qualified dealer'' for each designated issue (as defined in Rule 11.9 of this Chapter). Such qualified dealers shall perform the following functions:

(1) guarantee settlement for transactions occurring through the Exchange in issues for which the Proprietary Member is the qualified dealer and executes the transaction;

(2) act as a clearing contra-party for transactions occurring through the Exchange in issues for which the Proprietary member is a qualified dealer and executes the transaction;

(3) provide to all members during Exchange trading hours a continuous two-sided market in odd-lots of issues for which the Proprietary Member is designated a qualified dealer; and

(4) give precedence in trading to all public agency orders shown to the qualified dealer at prices equal to or better than the qualified dealer's own bid or offer.

(b) For purposes of Rule 11.8., a public agency order shall mean any order for the account of a person other than a member, which order is represented, as agent, by a member.

(c) Qualified dealer designation shall be used in those designated issues where there exists (i) an insufficient number of dealers to permit use of multiple dealer trading; (ii) insufficient computer capacity to permit use of multiple dealer trading; (iii) insufficient order flow to warrant use of multiple dealer trading; or (iv) other factors which would, in the judgment of the Securities Committee, make multiple dealer trading impracticable.

(d) Any person aggrieved by any determination under this Rule may seek review under the provisions of Exchange Rules for adverse action.]

(a) General. ETP Holders who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

(1) Maintain continuous limit orders to buy and to sell for round lots in those securities in which the Market Maker is registered to trade;

(2) Remain in good standing with the Exchange and in compliance with all Exchange Rules applicable to it;

(3) Inform the Exchange of any material change in financial or operational condition or in personnel;

(4) Maintain a current list of MMATs who are permitted to enter orders on behalf of the Market Maker and provide an updated version of this list to the Exchange upon any change in MMATs; and

(5) Clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another ETP Holder that clears trades through such agency.

(b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during trading hours on all days in which the Exchange is open for business.

(c) A Market Maker shall be responsible for the acts and omissions of its MMATs.

(d) If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Exchange in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Exchange under the By-Laws, Rules, or procedures of the Exchange with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule. Any ETP Holder aggrieved by any determination under this Rule may seek review under Chapter X of the Exchange Rules governing adverse action.

(e) Temporary Withdrawal. A Market Maker may apply to the Exchange to withdraw temporarily from its Market Maker status in the securities in which it is registered. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange may temporarily reassign the securities to another Market Maker.

Rule 11.9. [National Securities Trading System] *Access*

[(a) When used in Rule 11.9, unless the context otherwise requires—

(1) The term ''System'' means the National Securities Trading System, an electronic securities communication and execution facility designated by the Exchange's Board through which bids and offers of competing dealers, as well as public orders, are consolidated for review and execution by Users. The System combines the display of both the limit order file and current quotation/last sale information to Users with the matching and execution of like-priced orders, bids and offers according to programmed price/time and agency/principal priorities in order to give Users the ability to perform the brokerage and market-making functions performed on other exchanges. In addition, the System provides for the automatic execution of orders under predetermined conditions.

(2) The term ''Nasdaq/NNM Security'' shall mean any authorized security in the Nasdaq National Market which (1) satisfies all applicable requirements of the Rule 4300 Series of the NASD Rules and substantially meets the criteria set forth in the Rule 4300 Series of the NASD Rules; (2) is subject therefore to a transaction reporting plan approved by the Commission; (3) has been designated therefore as a national market system security pursuant to SEC Rule 11Aa2–1 and (4) as to which unlisted trading privileges have been granted pursuant to Section 12(f) of the Act.

(3) The term ''Nasdaq System'' means the NASD's automated Quotation System.

(4) The term ''Approved Dealer'' means a Designated Dealer, a Contributing Dealer, or a specialist or market maker registered as such with another exchange or Nasdaq with respect to any Designated Issue.

(5) The term ''Designated Dealer'' means a Proprietary Member who maintains a minimum net capital of at least the greater of $500,000 or the amount required under Rule 15c3–1 of the Securities Exchange Act of 1934, as amended, and who has been approved by the Securities Committee to perform market functions by entering bids and offers for Designated Issues into the System.

(6) The term ''Contributing Dealer'' means a Proprietary Member who (i) maintains a minimum net capital of at least the greater of $50,000 or the amount required under Rule 15c3–1 of the Securities Exchange Act, as amended; (ii) is registered with the

Exchange with respect to one or more Designated Issues; and (iii) provides to all Users through the System, during Exchange trading hours, regular bids and offers for round lots of Designated Issues for which he is registered.

(7) The term ''User'' means a Member of the Exchange or an Approved Dealer. Access Participant Members are considered to be Users in their limited capacity of executing transactions through the facilities of a Proprietary Member.

(8) The term ''Designated Issue'' means a security designated by the Securities Committee to be traded in the System.

(9) The term ''public agency order'' means any order for the account of a person other than a member, an Approved Dealer or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System, which order is represented, as agent, by a User.

(10) The term ''professional agency order'' means an order entered by a User as agent for the account of a broker-dealer, a futures commission merchant, or a member of a contract market.

(11) The term ''Floor'' means the electronically integrated System marketplace consisting of the premises on which System terminals are located and the System supervisory center.

(12) The term ''limit order guarantee'' means a guarantee to execute an order as principal upon the occurrence of a transaction in another market at the price of such order.

(13) The term ''ITS BBO'' means the best bid/ask quote among the Intermarket Trading System (''ITS'') participants in those issues that are traded on ITS.

(14) The term ''Nasdaq System BBO'' means the best bid/ask quote generated by the Nasdaq System participants in those issues that are traded on the Nasdaq System.

(b) Any class of securities listed or admitted to unlisted trading privileges on the Exchange shall be eligible to become a Designated Issue. All Designated Issues are eligible for odd-lot, round-lot and partial round-lot executions.

(c) The Securities Committee shall approve one or more applicant Proprietary Members of the Exchange as a Designated Dealer for one or more Designated Issues. A Designated Dealer shall perform the following functions:

(i) Upon request of any User guarantee settlement, at such Designated Dealer's customary charge, for transactions, executed through the System in Designated Issues for which he is a Designated Dealer.

(ii) Upon request of any User, at such Designated Dealer's customary charge, act as clearing contra-party for transactions executed through the System in Designated Issues for which he is Designated Dealer.

(iii) Provide to all Users through the System, during the Exchange trading hours, continuous bids and offers for round lots of Designated Issues for which he is a Designated Dealer.

(iv) Guarantee the execution of public agency market orders in Designated Issues for which he is Designated Dealer in accordance with subparagraph (n) of this Rule 11.9. If there exist two or more Designated Dealers in a Designated Issue, then unless the Securities Committee has approved one member as the primary Designated Dealer in that issue, the guarantee obligation shall rotate among such Designated Dealers on a daily basis. For the purposes of this subsection, market order shall include marketable limit order, which is a limit order that is immediately executable because the ITS BBO or Nasdaq System BBO at the time the order is entered is equal to or better than the limit price on the order.

(v) Guarantee the execution in Designated Issues that are other than Nasdaq/NNM securities up to 1099 shares at the opening price of opening public agency market orders and limit orders which are priced better than such opening price (''marketable limit orders''). Guarantee the execution of market orders and marketable limit orders in Designated Issues that are Nasdaq/NNM securities up to 1099 shares at an opening price that is on or between the first unlocked/uncrossed Nasdaq System BBO. If there exist two or more Designated Dealers in a Designated Issue, then, unless the Securities Committee has approved one member as the primary Designated Dealer in that issue, the guarantee obligation shall rotate among such Designated Dealers on a daily basis.

(d) A Proprietary Member registered with the Exchange as a Contributing Dealer shall forfeit his right to continue as a Contributing Dealer if he fails to provide to all Users through the System, during Exchange trading hours, regular bids and offers for round lots of Designated Issues for which he is registered as a Contributing Dealer.

(e) Any specialist or market maker registered as such with another exchange or Nasdaq with respect to any Designated Issue may provide bids and offers with respect to that Designated Issue through the System to all Users so long as such specialist or market maker complies with the provisions of this Rule with respect to his use of the System.

(f) Proprietary Members of the Exchange may provide bids and offers for their own accounts in any Designated Issue to all Users through the System so long as, in effecting transactions on the Exchange through the System, they comply with Section 11(a) of the Act and the rules and regulations thereunder.

(g) It shall be the responsibility of all Users when trading on the Exchange for the account of another person to effect such transactions through the System. Users may enter agency orders to buy and sell in Designated Issues through System terminals, which may have computer interfaces that have communications capability with the System and are directly linked to the System.

(h) The System shall display all current principal interest and agency orders of Users in Designated Issues, as well as the best bid/ask quotations of each ITS participant and Nasdaq System BBO quotations generated by the Nasdaq System participants in, and the last sale price for, Designated Issues, to each User for purposes of trading.

(1) Designated Dealers shall permit each Nasdaq System market maker, acting in its capacity as market maker, direct telephone access (or other such access as may be established between the Exchange and Nasdaq System) to the Designated Dealer in each Nasdaq/NNM Security in which such market maker is registered as a market maker. Such access shall include appropriate procedures to assure the timely response to communications received through telephone access. Nasdaq System market makers may use such telephone access (or other such access as may be established between the Exchange and Nasdaq System) to transmit orders for execution on the Exchange. Executions of Nasdaq System market maker orders shall be deemed to be transactions effected through the System and must be reported to the Exchange as promptly as possible and in any event within one minute of execution; and

(2) Designated Dealers may send orders from the Exchange via telephone (or other access as may be established between the Exchange and Nasdaq System) to any Nasdaq System market maker in each Nasdaq/NNM Security in which it displays quotations.

(i) The System offers two modes of order interaction selected by members:

(1) If automatic execution is selected, the System shall match and execute like-priced orders, bids and offers on an order by order basis only at the specific

instruction of Users, including Designated Dealers.

(2) If order delivery and automated response is selected, the System will deliver contra-side orders against displayed orders and quotations on an order by order basis only at the specific instruction of Users, including Designated Dealers. To be eligible for order delivery service, Users must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond appropriately within 1 second.

(j) Limit orders to buy (sell) at a price inferior to the ITS or Nasdaq System BBO will be executed other than at the opening only after a regular way transaction in the Designated Issue is executed in another ITS participant market or Nasdaq System at a price which is equal to or less than (greater than) the limit price of the order.

(k) Public agency orders entered in the System which have not been executed may be removed from the System only by the User who entered the order for the purpose of canceling the order, transferring the order to another national market or, in the case of withdrawal by an Approved Dealer or Proprietary Member, executing such order immediately as principal pursuant to a limit order guarantee. Executions of public agency orders as principal pursuant to a limit order guarantee shall be deemed to be transactions effected on the Exchange in the same manner as if such transactions were executed through the System and must be reported to the Exchange as promptly as possible and in any event within one minute of execution.

(l) Public agency orders to buy or sell at a particular price shall, in all cases except execution of such an order pursuant to a limit order guarantee, have priority over all other bids and offers on the System at the same price. Subject to the following condition,

(1) All bids entered in the System shall be queued for execution so that the highest price bid shall be the first to be executed and so that, in the case of bids at the same price, except in the case of Approved Dealer bids entered pursuant to subparagraph (u), the bid entered earliest in time shall be the first to be executed; and

(2) All offers entered in the System shall be queued for execution so that the lowest price offered shall be the first to be executed and so that, in the case of offers at the same price, except in the case of Approved Dealer offers entered pursuant to subparagraph (u), the offer entered earliest in time shall be the first to be executed.

(m) It shall be the responsibility of each Approved Dealer or other Proprietary Member when trading on the Exchange for his own account or as agent for professional agency orders in round lots of Designated Issues to effect such transactions through the System and, in so doing, to yield priority to

(1) All public agency orders in the System at prices equal to, or better than, his order, bid or offer; and

(2) All orders, bids and offers of Approved Dealers and other Proprietary Members for their own accounts and as agents for professional agency orders in the System at prices better than his order, bid or offer or at the same price in the event any such orders, bids or offers were entered in the System (i) at an earlier time than his order, bid or offer, or (ii) in the case of Approved Dealers, for the purpose of trading for their own account against public agency orders which such Approved Dealers are representing as agent pursuant to subparagraph (u).

(n) Public Agency Guarantee.

(1) Public agency opening market orders and limit orders better than the opening price in securities that are other than Nasdaq/NNM securities which are entered prior to the opening up to 1099 shares shall be executed at the opening price. Market orders and marketable limit orders in Nasdaq/NNM securities up to 1099 shares shall be executed at an opening price on or between the first unlocked/uncrossed Nasdaq System BBO.

(2) Public agency market and marketable limit orders in all Designated Issues which are entered after the opening are guaranteed execution pursuant to the following requirements and limitations.

(3) The Designated Dealer of the day must accept and guarantee execution on all public agency market and marketable limit orders in accordance with this subparagraph (n).

(4) Subject to the requirements of the short sale rule, orders must be filed on the basis of the ITS or Nasdaq System BBO bid on a sell order or the ITS or Nasdaq System BBO offer on a buy order. Sell orders will be satisfied up to the size of the lesser of the ITS or Nasdaq System BBO bid or 1099 shares; buy orders up to the lesser of the ITS or Nasdaq System BBO offer or 1099 shares. No portion of an order larger than 1099 shares is subject to the public agency guarantee.

(5) The number of shares which the Designated Dealer of the day is obligated to execute is reduced by the number of shares executed in the System against any agency or principal interest, including interest of the Designated Dealer of the Day, priced at the ITS or Nasdaq System BBO when the order enters the System.

(6) In unusual trading situations, a Designated Dealer may seek relief from the requirements of 2 through 5 above from an Exchange Floor Official or a member of the Exchange staff who would have authority to set execution prices. All execution guarantees and the requirements of Exchange Rule 12.6, Customer Priority, apply only during the hours of trading on the Exchange (8:30 a.m. to 3:05 p.m. local Chicago time).

(o) Prior to formatting any order, bid or offer into an ITS commitment to trade and issuing such a commitment to another ITS participant market, the System shall process such order, bid or offer as follows:

(1) If a principal bid or offer, the System shall first exhaust all interest at or better than such bid or offer which is resident in the System;

(2) If a public agency market or marketable limit order, the System shall first process the order pursuant to Exchange Rule 11.9(i) and (n) and then expose for fifteen seconds any remaining balance to all Approved Dealers, whether or not registered in the Designated Issue involved;

(3) If a professional agency order, the System shall exhaust all interest at or better than such order which is resident in the System and then, if the Board has authorized the System generation of ITS commitments to trade, and such a procedure is in effect, shall expose the order for fifteen seconds to all Approved Dealers, whether or not registered in the Designated Issue involved.

(p) Nothing in paragraphs (j) through (l) shall preclude an Approved Dealer or Proprietary Member from effecting an execution of a public agency order in a Designated Issue on the Exchange pursuant to a limit order guarantee.

(q) Confirmations. The System shall provide hard-copy confirmations of each transaction effected through the System promptly to each User (or his agent) who is a party to that transaction, supplying the following information: size, price, security, whether the User was a buyer or a seller and the transaction identification number.

(r) Access. Any User may obtain from the Exchange (or its designee) electronic means of direct access to the System upon the payment of such reasonable fees as the Board may specify from time to time in an effective rule filed with the Securities and Exchange Commission pursuant to Section 19(b)(2) or 19(b)(3) of the Act.

(s) The Board shall be responsible for the supervision of the National

Securities Trading System including the following:

(1) Affording to any person adversely affected by any prohibition or limitation with respect to access to services offered by the Exchange or any member in connection with the System the procedural rights available under Exchange Rules for adverse action.

(2) Requiring all persons participating in the System to maintain such additional records and to provide such access to those records as the Exchange shall determine are in the public interest or appropriate for the protection of investors and the maintenance of fair and orderly markets.

(3) Requiring all Users participating in the System to comply with all Exchange Rules. Approved Dealers and Proprietary Members shall apprise customers promptly when they have acted as principal in effecting transactions with customers, unless earlier notification and consent is required by law.

(t) Neither the Exchange nor its agents, employees or contractors shall be liable to its members, member organizations, successors, representatives or customers thereof, or any persons associated therewith, for any claims arising out of the use or enjoyment by such member, member organization, successor, representative, customer, or associated person, of the facilities afforded by the Exchange, including, without limitation, the National Securities Trading System and the Automated Extension Processing System.

(u) Public agency market and marketable limit orders which an Approved Dealer represents as agent may be preferenced to such Approved Dealer in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m). Notwithstanding subparagraphs (c) and (n), an Approved Dealer shall be Dealer of the day with respect to orders preferenced under this subparagraph (u).

Additionally, Designated Dealers shall be allowed to preference their customer order flow that is related to index arbitrage only on plus or zero plus ticks when the Dow Jones Industrial Average (''DJIA'') declines by 50 points or more from the previous day's closing value.

Interpretations and Policies

.01 Limit Order Protection

Public agency limit orders in securities other than Nasdaq/NNM Securities shall 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.

(v)(1) Applicability. This rule is applicable only to Portfolio Depositary Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Portfolio Depositary Receipts are included within the definition of ''security'' or ''securities'' as such terms are used in the Constitution and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(a) Portfolio Depositary Receipt. The term ''Portfolio Depositary Receipt'' means a security (i) that is based on a unit investment trust (''Trust'') which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (ii) that is issued by the Trust in a specified aggregate minimum number in return for a ''Portfolio Deposit'' consisting of specified numbers of shares of stock plus a cash amount; (iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the ''Portfolio Deposit''; and (iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(b) Reporting Authority. The term ''Reporting Authority'' in respect of a particular series of Portfolio Depositary Receipts means the Exchange, an institution (including the Trustee for a series of Portfolio Depositary Receipts), or a reporting service designated by the Exchange, or by the exchange that lists a particular series of Portfolio Depository Receipts (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depositary Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts, net asset value, or other information relating to the creation, redemption or trading of Portfolio Depositary receipts.

(3) Members and member organizations shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such a series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or to the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts].''

A member or member organization carrying omnibus account for a non-member broker-dealer is required to inform such non-member that execution

of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(4) Designation of an Index or Portfolio. The trading of Portfolio Depositary Receipts based on one or more stock indices or securities portfolios, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case by case basis. The Portfolio Depositary Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depositary Receipts are based shall be selected by the Exchange or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. A Trust upon which a series of Portfolio Depositary Receipts is based will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Trust, the Exchange will establish a minimum number of Portfolio Depositary Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, removal from listing of, or termination of unlisted trading privileges for a Trust upon which a series of Portfolio Depositary Receipts is based under any of the following circumstances: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depositary Receipts for 30 or more consecutive trading days; or (ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or (iii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes future dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Portfolio Depositary Receipts issued in connection with such Trust be removed from Exchange listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be stated in the Trust Prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed as co-trustee.

(e) Voting—Voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(6) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts; net asset value; or other information relating to the creation redemption or trading of Portfolio Depositary Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more of the underlying securities. The Exchange makes no warranty, express or implied, as to the results to be obtained by any person or entity from the use of Portfolio Depositary Receipts or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties or merchantability or fitness for a particular purpose with respect to Portfolio Depositary Receipts or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Articles of Incorporation, By-Laws or Rules.

Interpretations and Policies

.01 The Exchange will trade pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Corporation's S&P 500 Index, known as SPDRs.

.02 The Exchange will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Corporation's S&P MidCap 400 Index, known as MidCap SPDRs.

''Standard & Poor's'', ''S&P'', ''S&P 500'', ''Standard & Poor's 500'', and ''500'' are trademarks of the McGraw-Hill Companies, Inc. and have been licensed for use by the Exchange.

(w)(1) Applicability. This rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the Constitution and all the rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of ''security'' or ''securities'' as such terms are used in the Constitution and Rules of the Exchange. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the following meanings herein specified:

(a) Trust Issued Receipt. A Trust Issued Receipt is a security (a) that is issued by a trust (''Trust'') which holds specific securities deposited with the Trust; (b) that when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(3) Designation. The Exchange may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued

Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(4) Initial and Continued Listing. Trust Issued Receipts will be traded on the Exchange subject to application of the following criteria:

(a) Initial Listing—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (ii) if the Trust has more than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than $1,000,000; or (iv) if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that the Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The Trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(e) Voting—Voting rights shall be set forth in the Trust prospectus.

(5) Member Obligations. Members and member organizations shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(6) Trading Issues. Trust Issued Receipts may be acquired, held, or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot multiple, will be executed to the extent of the largest round-lot multiple.

Interpretations and Policies

.01 The Exchange may approve a series of Trust Issued Receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) under the Securities Act of 1934, provided that the following criteria are satisfied:

(a) Each security underlying the Trust Issued Receipt must be registered under Section 12 of the Exchange Act;

(b) Each company whose securities are underlying securities for the Trust Issued Receipt must have a minimum public float of at least $150 million;

(c) Each security underlying the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of NASDAQ as a reported national market system security;

(d) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(e) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and

(f) The most heavily weighted security in the Trust Issued Receipt cannot initially represent more than 20% of the overall value of the Trust Issued Receipt.

(x) Index Fund Shares

(1) Applicability. This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Constitution and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(a) Index Fund Shares means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holders request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) Reporting Authority. The term ''Reporting Authority'' in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term ''Reporting Authority'' shall not refer to an institution or reporting service not so designated.

(3) Disclosure. Upon request of a customer, members and member organizations shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) Designation. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio and shall be a designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series

of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person thereof, as shall have authorized use of such index. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances: (i) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (iii) if such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of an open-ended management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(c) Voting. Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

Interpretations and Policies

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million; (ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; (iii) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; (iv) The underlying index or portfolio must include a minimum of 13 stocks; and (v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire-wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional trading variation may vary among different series of Index Fund Shares but will be set at 1/16th, 1/32nd, or 1/64th of $1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of the Exchange Rules and By-Laws will apply to all series of Index Fund Shares.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares].''

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule.

Upon request of a customer, member or member organization shall also

provide a prospectus for the particular series of Index Fund Shares.]

(a) General. The System shall be available for entry and execution of orders by Users with authorized access. To obtain authorized access to the System, each User must enter into a User Agreement with the Exchange in such form as the Exchange may provide (''User Agreement'').

(b) Sponsored Participants. A Sponsored Participant may obtain authorized access to the System only if such Sponsored Participant is a registered broker or dealer and a self-clearing member of a Qualified Clearing Agency, and only if such access is authorized in advance by one or more Sponsoring ETP Holders as follows:

(1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring ETP Holders establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the System. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.

(2) For a Sponsored Participant to obtain and maintain authorized access to the System, a Sponsored Participant and its Sponsoring ETP Holder must agree in writing to the following Sponsorship Provisions:

(A) Sponsored Participant and its Sponsoring ETP Holder must have entered into and maintained a User Agreement with the Exchange. The Sponsoring ETP Holder must designate the Sponsored Participant by name in its User Agreement as such.

(B) Sponsoring ETP Holder acknowledges and agrees that

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring ETP Holder,

(ii) Sponsoring ETP Holder is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant, and

(iii) Sponsoring ETP Holder shall pay when due all amounts, if any, payable to the Exchange or any other third parties that arise from the Sponsored Participants access to and use of the System. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(C) Sponsoring ETP Holder shall comply with the Exchange's Articles of Incorporation, By-Laws, Rules and procedures, and Sponsored Participant shall comply with the Exchange's Articles of Incorporation, By-Laws, Rules and procedures, as if Sponsored Participant were an ETP Holder.

(D) Sponsored Participant shall maintain, keep current and provide upon request to the Sponsoring ETP Holder and the Exchange a list of Authorized Traders who may obtain access to the System on behalf of the Sponsored Participant. Sponsored Participant shall be subject to the obligations of Rule 11.10 with respect to such Authorized Traders.

(E) Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the System.

(F) Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to the System.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the System, including unauthorized entry of information into the System, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use and access to the System for compliance with the terms of this agreement.

(3) The Sponsoring ETP Holder must provide the Exchange with a written statement in form and substance acceptable to the Exchange acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue, including without limitation responsibility to clear and settle the Sponsored Participant's trades in the event that the Sponsored Participant or its Qualified Clearing Agency does not accept any such trades.

Rule 11.10. [National Securities Trading System Fees] Authorized Traders

[A. Trading Fees

(a) Agency Transactions. As in the case for Preferenced transactions, members acting as an agent will be charged the per share incremental rates as noted below for public agency transactions:

Avg. daily share * volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,001 and higher	0.0005

* Odd-Lot Shares Excluded.

(b) Odd-Lot Transactions. Members will be charged $0.50 per odd-lot transaction when acting as agent or principal, except that members will earn a credit of $0.50 for every four round-lot transactions executed (agency, professional agency or principal) on the Exchange and printed on the Consolidated Tape by the Exchange. Notwithstanding the forgoing credit, there will be a minimum charge of $0.10 per odd-lot transaction.

(c) Agency Order Mix Fee. Agency limit orders shall be charged based on the percentage of public agency market order shares executed on the Exchange during the trading month, according to the following schedule:

Percent of market order shares executed	Agency limit order mix fee
25 and higher	No Charge.
20 to 24.99	$0.005 per share.
15 to 19.99	$0.010 per share.
10 to 14.99	$0.015 per share.
Less than 10	$0.020 per share.

(d) Professional Agency Transactions. Members will be charged $0.0025 per share ($0.25/100 shares) for professional agency (Rule 11.9(a)(8)) transactions.

(e) Crosses and Meets

(1) Users executing crosses and meets in Tape A securities shall be charged $0.0005 per share per side for average daily volume up to 5 million shares per day and $0.000025 per share per side for average daily volume up above 5 million shares, with a maximum charge of $37.50 per firm per side of transaction.

(2) Users, who are not registered as Qualified or Designated Dealers in the securities in which they are executing crosses and meets in Tape C securities (Nasdaq NM and SmallCap securities), shall pay no transaction fees.

(3) Dealers executing crosses in Tape C securities (Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges) in which they are registered shall be charged a per share fee as noted below:

Average daily number of shares	Fee per share
Up to 5 million shares	$0.001
5 million shares and above	0.000025

(4) Users executing crosses and meets in Tape A, B or C securities through the Exchange's System Supervisory Center shall be charged $15 per contra-party, up to a maximum of $75 per side of transaction. This transaction fee shall be in lieu of any transaction fee otherwise applicable under Paragraphs (A)(e)(1) through (A)(e)(3) above.

(f) ITS Transactions. All ITS transactions, whether inbound or outbound, will be charged $0.001 per share.

(g) Proprietary (Principal) Transactions.

(1)(A) All Designated Dealers in securities other than Nasdaq securities, except those acting as Preferencing Dealers or Contributing Dealers, will be charged $0.001 per share ($0.10/100 shares) for principal transactions.

(B) For a pilot period commencing October 1, 2002 and lasting through June 30, 2006, members that execute orders in Nasdaq securities against previously displayed quotes/orders of other members shall pay $0.004 per share for such execution. The Exchange shall pass on to the member displaying the quote/order executed against $0.003 per share and the Exchange shall retain $0.001 per share.

(2) Designated Dealers acting as ''Dealer of the Day'' will be charged $0.0025 per share ($0.25/100 shares) for principal transactions.

(3) Contributing Dealers will be charged $0.02 per share ($2.00/100 shares) for principal transactions.

(4) Members executing principal transactions in securities for which they are not registered as a Designated or Contributing Dealer will be charged $0.02 per share ($2.00/100 shares).

(h)(1) Preferenced Transactions. Designated Dealers that are preferencing transactions in Tape A securities are charged for one side of their preferenced transactions and are subject to the incremental rates as noted below:

Avg. daily principal share* volume	Charge per share
1 to 250,000	$0.0015
250,001 to 500,000	0.0013
500,001 to 750,000	0.0009
750,001 to 1,250,000	0.0007
1,250,001 and higher	0.0005

* Odd-lot shares excluded.

(2) Dealers executing preferencing transactions in Tape C securities are charged for one side of their preferenced transactions and are subject to the following incremental rates:

Avg. daily principal share** volume	Charge per share
Up to 5 million shares	$0.001
5 million shares and above	0.000025

** Odd-lot shares excluded.

(i) Transaction Fee Cap. The monthly transaction fees charged to each member shall be equal to the lesser of (1) the amounts assessed pursuant to Paragraphs (A)(a) through (A)(h) of this Rule 11.10 or (2) $50,000.

(j) Revenue Sharing Program. After the Exchange earns total operating revenue sufficient to offset actual expenses and working capital needs, a percentage of all Specialist Operating Revenue (''SOR'') shall be eligible for sharing with Designated Dealers. SOR is defined as operating revenue that is generated by specialist firms. SOR consists of transaction fees, book fees, technology fees, and market data revenue that is attributable to specialist firm activity. SOR shall not include any investment income or regulatory monies. The sharing of SOR shall be based on each Designated Dealer's pro rata contribution to SOR in excess of $75,000 per quarter. In no event shall the amount of revenue shared with Designated Dealers exceed SOR. To the extent market data revenue is subject to any adjustment, SOR revenue may be adjusted accordingly.

(k) Tape ''B'' Transactions. Except as provided in Paragraph (A)(e)(4) above, the Exchange will not impose a transaction fee on Consolidated Tape ''B'' securities. In addition, Members will receive a 50 percent pro rata transaction credit of gross Tape ''B'' revenue; provided that, however, calculation of the transaction credit will be based on net Tape ''B'' revenues in those fiscal quarters where the overall revenue retained by the Exchange does not offset actual expenses and working capital needs. To the extent market data revenue from Tape ''B'' transactions is subject to any adjustment, credits provided under this program may be adjusted accordingly.

(l) Reserved.

(m) DD Issue/Book Fees. Designated Dealers will be charged a monthly book fee based on the following incremental schedule:

Number of issues	Fee per issue
0 to 150	$30.00
151 to 300	20.00
301 to 500	15.00
501 and higher	2.00

(n) NSTS Internal Customer Port Charge. For purposes of this charge, a ''Port'' shall be defined as a TCP/IP address. For each port utilized on the Exchange mainframe a $350.00 per month charge will be assessed to the member.

(o) Technology Fee. Every Member of the Exchange shall be assessed a fee of $1,250.00 per month to help offset technology expenses incurred by the Exchange.

(p) Clearing Related Fee Passed Through to Member. The Exchange will pass onto members the entire amount of the clearing related fees allocated to the Exchange by the clearing agent for transactions which the Exchange submits to clearing on behalf of members.

(q) Regulatory Transaction Fee. Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, this Regulatory Transaction Fee is assessed to members. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expense. Each member engaged in executing transactions on the Exchange shall pay, in such manner and at such times as the Exchange shall direct, a Regulatory Transaction Fee equal to (i) the rate determined by the Commission to be applicable to covered sales occurring on the Exchange in accordance with Section 31 of the Act multiplied by (ii) the member's aggregate dollar amount of covered sales occurring on the Exchange during any computational period.

(r) Workstation Fee. Every member using the Exchange Workstation shall be charged $1,000.00 per device per month.

B. Membership Fees.

Item	Fee
Yearly Membership Dues (Quarterly Charge $625)	$2,500
New Member Application Fee	1,000
Transfers	350
Responsible Party Change	
Firm Registration/Name Change	

C. Transaction Credit De Minimis. For all rebates applicable to Tape A and Tape B Transactions, no member shall be eligible for a rebate for any quarter unless the total rebate calculation for that quarter exceeds $500.00.]

(a) An ETP Holder shall maintain a list of ATs who may obtain access to the System on behalf of the ETP Holder or the ETP Holder's Sponsored Participants. The ETP Holder shall

update the list of ATs as necessary. ETP Holders must provide the list of ATs to the Exchange upon request.

(b) An ETP Holder must have reasonable procedures to ensure that all ATs comply with all Exchange Rules and all other procedures related to the System.

(c) An ETP Holder must suspend or withdraw a person's status as an AT if the Exchange has determined that the person has caused the ETP Holder to fail to comply with the Rules of the Exchange and the Exchange has directed the ETP Holder to suspend or withdraw the person's status as an AT.

(d) An ETP Holder must have reasonable procedures to ensure that the ATs maintain the physical security of the equipment for accessing the facilities of the Exchange to prevent the improper use or access to the systems, including unauthorized entry of information into the systems.

Rule 11.11. Orders and Modifiers

Users may enter into the System the types of orders listed in this Rule 11.11, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) General Order Types.

(1) Market Order. An order to buy or sell a stated amount of a security that is to be executed at the best price obtainable when the order reaches the Exchange. A market order that is designated as ''NSX Only'' will be cancelled if when reaching the Exchange, it cannot be executed in accordance with Rule 11.15(a)(i) on the System. Market orders that are not designated as ''NSX Only'' and that cannot be executed in accordance with Rule 11.15(a)(i) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.15.

(2) Limit Order. An order to buy or sell a stated amount of a security at a specified price or better. A ''marketable'' limit order is a limit order to buy (sell) at or above (below) the Protected NBBO offer (bid) for the security.

(b) Time-in-Force. Limit orders must have one of the following time-in-force terms.

(1) Immediate-or-Cancel (''IOC'') Order. A limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled. An order designated as IOC is not eligible for routing away pursuant to Rule 11.15.

(2) Day Order. A limit order to buy or sell which, if not executed, expires at the closing of the regular trading session for such security on its Listing Exchange. Any Day Order entered into the System before the opening of business on the Exchange as determined pursuant to Rule 11.1, or after the closing of the regular trading session for such security on its Listing Exchange, will be rejected.

(3) Day + Order. A limit order to buy or sell which, if not executed, expires at the closing of business on the Exchange (as determined pursuant to Rule 11.1) on the day on which it was entered. Any Day + Order entered into the System before the opening of business or after the closing of business on the Exchange as determined pursuant to Rule 11.1 will be rejected.

(4) Any limit orders entered with a ''Good 'til Cancel'' (GTC) or similar time-in-force term will be automatically converted into Day Orders.

(5) Any limit orders entered with a ''Good 'til Extended Hours'' (GTX) or similar time-in-force term will be automatically converted into Day + Orders.

(c) Other Types of Orders and Order Modifiers.

(1) ITS Order. An order entered into the System via the Intermarket Trading System (''ITS'') as described in Chapter XIV of these Rules. ITS Orders are executable in round lots only. All ITS Orders shall be treated as Immediate-or-Cancel (IOC).

(2) Reserve Order. A limit order with a portion of the quantity displayed (''display quantity'') and with a reserve portion of the quantity (''reserve quantity'') that is not displayed.

(3) Odd Lot Order. An order to buy or sell an odd lot. Odd Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

(4) Mixed Lot Order. An order to buy or sell a mixed lot. Odd lot portions of Mixed Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

(5) Post Only Order. A limit order that is to be posted on the Exchange and not routed away to another trading center. A Post Only Order will be rejected without execution if it is immediately marketable when entered.

(6) NSX Only Order. An order that is to be executed on the Exchange pursuant to Rule 11.15(a) or cancelled, without routing away to another trading center.

(7) Sweep Order. A limit order that instructs the System to ''sweep'' the market.

(i) Sweep Orders may be designated as ''Protected Sweep,'' ''Full Sweep,'' or ''Destination Sweep.'' Sweep Orders not carrying any such designation shall be treated as Protected Sweep Orders.

(A) A Protected Sweep Order will be converted into one or more limit orders with sizes equal to the sizes of protected quotations in the NSX Book and at away trading centers to be executed in accordance with Rule 11.15(b).

(B) A Full Sweep Order will be converted into one or more limit orders with sizes equal to the sizes of the best available quotations (including manual quotations) in the NSX Book and at away trading centers in accordance with Rule 11.15(b).

(C) A Destination Sweep Order will be routed to an away trading center specified by the User, after the order is exposed to the NSX Book.

(ii) When entering a Protected Sweep Order or Full Sweep Order, Users shall designate the Sweep Order as ''Sweep and Post,'' ''Sweep and Cancel,'' or a combination thereof.

(A) Any unfilled portion of a Sweep Order designated ''Sweep and Post'' following the market sweep described in subsection (i) above will be converted into a Post Only Order.

(B) Any unfilled portion of a Sweep Order designated ''Sweep and Cancel'' after the completion of the market sweep described in subsection (i) above will be cancelled.

(iii) A Sweep Order entered as part of a ''Cross/Sweep'' message pursuant to Rule 11.12 shall be treated identically to a Sweep Order designated ''Sweep and Cancel'' except as otherwise provided in Rule 11.12.

(iv) Any order converted from a Protected Sweep Order or Full Sweep Order for routing to other trading centers or for execution against the NSX Book shall be marked as an intermarket sweep order or ''ISO''.

(8) Incoming Intermarket Sweep Order. The System will accept incoming intermarket sweep orders (as such term is defined in Regulation NMS) from other trading centers. Such orders must be marked ''ISO'' in order to be eligible for treatment as an intermarket sweep order. Such orders, if appropriately marked, will be considered immediate-or-cancel (IOC) and will be executed without regard to protected quotations at away markets consistent with Regulation NMS.

(9) Destination Specific Order. A market or limit order that instructs the System to route the order to a specified away trading center, after exposing the order to the NSX Book. Users can access markets offering bids and offers other than protected quotations (i.e., manual quotations) by entering a Destination Specific Order. A Destination Specific Order must have an order type and a time-in-force term permitted by this Rule 11.11.

(d) Cancel/Replace Messages. A User may, by appropriate entry in the System, cancel or replace an existing

order entered by the User, subject to the following limitations.

(i) Orders may only be cancelled or replaced if the order has a time-in-force term other than IOC and if the order has not yet been executed.

(ii) If an order has been routed to another trading center, the order will be placed in a ''Cancel Pending'' state until the routing process is completed. Executions that are completed when the order is in the ''Cancel Pending'' state will be processed normally.

(iii) Only the price and quantity terms of the order may be changed by a Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered.

(iv) Notwithstanding anything to the contrary in these Exchange Rules, no cancellation or replacement of an order will be effective until the User has received written confirmation of the cancellation or replacement from the Exchange.

Rule 11.12. Cross Message

(a) Subject to the restrictions of this Rule, Users may enter a cross message (a ''Cross'') instructing the System to match for execution the identified buy-side of the Cross with the identified sell-side of the Cross at a specified price (the ''cross price'').

(b) Except as provided in paragraphs (c), (d) or (f) below, no Cross will be executed by the System, unless:

(1) The buy-side of the Cross is at a price less (by at least $0.01 per share) than the lowest displayed order to sell in the NSX Book, and (following the compliance date for Rule 611 of Regulation NMS) is at a price equal to or less than the Protected NBBO offer; and

(2) The sell-side of the Cross is at a price greater (by at least $0.01 per share) than the highest displayed order to buy in the NSX Book, and (following the compliance date for Rule 611 of Regulation NMS) is at a price equal to or greater than the Protected NBBO bid.

(c) Midpoint Cross. A Cross that is priced at the midpoint of the Protected NBBO (or, prior to the compliance date for Rule 611 of Regulation NMS, at the midpoint of the best bid and offer on the Exchange) (a ''Midpoint Cross'') may be executed on the System if it improves each side of the Top of Book by at least half the minimum increment permitted by Rule 11.3(a).

(d) Clean Cross. A Cross meeting the following requirements (a ''Clean Cross'') may be executed on the System at a price equal to or better than each side of the Top of Book:

(1) The Cross is for at least 5,000 shares and has an aggregate value of at least $100,000;

(2) Neither side of the Cross is for the account of the User entering the Cross; and

(3) The size of the Cross is greater than the size of the interest at each side of the Top of Book;

(4) Following the compliance date for Rule 611 of Regulation NMS, the price of the Cross is equal to or better than the Protected NBBO.

(e) If either side of a Cross is for the account of the User entering the Cross (a ''Proprietary Cross''), the User must comply with Exchange Rule 12.6 (the Customer Priority Rule). Without limiting the foregoing, no User shall enter a Proprietary Cross if the User is holding a customer order in the security unless the price of the Proprietary Cross improves the price that could have been received by the customer order by at least $0.01.

(f) Cross/Sweep. Users may enter a ''Cross/Sweep'' message into the System involving both a Sweep Order and a Cross.

(1) Upon receipt of a Cross/Sweep message, the System will enter a Protected Sweep Order for the User's account in an amount necessary to execute against all protected quotations that, if not swept, would prohibit the Cross from being executed by the System pursuant to paragraph (b) above. The Cross will be executed on the System simultaneously with the Sweep Order, unless the Protected Sweep Order would be for an amount of shares in excess of the size of the Cross, in which case both the Protected Sweep Order and the Cross shall be cancelled without execution.

(2) No User shall enter a Cross/Sweep if either side of the Cross is for the account of a customer, unless the User fully discloses to such customer all of the material facts relating to the Sweep Order, including price(s) of the Sweep Order and the fact that the Sweep Order is for the account of the User.

Rule 11.13. Proprietary and Agency Orders; Modes of Order Interaction

(a) Except as otherwise provided in these Rules, Users may enter proprietary orders and agency orders for the account of a customer. Proprietary orders accepted by the System from Users are subject to the same ranking and execution processes as agency orders. A User that enters a proprietary order into the System shall mark the order with the appropriate designator to identify the order as proprietary. All agency orders shall be designated as such and with each agency order, the User shall include a unique account number or other identifier that enables the User to identify the User's customer on whose behalf the order is being entered.

(b) The System offers two modes of order interaction selected by Users:

(1) If automatic execution is selected, the System shall match and execute like-priced orders on an order by order basis only at the specific instruction of Users.

(2) If order delivery and automated response is selected, the System will deliver contra-side orders against displayed orders on an order by order basis only at the specific instruction of Users. To be eligible for order delivery service, Users must demonstrate to Exchange examiners that the User's system can automatically process the inbound order and respond appropriately within ½ of a second. If no response to an inbound order is received within ½ of a second, the User's displayed order will be cancelled.

Rule 11.14. Priority of Orders

(a) Ranking. Orders of Users shall be ranked and maintained in the NSX Book based on the following priority:

(1) The highest-priced order to buy (or lowest-priced order to sell) shall have priority over all other orders to buy (or orders to sell) in all cases.

(2) Where orders to buy (or sell) are made at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order.

(3) In the event that less than the full size of an order is executed, the unexecuted size of the order shall retain priority at the same limit price in accordance with paragraphs (1) and (2) above.

(4) The displayed quantity of a Reserve Order shall have time priority as of the time of display. If the displayed quantity of the Reserve Order is decremented such that 99 shares or fewer would be displayed, the displayed portion of the Reserve Order shall be refreshed for (i) the original displayed quantity, or (ii) the entire reserve quantity, if the remaining reserve quantity is smaller than the original displayed quantity. After the refresh, the displayed portion of the Reserve Order shall have time priority as of the time of the refresh. The reserve quantity of a Reserve Order shall have no time priority until displayed. If all displayed orders and displayed portions of Reserve Orders at a given price are executed, and following such execution any marketable contra-side orders

remain outstanding, then such contra-side orders shall be executed against the refreshed displayed portions of Reserve Orders at such price based on the time priority as determined by this paragraph (4).

(b) Dissemination. The best-ranked order(s) to buy and the best-ranked order(s) to sell in the NSX Book and the aggregate displayed size of such orders associated with such prices shall be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS.

Rule 11.15. Order Execution

Subject to the restrictions on short sales under these Exchange Rules or the Act and the rules and regulations thereunder, orders shall be matched for execution by following this Rule. For any execution to occur during Regular Trading Hours, however, the price must be equal to or better than the Protected NBBO, unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS.

(a) Orders Other than Sweep Orders.

(i) Execution against NSX Book. An incoming order (other than a Sweep Order) shall first attempt to be matched for execution against orders in the NSX Book. An incoming order to buy (other than a Sweep Order) will be automatically executed to the extent that it is priced at an amount that equals or exceeds any order to sell in the NSX Book. Such order to buy shall be executed at the price(s) of the lowest order(s) to sell having priority in the NSX Book. An incoming order to sell (other than a Sweep Order) will be automatically executed to the extent that it is priced at an amount that equals or is less than any other order to buy in the NSX Book. Such order to sell shall be executed at the price(s) of the highest order(s) to buy having priority in the NSX Book.

(ii) Routing to Away Trading Centers. Unless the terms of the order direct otherwise, if an order (other than a Sweep Order) has not been executed in its entirety pursuant to paragraph (a)(i) of this Rule, the order shall be eligible for routing away as follows:

(A) The order will be converted into one or more limit orders, as necessary, to be matched for execution against each protected quotation at the Protected NBBO available at away trading centers. Each such converted limit order shall be priced at the price of the protected quotation that it is to be matched for execution against.

(B) Each converted limit order will be routed to the applicable trading center for execution against the applicable protected quotation at the Protected NBBO. No orders routed away pursuant to this subsection (ii) shall be marked ISO.

(iii) Following steps (i) and (ii) above, unless the terms of the order direct otherwise, any unfilled portion of the order originally entered into the System shall be ranked in the NSX Book in accordance with the terms of such order under Rule 11.14 and such order shall be eligible for execution under this Rule 11.15.

(b) Sweep Orders.

(i) Protected Sweep Orders. A Protected Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and will simultaneously be converted into one or more additional limit orders, as necessary, with sizes equal to the size of each protected quotation that is superior (or in the case of a Protected Sweep Order designated ''Sweep and Post'', superior or equal) to the limit price of the Protected Sweep Order. Each converted limit order will be routed to the applicable trading center for execution.

(ii) Full Sweep Orders. A Full Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and will simultaneously be converted into one or more additional limit orders, as necessary, with sizes equal to the size of each quotation available at an away trading center that (A) is the best bid or offer of a national securities exchange or association, and (B) is superior (or, in the case of a Full Sweep Order designated ''Sweep and Post'', superior or equal) to the limit price of the Full Sweep Order. Each converted limit order will be routed to the applicable trading center for execution.

(iii) Destination Sweep Orders. A Destination Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and if it cannot be matched for execution in accordance with paragraph (a)(i), will be routed to the specified away trading center for execution.

(iv) Any order converted from a Protected Sweep Order or Full Sweep Order for routing to other trading centers or for execution against the NSX Book shall be marked as an intermarket sweep order or ''ISO''.

(v) Following the steps described above, any unfilled portion of the Sweep Order will either be cancelled or ranked in the NSX Book in accordance with the terms of the Sweep Order.

(c) Special Rules for Orders Routed to Other Trading Centers.

(i) An order that is routed away may be executed in whole or in part subject to the applicable trading rules of the relevant trading center. While an order remains outside the System, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the NSX Book. Requests from Users to cancel their orders while the order is routed away to another trading center and remains outside the System shall be processed, subject to the applicable trading rules of the relevant trading center.

(ii) Where an order or portion of an order is routed away and is not executed either in whole or in part at the other trading center (i.e., all attempts at the fill are declined or timed-out), the order shall be ranked in the NSX Book in accordance with the terms of such order under Rule 11.14 and such order shall be eligible for execution under this Rule 11.15, unless the terms of the order provide otherwise.

(d) Display of Automated Quotations. The System will be operated as an ''automated market center'' within the meaning of Regulation NMS, and in furtherance thereof, will display ''automated quotations'' within the meaning of Regulation NMS at all times except in the event that a systems malfunction renders the System incapable of displaying automated quotations. The Exchange shall communicate to ETP Holders its procedures concerning a change from automated to manual quotations.

Rule 11.16. Trade Execution and Reporting

Executions occurring as a result of orders matched against the NSX Book shall be reported by the Exchange to an appropriate consolidated transaction reporting system to the extent required by the Act and the rules and regulations thereunder. Executions occurring as a result of orders routed away from the System shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting trading center. The Exchange shall promptly notify Users of all executions of their orders as soon as such executions take place.

Rule 11.17. Clearance and Settlement

(a) Each ETP Holder must either (1) be a member of a Qualified Clearing Agency, or (2) clear transactions executed on the Exchange through another ETP Holder that is a member of a Qualified Clearing Agency. Each Sponsored Participant must be a member of a Qualified Clearing Agency. If an ETP Holder clears transactions

through another ETP Holder that is a member of a Qualified Clearing Agency (''clearing member''), such clearing member shall affirm to the Exchange in writing, through letter of authorization, letter of guarantee or other agreement acceptable to the Exchange, its agreement to assume responsibility for clearing and settling any and all trades executed by the ETP Holder designating it as its clearing firm. The rules of any such clearing agency shall govern with respect to the clearance and settlement of any transactions executed by the ETP Holder on the Exchange.

(b) Each transaction executed within the System shall be automatically processed for clearance and settlement on a locked-in basis.

(c) Except as required by any Qualified Clearing Agency, the Exchange will reveal the identity of an ETP Holder or ETP Holder's clearing firm in the following circumstances:

(1) for regulatory purposes or to comply with an order of a court or arbitrator; or

(2) when a Qualified Clearing Agency ceases to act for an ETP Holder or the ETP Holder's clearing firm, and determines not to guarantee the settlement of the ETP Holder's trades.

11.18. LIMITATION OF LIABILITY

(A) NEITHER THE EXCHANGE NOR ITS AGENTS, EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS OR AFFILIATES (''EXCHANGE RELATED PERSONS'') SHALL BE LIABLE TO ANY USER OR ETP HOLDER, OR SUCCESSORS, REPRESENTATIVES OR CUSTOMERS THEREOF, OR ANY PERSONS ASSOCIATED THEREWITH, FOR ANY LOSS, DAMAGES, CLAIM OR EXPENSE:

(1) GROWING OUT OF THE USE OR ENJOYMENT OF ANY FACILITY OF THE EXCHANGE, INCLUDING, WITHOUT LIMITATION, THE SYSTEM; OR

(2) ARISING FROM OR OCCASIONED BY ANY INACCURACY, ERROR OR DELAY IN, OR OMISSION OF OR FROM THE COLLECTION, CALCULATION, COMPILATION, MAINTENANCE, REPORTING OR DISSEMINATION OF ANY INFORMATION DERIVED FROM THE SYSTEM OR ANY OTHER FACILITY OF THE EXCHANGE, RESULTING EITHER FROM ANY ACT OR OMISSION BY THE EXCHANGE OR ANY EXCHANGE RELATED PERSON, OR FROM ANY ACT CONDITION OR CAUSE BEYOND THE REASONABLE CONTROL OF THE EXCHANGE OR ANY EXCHANGE RELATED PERSON, INCLUDING, BUT NOT LIMITED TO, FLOOD, EXTRAORDINARY WEATHER CONDITIONS, EARTHQUAKE OR OTHER ACTS OF GOD, FIRE, WAR, TERRORISM, INSURRECTION, RIOT, LABOR DISPUTE, ACCIDENT, ACTION OF GOVERNMENT, COMMUNICATIONS OR POWER FAILURE, OR EQUIPMENT OR SOFTWARE MALFUNCTION.

(B) EACH ETP HOLDER EXPRESSLY AGREES, IN CONSIDERATION OF THE ISSUANCE OF THE ETP, TO RELEASE AND DISCHARGE THE EXCHANGE AND ALL EXCHANGE RELATED PERSONS OF AND FROM ALL CLAIMS AND DAMAGES ARISING FROM THEIR ACCEPTANCE AND USE OF THE FACILITIES OF THE EXCHANGE (INCLUDING, WITHOUT LIMITATION, THE SYSTEM).

(C) NEITHER THE EXCHANGE NOR ANY EXCHANGE RELATED PERSON MAKES ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS TO USERS AS TO RESULTS THAT ANY PERSON OR PARTY MAY OBTAIN FROM THE SYSTEM FOR TRADING OR FOR ANY OTHER PURPOSE, AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, TITLE, AND NON-INFRINGEMENT WITH RESPECT TO THE SYSTEM ARE HEREBY DISCLAIMED.

Rule 11.19. Clearly Erroneous Executions

(a) Definition. For purposes of this Rule, the terms of a transaction executed on the Exchange are ''clearly erroneous'' when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties may be removed, if the parties do not object, subject to the approval of the Exchange.

(b) Request for Exchange Review. An ETP Holder that receives an execution on an order that was submitted erroneously to the Exchange for its own or customer account may request that the Exchange review the transaction under this Rule. Such request for review shall be made via telephone, facsimile or e-mail and submitted within fifteen (15) minutes of the trade in question. Upon receipt, the counterparty to the trade, if any, shall be notified by the Exchange as soon as practicable. Thereafter, an Officer of the Exchange or such other designee of the Exchange (''Officer'') shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Each party to the transaction shall provide, within thirty (30) minutes of the request for review, any supporting written information as may be reasonably requested by Officer to aid resolution of the matter. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(c) Review Procedures.

(1) Determination by Officer. Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Officer. If the Officer determines that the transaction is not clearly erroneous, the Officer shall decline to take any action in connection with the completed trade. In the event that the Officer determines that the transaction in dispute is clearly erroneous, the Officer shall declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The parties shall be promptly notified of the determination.

(2) Appeal to CEE Panel. If a party affected by a determination made under this Rule so requests within the time permitted below, the Clearly Erroneous Execution Panel (''CEE Panel'') will review decisions made by the Officer under this Rule, including whether a clearly erroneous execution occurred and whether the correct adjustment was made.

(A) The CEE Panel will be comprised of the Exchange's Chief Regulatory Officer (''CRO''), or a designee of the CRO, and representatives from two (2) ETP Holders.

(B) The Exchange shall designate the ETP Holder representatives to be called upon to serve on the CEE Panel as needed. In no case shall a CEE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a CEE Panel on an equally frequent basis.

(C) A request for review on appeal must be made via facsimile or e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CEE Panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

(D) The CEE Panel may overturn or modify an action taken by the Officer under this Rule. All determinations by the CEE Panel shall constitute final action by the Exchange on the matter at issue.

(d) Abuse of Process. An abuse of the process described in subsections (c) and (d) above may subject the abusing User to disciplinary action under Chapter VIII.

(e) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Exchange, or extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the Officer, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify the terms of these transactions if the Officer determines that the transaction(s) are clearly erroneous, or that such actions are necessary for the maintenance of a fair and orderly market or for the protection of investors and the public interest. Any such action of the Officer pursuant to this subsection (e) shall be taken as promptly as practicable following detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of subsection (c)(2).

Rule 11.20. Trading Halts Due to Extraordinary Market Volatility

(a) Trading in stocks will halt on the Exchange and will not reopen for the time periods described in this paragraph (a) if the Dow Jones Industrial Average reaches Level 1 below its closing value on the previous trading day:

(1) before 1:00 p.m. Central Time, for one hour;

(2) at or after 1:00 p.m. but before 1:30 p.m. Central Time, for 30 minutes.

If the Dow Jones Industrial Average reaches Level 1 below its closing value on the previous trading day at or after 1:30 p.m. Central Time, trading will continue through the facilities of the Exchange until the close, unless the Dow Jones Industrial Average reaches Level 2 below its closing value on the previous trading day, at which time trading will be halted for the remainder of the day.

(b) Trading in stocks will halt on the Exchange and will not re-open for the time periods described in this paragraph (b) if the Dow Jones Industrial Average reaches Level 2 below its closing value on the previous trading day:

(1) before 12:00 noon Central Time, for two hours;

(2) at or after 12:00 noon but before 1:00 p.m. Central Time, for one hour;

(3) at or after 1:00 p.m. Central Time, for the remainder of the day.

(c) If the Dow Jones Industrial Average reaches Level 3 below its closing value on the previous trading day, trading in stocks will halt on the Exchange and will not reopen for the remainder of the day.

(d) On the occurrence of any trading halt pursuant to this Rule, all outstanding orders in the System will be cancelled.

Commentary:

.01 Levels 1, 2 and 3 will be calculated at the beginning of each calendar quarter, using the average closing value of the Dow Jones Industrial Average for the month prior to the beginning of the quarter. Level 1 will be 10% of such average closing value calculation; Level 2 will be 20% of such average closing value calculation; Level 3 will be 30% of such average closing value calculation. Each Level will be rounded to the nearest fifty points. The values of Levels 1, 2 and 3 will remain in effect until the next calculation.

.02 The restrictions in this Rule will apply whenever the Dow Jones Industrial Average reaches the trigger values notwithstanding the fact that at any given time, the calculation of the value of the average may be based on the prices of less than all of the stocks included in the average.

.03 The reopening of trading following a trading halt under this Rule will be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its ETP Holders.

.04 Nothing in this Rule should be construed to limit the ability of the Exchange to otherwise halt or suspend the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange Rule or policy.

Rule 11.21. Short Sales

All short sale orders shall be identified as either short sale or short sale exempt when entered into the System. Any marketable order entered in the System that, if matched for execution, would violate the short sale provisions of the Act or the rules and regulations thereunder shall be cancelled. The foregoing shall not be in limitation of the Exchange's ability to adopt additional Rules, interpretations or policies relating to short sales.

Rule 11.22. Locking or Crossing Quotations in NMS Stocks

(a) Definitions. For purposes of this Rule, the following definitions shall apply:

(1) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS.

(2) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(3) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, Users shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(c) Manual quotations. If a User displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such User shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(d) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a

failure, material delay, or malfunction of its systems or equipment.

(2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(3) The locking or crossing quotation was an automated quotation, and the User displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(4) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the User displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

Rule 11.23. Riskless Principal Transactions

(a) A ''riskless principal transaction'' is defined as two offsetting principal transaction legs in which an ETP Holder, (i) after having received an order to buy a security that it holds for execution on the Exchange, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security that it holds for execution on the Exchange, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.

(b) A last sale report for only the initial offsetting transaction leg of a riskless principal transaction shall be submitted to the respective consolidated tape in accordance with the rules and procedures of the market where that transaction leg occurred. A last sale report for the second offsetting transaction leg of a riskless principal transaction shall not be submitted by the Exchange to the respective consolidated tape provided that the second offsetting transaction leg is submitted to the Exchange for execution and designated with a riskless principal modifier by the ETP Holder.

(c) An ETP Holder must have written policies and procedures to assure that its riskless principal transactions comply with this Rule. At a minimum these policies and procedures must require that the customer order be received prior to the offsetting transactions, and that the second offsetting transaction leg be executed within 60 seconds of the initial offsetting transaction leg. An ETP Holder must also have supervisory systems in place that produce records that enable the ETP Holder and the Exchange to accurately and readily reconstruct, in a time-sequenced manner, all orders related to each riskless principal transaction.

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CHAPTER XII. Trading Practice Rules

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Rule 12.6. Customer Priority

(a)–(c) No change.

(d) The provisions of paragraphs (a) and (b) of this Rule also shall not apply if an ETP Holder engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer (whether its own customer or the customer of another member) (the ''facilitated order''), provided that the requirements of Rule 11.23 are satisfied. Any transaction handled by an ETP Holder on other than an agency basis that does not satisfy the requirements of Exchange Rule 11.23 remains a transaction that, unless otherwise exempt, is subject to the provisions of paragraphs (a) and (b) of this Rule. This exemption applies to both offsetting transaction legs of a riskless principal transaction but only to the extent of the actual number of shares that are required to satisfy the facilitated order.

Interpretations and Policies

.01 If [a Designated Dealer] *an ETP Holder* holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the [Designated Dealer] *ETP Holder* shall cross them without interpositioning itself as a dealer.

.02 For a pilot period lasting through June 30, 2006:

(a) [A Designated Dealer] *An ETP Holder* shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) representing the NBBO, the [Designated Dealer] *ETP Holder,* for his own account, trades with an incoming market or marketable limit order at a price which is less than one penny better than the price of such customer limit order (not the quoted price) held by such [Designated Dealer] *ETP Holder.*

(b) [A Designated Dealer] *An ETP Holder* shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) at a price outside the NBBO, the [Designated Dealer] *ETP Holder,* for his own account, trades with an incoming market or marketable limit order at a price which is less than the nearest penny increment to the actual price of the customer limit order (not the quoted price) held by such [Designated Dealer] *ETP Holder.*

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CHAPTER XIV. Intermarket Trading System Plan

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Rule 14.9. ITS ''Trade-Throughs'' and ''Locked Markets''

(a)–(e) No change.

(f) This Rule 14.9 shall cease to be operational on the compliance date for the provisions of Regulation NMS relating to trade-throughs and locked markets.

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CHAPTER XV. Listed Securities and Other Exchange Products

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15.10. Portfolio Depositary Receipts

(1) Applicability. This rule is applicable only to Portfolio Depositary Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Portfolio Depositary Receipts are included within the definition of ''security'' or ''securities'' as such terms are used in the By-Laws and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(a) Portfolio Depositary Receipt. The term ''Portfolio Depositary Receipt'' means a security (i) that is based on a unit investment trust (''Trust'') which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (ii) that is issued by the Trust in a specified aggregate minimum number in return for a ''Portfolio Deposit'' consisting of specified numbers of shares of stock plus a cash amount; (iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the ''Portfolio Deposit'; and (iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depository Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(b) Reporting Authority. The term ''Reporting Authority'' in respect of a

particular series of Portfolio Depositary Receipts means the Exchange, an institution (including the Trustee for a series of Portfolio Depositary Receipts), or a reporting service designated by the Exchange, or by the exchange that lists a particular series of Portfolio Depository Receipts (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depositary Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts, net asset value, or other information relating to the creation, redemption or trading of Portfolio Depositary receipts.

(3) ETP Holders shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such a series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or to the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts].'' An ETP Holder carrying omnibus account for a non-ETP Holder broker-dealer is required to inform such non-ETP Holder that execution of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this Rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(4) Designation of an Index or Portfolio. The trading of Portfolio Depositary Receipts based on one or more stock indices or securities portfolios, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case by case basis. The Portfolio Depositary Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depositary Receipts are based shall be selected by the Exchange or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. A Trust upon which a series of Portfolio Depositary Receipts is based will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Trust, the Exchange will establish a minimum number of Portfolio Depositary Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, removal from listing of, or termination of unlisted trading privileges for a Trust upon which a series of Portfolio Depositary Receipts is based under any of the following circumstances: (i) If the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depositary Receipts for 30 or more consecutive trading days; or (ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or (iii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes future dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Portfolio Depositary Receipts issued in connection with such Trust be removed from Exchange listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be stated in the Trust Prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(d) Trustee—The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed as co-trustee.

(e) Voting—Voting rights shall be as set forth in the Trust prospectus. The Trustee of a Trust may have the right to vote all of the voting securities of such Trust.

(6) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts; net asset value; or other information relating to the creation redemption or trading of Portfolio Depositary Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more of the underlying securities. The Exchange makes no warranty, express or implied, as to the results to be obtained by any person or entity from the use of Portfolio Depositary Receipts or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties or merchantability or fitness for a particular purpose with respect to Portfolio Depositary Receipts or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation

contained in the Exchange's Articles of Incorporation, By-Laws or Rules.

Interpretations And Policies

.01 The Exchange will trade pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Exchange's S&P 500 Index, known as SPDRs.

.02 The Exchange will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Exchange's S&P MidCap 400 Index, known as MidCap SPDRs.

Standard & Poor's'', ''S&P'', ''S&P 500'', ''Standard & Poor's 500'', and ''500'' are trademarks of the McGraw-Hill Companies, Inc. and have been licensed for use by the Exchange.

15.11. Trust Issued Receipts

(1) Applicability. This rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the By-Laws and all the rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of ''security'' or ''securities'' as such terms are used in the By-Laws and Rules of the Exchange. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the following meanings herein specified:

(a) Trust Issued Receipt. A Trust Issued Receipt is a security (a) that is issued by a trust (''Trust'') which holds specific securities deposited with the Trust; (b) that when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(3) Designation. The Exchange may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(4) Initial and Continued Listing. Trust Issued Receipts will be traded on the Exchange subject to application of the following criteria:

(a) Initial Listing—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Listing—Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances: (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (ii) if the Trust has more than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than $1,000,000; or (iv) if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of a Trust, the Exchange requires that the Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term—The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(f) Trustee—The Trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(g) Voting—Voting rights shall be set forth in the Trust prospectus.

(5) ETP Holder Obligations. ETP Holders shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(6) Trading Issues. Trust Issued Receipts may be acquired, held, or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot multiple, will be executed to the extent of the largest round-lot multiple.

Interpretations and Policies

.01 The Exchange may approve a series of Trust Issued Receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b–4(e) under the Act, provided that the following criteria are satisfied:

(a) Each security underlying the Trust Issued Receipt must be registered under Section 12 of the Act;

(b) Each company whose securities are underlying securities for the Trust Issued Receipt must have a minimum public float of at least $150 million;

(c) Each security underlying the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of NASDAQ as a reported national market system security;

(d) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(e) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least $1 million; and

(f) The most heavily weighted security in the Trust Issued Receipt cannot initially represent more than 20% of the overall value of the Trust Issued Receipt.

15.12. Index Fund Shares

(1) Applicability. This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the By-Laws and Rules of the Exchange.

(2) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(a) Index Fund Shares means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign

or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holders request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) Reporting Authority. The term ''Reporting Authority'' in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term ''Reporting Authority'' shall not refer to an institution or reporting service not so designated.

(3) Disclosure. Upon request of a customer, ETP Holders shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) Designation. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio and shall be a designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person thereof, as shall have authorized use of such index. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

(a) Commencement of Trading—For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(b) Continued Trading—Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances: (i) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (iii) if such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of an open-ended management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(c) Voting—Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

Interpretations and Policies

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b–4(e) under the Act provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million; (ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; (iii) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; (iv) The underlying index or portfolio must include a minimum of 13 stocks; and (v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''fire-wall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional trading variation may vary among different series of Index Fund Shares but will be set at 1/16th, 1/32nd, or 1/64th of $1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of the Exchange Rules and By-Laws will apply to all series of Index Fund Shares.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission

exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform ETP Holders regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that ETP Holders provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares].''

An ETP Holder carrying an omnibus account for a non-ETP Holder broker-dealer is required to inform such non-ETP Holder that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Index Fund Shares.

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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 proposal and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange is proposing a series of rule changes in connection with a new electronic trading system (the ''System'') the Exchange is developing to replace the Exchange's current National Securities Trading System (''NSTS''). The Exchange states that the System would provide for a new trading platform and structure in order to take advantage of opportunities in the marketplace and the implementation of Regulation NMS (''Regulation NMS'') under the Act, as amended, and the rules and regulations thereunder.[4] The System would have different priority rules than that of NSTS. For example, NSTS and the Exchange's current trading rules allow preferencing by dealers under certain circumstances.[5] The Exchange states that the System (and the proposed rule change described in this submission) would provide for strict price-time priority execution, with no priority of execution distinction made for principal or agency orders.[6]

The proposed rule change, as amended, also incorporates the trade-through rule of Regulation NMS[7] by requiring that, for any execution to occur on the Exchange during regular trading hours,[8] the price must be equal to or better than the national best bid or offer that is a ''protected quotation'' within the meaning of Regulation NMS (the ''Protected NBBO''), unless an exception to the trade-through rule of Regulation NMS is available.[9] NSX proposes to route orders that cannot be executed at the Protected NBBO on the Exchange to away markets for execution.[10] Finally, with the System the Exchange proposes to retain an option for order delivery,[11] but to require that Users requesting order delivery be able to process inbound orders and respond within ½ of a second.[12]

With this proposed rule change, the Exchange is proposing to substantially revise Chapter XI of its Rules (relating to Trading Rules), in order to incorporate priority rules and other features consistent with the System. In connection with the proposed changes to the trading rules, the Exchange is also proposing changes to certain other aspects of its rules as follows:

1. Revisions to Chapter I to incorporate new definitions and other general provisions;

2. One change to Chapter II concerning the ETP Holder admission process and related provisions;

3. Revisions to Chapter XV, to incorporate provisions relating to specifications for other products (*e.g.*, exchange-traded funds) that are currently located in Chapter XI of the Exchange's Rules; and

4. Certain other technical changes in order to be consistent with the new trading rules and related changes being proposed.[13]

Finally, in connection with the new System and the proposed changes to the Exchange's trading rules, the Exchange is requesting that the Commission approve NSX Securities LLC (''NSX Securities'') to be a facility (as defined in Section 3(a)(2) of the Act) of the Exchange.

Trading Rules

Chapter XI of the Exchange's Rules is proposed to be substantially revised in order to accommodate the proposed new market structure. The Exchange states that, although certain aspects of NSX's current Chapter XI have been retained in part, as noted below, for the most part proposed Chapter XI is not based on current Exchange Rules. In general, the proposed Chapter is ordered as follows: (1) Introductory provisions, such as hours of trading and price variations; (2) Registration and obligations of Market Makers (which are optional in this proposed market structure); (3) Access to the System; (4) Types of orders and messages that can be entered into the System; (5) Order priority and execution; and (6) Clearance and settlement, clearly erroneous executions, and other miscellaneous provisions.

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[4] 17 CFR 242.600 *et seq.*

[5] *See* current NSX Rule 11.9, particularly NSX Rules 11.9(l), (m) and (u).

[6] *See* proposed NSX Rules 11.13 and 11.14.

[7] 17 CFR 242.611.

[8] ''Regular Trading Hours'' is defined as between 8:30 a.m. and 3:00 p.m. Central Time. *See* proposed NSX Rule 1.5(R)(1). This is consistent with the definition of ''regular trading hours'' set forth in Regulation NMS. *See* 17 CFR 242.600(b)(64).

[9] *See* proposed NSX Rule 11.15.

[10] *See* proposed NSX Rule 11.15(a)(ii).

[11] *See* current NSX Rule 11.9(i).

[12] *See* proposed NSX Rule 11.13(b).

[13] The Exchange states that a proposed new Chapter XVI relating to dues, fees, assessments and other charges and Exchange rebate programs will be filed with the Commission by the Exchange at a later date. This will replace the Exchange's current fee schedule contained in NSX Rule 11.10, which is being removed in connection with the proposed changes to Chapter XI described herein.

A. Hours of Trading, Units of Trading, Price Variations, and Securities Eligible for Trading

Proposed NSX Rule 11.1 generally provides for trading hours as determined by the Board of Directors of the Exchange (the ''Board''), with notice to ETP Holders.[14] Current NSX Rule 11.1 provides for specific hours of trading.[15] The Exchange is proposing this change to provide greater flexibility to respond to market conditions. The Exchange is also proposing to set forth the specific holidays it observes.[16]

NSX Rule 11.2 is proposed to be changed to define 100 shares as a ''round lot,'' any amount less than 100 shares as an ''odd lot'' and any amount greater than 100 shares that is not a multiple of a round lot as a ''mixed lot''.[17] The Exchange is also proposing to remove current language in NSX Rule 11.2 and elsewhere relating to bonds, as it has not traded bonds for many years.

The Exchange states that the language of proposed NSX Rule 11.3(a) is identical to the language of current NSX Rule 11.3. Proposed NSX Rule 11.3(b) requires that Crosses (as described in proposed NSX Rule 11.12 and Section D below) must improve each side of the Exchange's best bid or offer (''Top of Book'') by at least $0.01 per share, subject to limited exceptions as described in Section D below. Proposed NSX Rule 11.4 provides that any class of securities listed or admitted to unlisted trading privileges on the Exchange may be designated for trading by the Exchange.[18]

B. Market Makers

Proposed NSX Rules 11.5 through 11.8 set forth the registration process and obligations of Market Makers. NSX states that Market Makers are purely optional in this proposed market structure. The Exchange states that it does not expect Market Makers to play a significant role on the Exchange at the outset, but is including these provisions in order to provide flexibility as it expands the System's functionality to provide for additional order types and other features that may make Market Maker registration more attractive.

Proposed NSX Rule 11.5 provides for a registration process for Market Makers. No ETP Holder may act as a Market Maker in any security on the Exchange unless the ETP Holder is registered as a Market Maker in the security.[19] The Exchange plans to administer the Market Maker application process in similar fashion to its administration of applications for equity trading permits, which is described below. Market Makers must file an application for registration in the form prescribed by the Exchange. When reviewing such applications, the Exchange would consider factors such as the applicant's capital, operations, personnel, technical resources, and disciplinary history. Market Makers must maintain at least the minimum net capital required under Rule 15c3–1 under the Act.[20] The Exchange may suspend or terminate the registration of a Market Maker if the Exchange determines that (1) the Market Maker has substantially or continually failed to engage in dealings in accordance with the Exchange Rules; (2) the Market Maker has failed to meet the minimum net capital requirements described above; or (3) the Market Maker has failed to maintain fair and orderly markets.[21] A Market Maker may withdraw its registration by giving written notice to the Exchange, subject to the Exchange's right to require a minimum prior notice period or to place such other conditions on withdrawal (and re-registration following withdrawal) as it deems appropriate in the interests of maintaining fair and orderly markets.[22]

Proposed NSX Rule 11.6 provides for the registration of Market Maker Authorized Traders (''MMATs'') who are permitted to enter orders for the account of the Market Maker for which they are registered. MMATs may be officers, partners, employees, or other associated persons of Market Makers, and must register as an MMAT on the form prescribed by the Exchange.[23] MMATs must successfully complete a ''Series 7'' examination, unless the Exchange waives this requirement for applicant MMATs who have served as dealer-specialists or market makers on another national securities exchange or association for at least two consecutive years within three years of the MMAT application.[24] The Exchange may grant conditional registration as an MMAT subject to conditions the Exchange deems appropriate in the interests of maintaining a fair and orderly market.[25] The Exchange may also suspend or withdraw the registration of an MMAT if (1) the MMAT has caused its Market Maker to fail to comply with securities laws or the By-laws, Rules and procedures of the Exchange; (2) the MMAT is not properly performing its responsibilities as an MMAT or has failed to meet the conditions of registration described above; or (3) the Exchange believes suspension or withdrawal is in the interest of maintaining fair and orderly markets to suspend or withdraw the MMAT's registration.[26] The Exchange would also withdraw the registration of an MMAT upon the written request of the ETP Holder for which the MMAT is registered.[27]

Proposed NSX Rule 11.7 provides for a registration process for Market Makers in a particular security. Market Makers must register in a particular security by filing a security registration form with the Exchange. Unless otherwise provided by the Exchange, such registration shall become effective on the first business day following the Exchange's approval of the registration.[28] In considering the approval of a Market Maker's registration in a particular security, the Exchange may consider the Market Maker's financial resources; the Market Maker's experience, expertise and past performance in making markets; the Market Maker's operational capability; the effect on competition among Market Makers; the Market Maker's clearing arrangements; and the character of the market for the security.[29] A Market Maker may terminate its registration in a security by giving written notice to the Exchange, subject to the Exchange's right to require a minimum prior notice period or impose such other conditions as it deems appropriate in the interests of maintaining fair and orderly markets.[30] Proposed NSX Rule 11.7(c) allows the Exchange to terminate such registration if the Market Maker has not met its obligations as set forth in the

[14] *See* proposed NSX Rule 11.1(a).

[15] *See* current NSX Rule 11.1(a).

[16] *See* proposed NSX Rule 11.1(b).

[17] *See* proposed NSX Rule 11.2.

[18] This proposed Rule is generally consistent with current NSX Rule 11.9(b). Current Rules 11.4 and 11.5 are proposed to be replaced in their entirety, as they relate to trading ex-dividend and related issues that will no longer apply because no orders will remain in the System beyond a single trading day.

[19] *See* proposed NSX Rule 11.5(a). Registered Market Makers will be designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

[20] *See* proposed NSX Rule 11.5(b).

[21] *See* proposed NSX Rule 11.5(d).

[22] *See* proposed NSX Rule 11.5(e).

[23] *See* proposed NSX Rule 11.6(b). Market Makers must ensure that their MMATs are in compliance with NSX Rules and are properly qualified to perform market-making activities on the Exchange. *See* proposed NSX Rule 11.6(b)(5). Market Makers are responsible for the acts and omissions of their MMATs. *See* proposed NSX Rule 11.8(c).

[24] *See* proposed NSX Rule 11.6(b)(2).

[25] *See* proposed NSX Rule 11.6(b)(4).

[26] *See* proposed NSX Rule 11.6(c)(1).

[27] *See* proposed NSX Rule 11.6(b)(3).

[28] *Id.*

[29] *See* proposed NSX Rule 11.7(a).

[30] *See* proposed NSX Rule 11.7(b). A Market Maker may also withdraw temporarily from its Market Maker status in a security if legal or regulatory requirements necessitate. *See* proposed NSX Rule 11.8(e).

Exchange Rules or has not maintained fair and orderly markets.

Proposed NSX Rule 11.8 sets forth certain obligations of Market Makers. Market Makers generally must engage in a course of dealings for their own account to assist in the maintenance of fair and orderly markets on the Exchange.[31] Market Makers are specifically required, among other things, to maintain continuous limit orders to buy and sell for round lots in those securities in which Market Makers is registered to trade; to comply with all Exchange Rules; to inform the Exchange of a material change in the financial or operation condition or in the personnel of the Market Maker; to maintain a current list of MMATs and provide an updated version of this list to the Exchange upon any change in MMATs; and to clear and settle transactions through the facilities of a registered clearing agency.[32] Substantial or continued failure to comply with these requirements may subject a Market Maker to suspension or revocation of the Market Maker's registration in one or more securities, or other disciplinary action.[33]

C. Access to the System and Authorized Traders

Orders may be entered on the System only by Users who have obtained authorized access by entering into a User Agreement with the Exchange in the form prescribed by the Exchange.[34] In addition to ETP Holders, non-ETP Holders may enter into User Agreements and thereby access the System, subject to the requirements of proposed NSX Rule 11.9. A non-ETP Holder accessing the System is known as a ''Sponsored Participant.''[35] A Sponsored Participant, to obtain access to the System, must be a registered broker or dealer and a self-clearing member of a qualified clearing agency (''Qualified Clearing Agency''),[36] and must enter into an agreement with a Sponsoring ETP Holder[37] pursuant to which the Sponsoring ETP Holder agrees to be responsible for any and all actions taken by or on behalf of the Sponsored Participant.[38] The Sponsored Participant must also (1) agree to comply with the Exchange's Rules and procedures as if the Sponsored Participant were an ETP Holder; (2) maintain a current list of its Authorized Traders who may access the System on behalf of the Sponsored Participant (and provide such list to the Sponsoring ETP Holder and the Exchange on request); (3) familiarize its Authorized Traders with the Sponsored Participant's obligations and assure that they receive appropriate training; (4) take reasonable security precautions to prevent access to the System by anyone other than the Sponsored Participant's Authorized Traders; and (5) establish adequate procedures and controls to effectively monitor the Sponsored Participant's employees, agents and customers' use and access to the System.[39] The Exchange intends to administer the Sponsored Participant access provisions of proposed NSX Rule 11.9 in a fashion similar to its current non-member give-up rule.[40]

Proposed NSX Rule 11.10 requires that ETP Holders maintain a list of Authorized Traders (''ATs'') who may obtain access to the System on behalf of the ETP Holder or the ETP Holder's Sponsored Participant, and requires that an ETP Holder provide such list to the Exchange upon request.[41] An ETP Holder must have reasonable procedures to ensure that its ATs (1) comply with all Exchange Rules and other procedures relating to the System; and (2) maintain the physical security of the System and the equipment used to access it.[42] An ETP Holder must suspend or withdraw a person's status as an AT if the Exchange so directs after determining that the AT has caused the ETP Holder to fail to comply with the Exchange Rules.[43]

D. Types of Orders and Messages That May Be Entered Into the System

Proposed NSX Rule 11.11 allows Users (*i.e.*, ETP Holders and Sponsored Participants) to enter market orders and limit orders with various time-in-force terms and other modifiers. The System would not allow a time-in-force term longer than Day +.[44] Unexecuted Day orders would expire at the closing of trading on the exchange where the security is listed. Unexecuted Day + orders would expire at the closing of trading on NSX.[45] Other order types permitted to be entered into the System include Reserve Orders,[46] Odd Lot and Mixed Lot Orders,[47] Post Only Orders,[48] and NSX Only Orders.[49]

A Sweep Order type is provided for in proposed NSX Rule 11.11(c)(7). A Sweep Order that is designated as a ''Protected Sweep Order'' would be converted into one or more limit orders to be matched for execution against protected quotations on the Exchange and at away markets to the extent the prices of such protected quotations are superior to the limit price of the Sweep Order.[50] A Sweep Order that is designated as a ''Full Sweep Order'' would be converted into one or more limit orders to be matched for execution against the best available quotation on the Exchange and each other market (automated and manual) with a price superior to the limit price of the Sweep Order.[51] The Exchange states that all

[31] *See* proposed NSX Rule 11.8(a).

[32] *See* proposed NSX Rule 11.8(a).

[33] *See* proposed NSX Rule 11.8(d). Current NSX Rules 11.6 through 11.9, which relate to various types of trading on the Exchange, are proposed to be replaced in their entirety with the proposed Rules described herein.

[34] *See* proposed NSX Rule 11.9(a).

[35] *See* proposed NSX Rule 1.5(S)(1).

[36] ''Qualified Clearing Agency'' is defined in proposed NSX Rule 15(Q)(1) as a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange.

[37] *See* proposed NSX Rule 1.5(S)(2).

[38] *See* proposed NSX Rule 11.9(b). The Sponsoring ETP Holder must also agree to pay when due any amounts arising from the Sponsored Participant's access to the System. *See* proposed NSX Rule 11.9(b)(2)(B)(iii).

[39] *See* proposed NSX Rule 11.9(b)(2)(D)–(H).

[40] *See* Interpretation and Policy .03 of Section 2.4 of the NSX Rules.

[41] *See* proposed NSX Rule 11.10(a).

[42] *See* proposed NSX Rule 11.10(b), (d).

[43] *See* proposed NSX Rule 11.10(c).

[44] *See* proposed NSX Rule 11.11(a)(3), which defines a Day + Order type.

[45] *See* proposed NSX Rule 11.11(b)(2)–(5).

[46] A Reserve Order is a limit order with a portion of the quantity displayed (the ''displayed quantity'') and with a reserve, or undisplayed, portion of the quantity (''reserve quantity''). *See* proposed NSX Rule 11.11(c)(2).

[47] *See* proposed NSX Rule 11.11(c)(3)–(4). Odd Lot and Mixed Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

[48] A Post Only Order is a limit order that is to be posted on the Exchange and not routed away to another trading center. A Post Only Order will be rejected without execution if it is immediately marketable on the System when entered. *See* proposed NSX Rule 11.11(c)(5).

[49] An NSX Only Order is an order that is to be cancelled (without routing away to another trading center) if it cannot be executed on the Exchange within the System's execution parameters. *See* proposed NSX Rule 11.11(c)(6).

[50] *See* proposed NSX Rule 11.11(c)(7)(i)(A). A Protected Sweep Order that is designated ''Sweep and Post'', meaning the unfilled portion of the Sweep Order following the market sweep will be posted on the NSX Book, will be converted into one or more limit orders and matched for execution against protected quotations with prices superior or equal to the limit price of the Protected Sweep Order. *See* proposed NSX Rules 11.11(c)(7)(ii); 11.15(b)(i).

If a limit order that has been converted from a Protected Sweep Order cannot be executed against the protected quotation that it was routed to execute against because the protected quotation is no longer available (due to a race condition), the limit order will be available for execution against other orders in the applicable market that are priced the same as or better than such limit order.

[51] *See* proposed NSX Rule 11.11(c)(7)(i)(B). A Full Sweep Order that is designated ''Sweep and Post'', meaning the unfilled portion of the Sweep Order following the market sweep will be posted on the NSX Book, will be converted into one or more limit orders and matched for execution against the best available quotation on the Exchange and each other market (automated and manual) with a price superior or equal to the limit price of the Full

limit orders converted from Protected Sweep Orders and Full Sweep Orders would be deemed intermarket sweep orders under Regulation NMS [52] and shall be so marked.[53] A Sweep Order designated ''Destination Sweep Order'' would be routed to an away trading center specified by the User, after the order has been exposed to the System's electronic file of orders (the ''NSX Book'').[54] The System would also accept incoming intermarket sweep orders from other markets and would execute these consistent with the requirements of Regulation NMS.[55]

The System would allow Users to enter a ''Destination Specific Order'' instructing the Exchange to route the order to a specified away trading center, after exposing the order to the NSX Book.[56] The Exchange states that it has included this order type in order to allow Users to access manual markets if they so choose.

Proposed NSX Rule 11.11(e) allows a User to cancel or replace an existing order entered into the System by the User, subject to certain limitations.[57] No cancellation or replacement of an order would be effective until the User has received written confirmation of the cancellation and replacement from the Exchange.[58]

Proposed NSX Rule 11.12 allows a User to post a cross message (''Cross'') on the System if the price of the trade is better than the best bid and offer on NSX, and (following the compliance date for Rule 611 of Regulation NMS) if it is equal to or better than the Protected NBBO. Crosses must improve each side of the Top of Book by at least one penny a share, except in the case of a Midpoint Cross and a Clean Cross. A Midpoint Cross may improve the Top of Book by as little as one-half the minimum increment provided in NSX Rule 11.3(a), if it is priced at the midpoint of the Protected NBBO (or, prior to the compliance date for Rule 611 of Regulation NMS, if it is priced at the midpoint of the best bid and offer on the Exchange).[59] A Clean Cross may be executed on the System at a price equal to or better than the Top of Book if (i) it is for at least 5,000 shares and has an aggregate value of at least $100,000, (ii) neither side of the Cross is for the account of the User, (iii) the size of the Cross is greater than the size of the total interest on NSX at the Cross price, and (iv) following the compliance date for Rule 611 of Regulation NMS, it is at a price equal to or better than the Protected NBBO.[60] The Exchange states that the requirements of the Midpoint Cross and the Clean Cross are substantively similar to rules of other national securities exchanges.[61]

NSX Rule 11.12(e) requires that all Users entering a proprietary Cross comply with the Exchange's Customer Priority Rule (*i.e.*, the price of the Cross must be better than any customer order the User is holding by at least $0.01). A User may also post a ''Cross/Sweep'' message that enters a Sweep Order for the account of the User sweeping all protected quotations that are superior to the Cross price, and simultaneously executes the Cross. In connection with any Cross/Sweep, the User must fully disclose the material facts relating to the Sweep Order to any customer for whose account either side of the Cross is being executed.[62]

Proposed NSX Rule 11.13(a) provides that proprietary and agency orders shall be subject to the same ranking and execution processes. Users must identify all orders as either proprietary or agency, and for all agency orders, must include an identifier that enables the User to identity the User's customer on whose behalf the order is being entered.[63]

Proposed NSX Rule 11.13(b) contains the Exchange's proposed order delivery rule. The Exchange states that this rule is substantively identical to the Exchange's current order delivery rule,[64] except that it requires that Users selecting order delivery demonstrate their ability to automatically process the inbound order and respond appropriately within ½ a second. If no response to an inbound order is received within ½ a second from a User selecting order delivery, the User's displayed order would be cancelled.[65] The Exchange is proposing to change the required response time from 1 second to ½ a second in order to provide the Exchange with a ''buffer'' to ensure that the Exchange meets the definition of an ''automated trading center'' under Regulation NMS.[66] Based on current processing speeds in the securities industry, the Exchange believes that its Users should have no problem complying with this required response time.

E. Order Priority and Execution

Proposed NSX Rules 11.14 and 11.15 set forth the priority and execution parameters of the System. The Exchange states that orders are prioritized on a strict price-time basis, first by price and then by time.[67] Only the displayed portion of a Reserve Order has time priority.[68]

Incoming orders (other than Sweep Orders) are first matched for execution against orders in the NSX Book.[69] Proposed NSX Rule 11.15 reflects the trade-through rule of Regulation NMS [70] by requiring that, for any execution on NSX to occur during Regular Trading Hours (*i.e.*, between 8:30 a.m. and 3:00 p.m. Central Time), the price must be equal to or better than the Protected NBBO unless the order is marked as an intermarket sweep order or unless another exception to the trade-through rule of Regulation NMS is available. Orders that cannot be executed within these parameters are eligible for routing to away trading centers for execution at the Protected NBBO.

Unless the terms of the order direct otherwise, any order other than a Sweep Order that cannot be executed on the Exchange would be converted into one or more limit orders, as necessary, to match the price of each protected quotation at the Protected NBBO available at away markets, and these limit orders would be routed to the applicable market for execution against the applicable protected quotation at the Protected NBBO.[71]

Unless the terms of the order direct otherwise, any order not executed in

Sweep Order. *See* proposed NSX Rules 11.11(c)(7)(ii); 11.15(b)(ii).

If a limit order that has been converted from a Full Sweep Order cannot be executed against the quotation that it was routed to execute against because the quotation is no longer available (due to a race condition), the limit order will be available for execution against other orders in the applicable market that are priced the same as or better than such limit order.

[52] 17 CFR 242.600(b)(30).

[53] *See* proposed NSX Rule 11.11(c)(7)(iv).

[54] *See* proposed NSX Rule 11.11(c)(7)(i)(C).

[55] *See* proposed NSX Rule 11.11(c)(9).

[56] *See* proposed NSX Rule 11.11(c)(8).

[57] These limitations include the following: (1) An order may only be cancelled or replaced if it has a time-in-force term longer than immediate-or-cancel and if the order has not yet been executed; (2) An order routed to another trading center that the User wishes to cancel will be placed in a ''Cancel Pending'' state until the routing process is completed, and executions received while an order is in a ''Cancel Pending'' state will be processed normally; and (3) Only the price and quantity terms of an order may be changed by a replace message. *See* proposed NSX Rule 11.11(e)(i)–(iii).

[58] *See* proposed NSX Rule 11.11(e)(iv).

[59] *See* proposed NSX Rule 11.12(c).

[60] *See* proposed NSX Rule 11.12(d). Pursuant to proposed NSX Rule 11.3(b), Clean Crosses may not be executed in increments smaller than those permitted by NSX Rule 11.3(a).

[61] *See, e.g.*, PCX Equities, Inc. Rule 7.6(a), Commentary .05, and Rule 7.31(y) (relating to Midpoint Cross); Boston Stock Exchange Rules Chapter II, Section 18 (relating to Clean Cross).

[62] *See* proposed NSX Rule 11.12(f).

[63] *See* proposed NSX Rule 11.13(a).

[64] *See* current NSX Rule 11.9(i).

[65] *See* proposed NSX Rule 11.13(b).

[66] 17 CFR 242.600(b)(4).

[67] *See* proposed NSX Rule 11.14(a).

[68] *See* proposed NSX Rule 11.14(a)(4).

[69] *See* proposed NSX Rule 11.15(a)(i).

[70] 17 CFR 242.611.

[71] *See* proposed NSX Rule 11.15(a)(ii).

full on the Exchange which by its terms is not eligible for routing away, or which is not executed in full when routed away, would be ranked in the NSX Book in accordance with order priority rules of proposed NSX Rule 11.14.[72]

Sweep Orders would be matched for execution in the NSX Book to the extent possible at the Protected NBBO, and simultaneously converted into one or more limit orders and routed to away markets to be matched for execution against quotations in accordance with the terms of the Sweep Order (as described in Section D above).[73]

Proposed NSX Rule 11.15(d) states that the System would be operated as a ''automated market center'' within the meaning of Regulation NMS, and would display automated quotations at all times except in the event that a systems malfunction renders the System incapable of displaying automated quotations. The Exchange states that it would communicate to its ETP Holders its procedures relating to any change from automated to manual quotations in the event of such a systems malfunction.

F. Other Trading-Related Rules

Proposed NSX Rules 11.16 through 11.22 relate to other trading-related matters such as clearance and settlement, clearly erroneous executions, trading halts, short sales, and locked and crossed markets. Purposed NSX Rule 11.16 describes the Exchange's trade reporting processes. Pursuant to proposed NSX Rule 11.16, the Exchange would report all executions occurring on the System to an appropriate consolidated transaction reporting system to the extent required by law, and would promptly notify Users of all executions of their orders as soon as executions take place.

Proposed NSX Rule 11.17 covers clearance and settlement. Proposed NSX Rule 11.17(a) requires that each ETP Holder either be a member of a Qualified Clearing Agency or clear transactions executed on the Exchange through another ETP Holder that (i) is a member of a Qualified Clearing Agency and (ii) agrees to be responsible for such clearance and settlement. The Exchange states that trading on the System would be on an anonymous basis.

The Exchange states that proposed NSX Rule 11.18 is based on NSX's current limitation of liability rule set forth in NSX Rule 11.9(t), but has been expanded in three ways. First, proposed NSX Rule 11.18 describes with greater specificity the categories of actions for which the Exchange would not be liable. Second, proposed NSX Rule 11.8(B) contains an agreement by each ETP Holder to release and discharge the Exchange and its related persons from all claims and damages arising from the ETP Holder's use of the facilities of the Exchange (including the System). Third, proposed NSX Rule 11.8(C) contains a disclaimer by the Exchange of any and all express or implied warranties relating to the System.

Proposed NSX Rule 11.19 provides for a review process for determining clearly erroneous executions. The process generally involves a review by an Exchange officer upon request of an ETP Holder (which must submitted within 15 minutes of the trade in question), with an appeal to a Clearly Erroneous Execution Panel available for parties affected by the officer's determination.[74]

Proposed NSX Rule 11.20 incorporates the New York Stock Exchange's ''circuit breaker'' tests based upon reductions to the Dow Jones Industrial Average. Proposed NSX Rule 11.21, relating to short sales, requires that all short sale orders entered into the System be identified either as ''short sale'' or ''short sale exempt''. It also provides that any marketable order entered in the System which, if matched for execution, would violate the short sale provisions under the Act and, therefore, would be cancelled.

Proposed NSX Rule 11.22 relates to locking or crossing quotations and is substantively identical to the proposed rule language that was provided to NSX and other national securities exchanges by the Commission.

Proposed NSX Rule 11.23 relates to riskless principal transactions. A ''riskless principal transaction'' is defined as ''two offsetting principal transaction legs in which an ETP Holder, (i) after having received an order to buy a security that it holds for execution on the Exchange, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security that it holds for execution on the Exchange, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.''[75] The Exchange states that only the initial offsetting transaction leg of an appropriately designated riskless principal transaction would be submitted by the Exchange to the appropriate consolidated tape.[76] An ETP Holder must have written policies and procedures to assure compliance with this proposed Rule, which must require (at a minimum) that the customer order be received prior to the offsetting transactions, and that the second offsetting transaction leg be executed within 60 seconds of the initial offsetting transaction leg.[77] The Exchange's customer priority rules applicable to proprietary trading would not apply to a riskless principal transaction meeting the standards of NSX Rule 11.23 that is executed by an ETP Holder to facilitate the execution of a customer order.[78]

Other Proposed Rule Changes

A. Chapter I—Adoption, Interpretation, and Application of Rules; Definitions

Chapter I is proposed to be revised to incorporate certain new definitions and other provisions relating to the proposed trading rule changes described above. Specifically, proposed NSX Rule 1.4 provides for different effective times of certain of the new trading rules described above. Proposed NSX Rule 1.4 provides that the Exchange's proposed rule relating to Sweep Orders (proposed NSX Rule 11.11(c)(7)(iv)) shall not become effective until the compliance date for Rule 611 of Regulation NMS, and provides that the proposed Trading Rules relating to the trade-through rule and locked and crossed markets (*i.e.*, proposed NSX Rules 11.15 and 11.22) shall only apply to quotations for securities subject to the Intermarket Trading System Plan until the compliance date for those sections of Regulation NMS relating to trade-throughs and locked and crossed markets, respectively.

NSX Rule 1.5 is proposed to be revised to include a number of additional definitions used in the proposed changes to Chapter XI.

[72] *See* proposed NSX Rule 11.15(a)(iii).

[73] *See* proposed NSX Rule 11.15(b).

[74] *See* proposed NSX Rule 11.19(c). In addition to the process provided for in proposed NSX Rule 11.19, the Exchange has adopted internal guidelines concerning clearly erroneous executions. The Exchange states that its staff uses these guidelines to help determine what constitutes a clearly erroneous execution.

[75] Proposed NSX Rule 11.23(a).

[76] *See* proposed NSX Rule 11.23(b).

[77] *See* proposed NSX Rule 11.23(c). ETP Holders must also have supervisory systems that produce records enabling the ETP Holder and the Exchange to accurately and readily reconstruct, in a time-sequenced manner, all orders related to each riskless principal transaction. *See* proposed NSX Rule 11.23(c).

[78] *See* proposed NSX Rule 12.6(d).

B. Chapter II—Equity Trading Permits and ETP Holders

In Chapter II, relating to ETPs and ETP Holders, Interpretation .03 under NSX Rule 2.4 is proposed to be deleted, because it is being substantively replaced by proposed NSX Rule 11.9 providing for Sponsored Participants.

C. Chapter XV—Listed Securities and Other Exchange Products

Chapter XV is proposed to be revised to move provisions relating to specifications for certain products (*e.g.* index funds) from NSX Rules 11.9(v)–(x) to Chapter XV.[79] The Exchange states that certain terminology and cross-reference changes have been made to these provisions, but no substantive changes have been made.

D. Other Technical Changes To Rules

The Exchange states that other technical changes are proposed to be made to certain provisions of the NSX Rules in order to be consistent with the proposed changes described above. These changes include the following:

1. A change to Interpretation .01 of NSX Rule 3.6, requiring that all ETP Holders who handle customer orders on the Exchange establish and enforce fixed standards for queuing and executing customer orders. This interpretation formerly only applied to Designated Dealers on the Exchange. As the position of Designated Dealer is proposed to be removed in connection with the proposed new market structure, this interpretation is proposed to be revised to apply to all ETP Holders.

2. NSX Rule 5.5 (relating to ''Chinese Wall'' procedures) is proposed to be revised to apply to any ETP Holder that trades for its own account in a security or has a specialist operation in a security.[80]

3. The interpretations under NSX Rule 12.6, the Exchange's Customer Priority Rule, are proposed to be revised to apply to all ETP Holders that conduct both proprietary and agency trading, rather than only Designated Dealers.

4. NSX Rule 14.9, relating to Intermarket Trading System ''trade-throughs'' and locked and crossed markets, is proposed to be deleted simultaneously with the compliance date for those provisions of Regulation NMS relating to trade-throughs and locked and crossed markets. The Exchange believes this change is appropriate because proposed NSX Rules 11.15 and 11.22 provide restrictions on trade-throughs and locked and crossed markets that are consistent with Regulation NMS and the Commission's guidance on these issues. The Exchange is not proposing any additional changes to Chapter XIV relating to the Intermarket Trading System (''ITS'') Plan at this time, because it understands that the ITS Plan will be phased out of existence and replaced with new linkages in the near future in connection with the implementation of Regulation NMS.

NSX Securities, LLC

In connection with the proposed changes to the trading rules described above, the Exchange requests that the Commission approve NSX Securities, LLC (''NSX Securities'') to be a facility (as defined in Section 3(a)(2) of the Act) of the Exchange.

The Exchange states that NSX Securities, a wholly-owned subsidiary of the Exchange, is registering as a broker-dealer, has applied for membership in the National Association of Securities Dealers, Inc. (''NASD''), and is applying to become an ETP Holder. The Exchange states that NSX Securities plans to provide an optional routing service for the Exchange, in which NSX Securities would route orders to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers (collectively, ''Trading Centers'') from the Exchange (such function of NSX Securities is referred to as the ''Outbound Router'').[81]

NSX states that, as an Outbound Router, NSX Securities would receive instructions from the Exchange, route orders to other Trading Centers in accordance with those instructions and be responsible for reporting resulting executions back to the Exchange. In addition, all orders routed through NSX Securities would be subject to the terms and conditions of the Exchange Rules.

NSX states that it would regulate the Outbound Router function of NSX Securities as a facility (as defined in Section 3(a)(2) of the Act) subject to Section 6 of the Act. As such, the Exchange states that the Outbound Router function of NSX Securities would be subject to the Commission's continuing oversight. In particular, and without limitation, under the Act, NSX states that it is responsible for filing with the Commission rule changes and fees relating to the NSX Securities Outbound Router function, and NSX Securities would be subject to exchange non-discrimination requirements.[82]

Pursuant to Rule 17d–1 under the Act, where a member of the Securities Investor Protection Corporation is a member of more than one self-regulatory organization (''SRO''), the Commission shall designate to one of such organizations the responsibility for examining such member for compliance with the applicable financial responsibility rules.[83] The SRO designated by the Commission is referred to as a ''Designated Examining Authority.'' As noted above, NSX Securities is applying to become an ETP Holder of the Exchange, and has applied for membership in the NASD. The NASD is an SRO not affiliated with NSX or any of its affiliates. NSX understands that, once NSX Securities is approved as a member of the NASD, the NASD would become the Designated Examining Authority for NSX Securities pursuant to Rule 17d–1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.

ETP Holders' use of NSX Securities to route orders to another Trading Center would be optional, as described above. Those ETP Holders who choose to use the Outbound Routing service of NSX Securities must sign an NSX Securities Routing Agreement (which is incorporated into the Exchange's User Agreement). Among other things, the NSX Securities Routing Agreement provides that all orders routed through NSX Securities are subject to the terms and conditions of the Exchange Rules.

The Exchange recognizes that after its demutualization becomes effective,[84] its ownership of NSX Securities '' by virtue of NSX Securities being an ETP Holder '' would be in violation of proposed limitations [85] to be set forth in the Exchange Rules, unless the Exchange's

[79] *See* proposed NSX Rules 15.10–15.12.

[80] The Rule currently only applies to Designated Dealers.

[81] The optional routing of orders to away markets by the System is described above.

[82] *See, e.g.*, Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

[83] 17 CFR 240.17d–1. Pursuant to Rule 17d–1 under the Act, in making such designation the Commission shall take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among self-regulatory organizations, and the development of a national market system for the clearance and settlement of securities transactions.

[84] *See* Securities Exchange Act Release Nos. 53721 (April 25, 2006), 71 FR 26155 (May 3, 2006) (notice of filing of File No. SR–NSX–2006–03) (''Demutualization Rule Filing''); and 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (order approving File No. SR–NSX–2006–03).

[85] *See* proposed NSX Rule 2.10 on page 146 of the Demutualization Rule Filing.

ownership of NSX Securities is approved by the Commission.

The Exchange further recognizes that the ownership of NSX Securities by the Exchange may pose a conflict of interest between the regulatory responsibilities of the Exchange and the broker or dealer activities of NSX Securities. This is because the financial interests of the Exchange may conflict with the responsibilities of the Exchange as an SRO regarding NSX Securities.

The Exchange believes, however, that such conflict may be mitigated with the following proposed undertakings of the Exchange and NSX Securities.

A. Proposed Undertakings

Each of the Exchange and NSX Securities undertakes as follows:

1. The Exchange will regulate the Outbound Router function of NSX Securities as a facility (as defined in Section 3(a)(2) of the Act), subject to Section 6 of the Act. In particular, and without limitation, under the Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to the NSX Securities Outbound Router function and NSX Securities will be subject to exchange non-discrimination requirements.

2. NASD, an SRO unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d–1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.

3. An ETP Holder's use of NSX Securities to route orders to another Trading Center will be optional. Any ETP Holder that does not want to use NSX Securities may use other routers to route orders to other Trading Centers.[86]

4. NSX Securities will not engage in any business other than (1) its Outbound Router function and (2) any other activities it may engage in as approved by the Commission.[87]

NSX is reflecting these undertakings in proposed NSX Rule 2.11.

B. Request for Approval

In sum, the Exchange believes that the proposed undertakings of the Exchange and NSX Securities set forth above would address the potential conflict of interest with the regulatory responsibilities of the Exchange and the ownership and operation of NSX Securities by the Exchange. Consequently, subject to the proposed undertakings set forth above, the Exchange requests that the Commission approve NSX Securities to be a facility (as defined in Section 3(a)(2) of the Act)[88] of the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[89] in general, and furthers the objectives of Section 6(b)(5)[90] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

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, as amended; or

(b) institute proceedings to determine whether the proposed rule change, as amended, 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–NSX–2006–08 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–NSX–2006–08. 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 NSX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2006–08 and should be submitted on or before July 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[91]

Nancy M. Morris,

Secretary.

[FR Doc. 06–5961 Filed 7–5–06; 8:45 am]

BILLING CODE 8010–01–P

[86] An ETP Holder may choose to enter a Post Only Order or an NSX Only Order into the System. The terms of each such order provide that, if the order is not executable on the System, the order will be cancelled and returned to the ETP Holder, at which time the ETP Holder could choose to route the order to another market. *See* proposed NSX Rule 11.11(c)(5)–(6).

[87] NSX Securities' outbound routing function includes the clearing functions that it may perform for trades with respect to orders routed to other trading centers.

[88] 15 U.S.C. 78c(a)(2).

[89] 15 U.S.C. 78f(b).

[90] 15 U.S.C. 78f(b)(5).

[91] 17 CFR 200.30–3(a)(12).

Federal Register

Thursday,
July 6, 2006

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Stationary Combustion Turbines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2004–0490, FRL–8033–4]

RIN 2060–AM79

Standards of Performance for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates standards of performance for new stationary combustion turbines in 40 CFR part 60, subpart KKKK. The standards reflect changes in nitrogen oxides (NO_X) emission control technologies and turbine design since standards for these units were originally promulgated in 40 CFR part 60, subpart GG. The NO_X and sulfur dioxide (SO_2) standards have been established at a level which brings the emissions limits up to date with the performance of current combustion turbines.

DATES: *Effective date:*The final rule is effective July 6, 2006. The incorporation by reference of certain publications in the final rule is approved by the Director of the Office of the Federal Register as of July 6, 2006.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0490. All documents in the docket are listed electronically on *www.regulations.gov.* 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, 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 *www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2004–0490, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Christian Fellner, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–4003; facsimile number (919) 541–5450; e-mail address *fellner.christian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action are those that own and operate stationary combustion turbines with a heat input at peak load equal to or greater than 10.7 gigajoules (GJ) (10 million British thermal units (MMBtu)) per hour that commenced construction, modification, or reconstruction after February 18, 2005. Regulated categories and entities include, but are not limited to:

Category	NAICS	SIC	Examples of regulated entities
Any industry using a new stationary combustion turbine as defined in the final rule	2211	4911	Electric services.
	486210	4922	Natural gas transmission.
	211111	1311	Crude petroleum and natural gas.
	211112	1321	Natural gas liquids.
	221	4931	Electric and other services, combined.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is available on the WWW through the Technology Transfer Network Website (TTN Web). Following signature, EPA will post a copy of the final rule on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by September 5, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''if the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

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

I. Background

This action promulgates new source performance standards (NSPS) that apply to stationary combustion turbines with a heat input at peak load equal to or greater than 10.7 GJ (10 MMBtu) per hour, based on the higher heating value (HHV) of the fuel, that commence construction, modification, or reconstruction after February 18, 2005. The NSPS are being promulgated pursuant to section 111 of the CAA, which requires EPA to promulgate and periodically revise the NSPS, taking into consideration available control technologies and the costs of control. EPA promulgated the original NSPS for stationary gas turbines in 1979 (44 FR 52798). Since promulgation of the NSPS for stationary gas turbines, many advances in the design and control of emissions from stationary combustion turbines have occurred. Nitrogen oxides and SO_2 are known to cause adverse health and environmental effects. The final rule represents reductions in the NO_X and SO_2 limits of over 80 and 90 percent, respectively. Today's action allows turbine owners and operators to meet either concentration-based or output-based standards. The output-based standards in the final rule allow owners and operators the flexibility to meet their emission limit targets by increasing the efficiency of their turbines.

II. Summary of the Final Rule

A. Does the final rule apply to me?

Today's final rule applies to stationary combustion turbines with a heat input at peak load equal to or greater than 10.7 GJ (10 MMBtu) per hour that commence construction, modification, or reconstruction after February 18, 2005. A stationary combustion turbine is defined as all equipment, including but not limited to the combustion turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), heat recovery system, and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system. Stationary means that the combustion turbine is not self-propelled or intended to be propelled while performing its function. It may, however, be mounted on a vehicle for portability. The applicability of the final rule is similar to that of 40 CFR part 60, subpart GG, except that the final rule applies to new, modified, and reconstructed stationary combustion turbines, and their associated heat recovery steam generators (HRSG) and duct burners. The stationary combustion turbines subject to subpart KKKK, 40 CFR part 60, are exempt from the requirements of 40 CFR part 60, subpart GG. Heat recovery steam generators and duct burners subject to subpart KKKK are exempt from the requirements of 40 CFR part 60, subparts Da, Db, and Dc.

B. What pollutants are regulated?

The pollutants that are regulated by the final rule are NO_X and SO_2.

C. What is the affected source?

The affected source for the stationary combustion turbine NSPS is each stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 GJ (10 MMBtu) per hour that commences construction, modification, or reconstruction after February 18, 2005. Integrated gasification combined cycle (IGCC) combustion turbine facilities covered by subpart Da of 40 CFR part 60 (the Utility Boiler NSPS) are exempt from the requirements of the final rule. Combustion turbine test cells/stands are also exempt from the requirements of the final rule.

D. What emission limits must I meet?

The standards for NO_X in the final rule allow the turbine owner or operator the choice of a concentration-based or output-based emission standard. The concentration-based limit is in units of parts per million by volume (ppmv) at 15 percent oxygen. The output-based emission limit is in units of emissions mass per unit useful recovered energy, nanograms per Joule (ng/J) or pounds per megawatt-hour (lb/MWh). The NO_X limits, which are presented in table 1 of this preamble, differ based on the fuel input at peak load, fuel, application, and location of the turbine. The fuel input of the turbine does not include any supplemental fuel input to the heat recovery system and refers to the rating of the combustion turbine itself. The 50 MMBtu/h category peak heat input is based on the fuel input to a 23 percent efficient 3.5 megawatt (MW) combustion turbine. The 850 MMBtu/h category peak heat input is based on the fuel input to a 44 percent efficient 110 MW combustion turbine. The 30 MW category for turbines located north of the Arctic Circle, turbines operating at less than 75 percent of peak load, modified and reconstructed offshore turbines, and turbines operating at temperatures less than 0°F is based on the categories in the original NSPS for combustion turbines, subpart GG.

TABLE 1.—NO_X EMISSION STANDARDS

Combustion turbine type	Combustion turbine heat input at peak load (HHV)	NO_X emission standard
New turbine firing natural gas, electric generating.	≤ 50 million British thermal units per hour(MMBtu/h).	42 ppm at 15 percent oxygen (O_2) or 290 ng/J of useful output (2.3 lb/MWh).
New turbine firing natural gas, mechanical drive	≤ 50 MMBtu/h	100 ppm at 15 percent O_2 or 690 ng/J of useful output (5.5 lb/MWh).
New turbine firing natural gas	> 50 MMBtu/h and ≤850 MMBtu/h	25 ppm at 15 percent O_2 or 150 ng/J of useful output (1.2 lb/MWh).
New, modified, or reconstructed turbine firing natural gas.	> 850 MMBtu/h	15 ppm at 15 percent O_2 or 54 ng/J of useful output (0.43 lb/MWh).
New turbine firing fuels other than natural gas, electric generating.	≤ 50 MMBtu/h	96 ppm at 15 percent O_2 or 700 ng/J of useful output (5.5 lb/MWh).

TABLE 1.—NO_X EMISSION STANDARDS—Continued

Combustion turbine type	Combustion turbine heat input at peak load (HHV)	NO_X emission standard
New turbine firing fuels other than natural gas, mechanical drive.	≤ 50 MMBtu/h	150 ppm at 15 percent O_2 or 1,100 ng/J of useful output (8.7 lb/MWh).
New turbine firing fuels other than natural gas ..	> 50 MMBtu/h and ≤ 850 MMBtu/h	74 ppm at 15 percent O_2 or 460 ng/J of useful output (3.6 lb/MWh).
New, modified, or reconstructed turbine firing fuels other than natural gas.	> 850 MMBtu/h	42 ppm at 15 percent O_2 or 160 ng/J of useful output (1.3 lb/MWh).
Modified or reconstructed turbine	≤ 50 MMBtu/h	150 ppm at 15 percent O_2 or 1,100 ng/J of useful output (8.7 lb/MWh).
Modified or reconstructed turbine firing natural gas.	> 50 MMBtu/h and ≤ 850 MMBtu/h	42 ppm at 15 percent O_2 or 250 ng/J of useful output (2.0 lb/MWh).
Modified or reconstructed turbine firing fuels other than natural gas.	> 50 MMBtu/h and ≤ 850 MMBtu/h	96 ppm at 15 percent O_2 or 590 ng/J of useful output (4.7 lb/MWh).
Turbines located north of the Arctic Circle (latitude 66.5 degrees north), turbines operating at less than 75 percent of peak load, modified and reconstructed offshore turbines, and turbines operating at temperatures less than 0 °F.	≤ 30 megawatt (MW) output	150 ppm at 15 percent O_2 or 1,100 ng/J of useful output (8.7 lb/MWh).
Turbines located north of the Arctic Circle (latitude 66.5 degrees north), turbines operating at less than 75 percent of peak load, modified and reconstructed offshore turbines, and turbines operating at temperatures less than 0 °F.	> 30 MW output	96 ppm at 15 percent O_2 or 590 ng/J of useful output (4.7 lb/MWh).
Heat recovery units operating independent of the combustion turbine.	All sizes	54 ppm at 15 percent O_2 or 110 ng/J of useful output (0.86 lb/MWh).

We have determined that it is appropriate to exempt emergency combustion turbines from the NO_X limit. We have defined these units as turbines that operate in emergency situations. For example, turbines used to supply electric power when the local utility service is interrupted are considered to fall under this definition. Stationary combustion turbine test cells/stands are also exempt from the final rule. Combustion turbines used by manufacturers in research and development of equipment for both combustion turbine emissions control techniques and combustion turbine efficiency improvements are exempt from the NO_X limits on a case-by-case basis. Given the small number of turbines that are expected to fall under this category and since there is not one definition that can provide an all-inclusive description of the type of research and development work that qualifies for the exemption from the NO_X limit, we have decided that it is appropriate to make these exemption determinations on a case-by-case basis only.

The emission standard for SO_2 is the same for all turbines regardless of size and fuel type. You may not cause to be discharged into the atmosphere from the subject stationary combustion turbine any gases which contain SO_2 in excess of 110 ng/J (0.90 lb/MWh) gross energy output for turbines that are located in continental areas, and 780 ng/J (6.2 lb/MWh) gross energy output for turbines located in noncontinental areas. You can choose to comply with the SO_2 limit itself or with a limit on the sulfur content of the fuel. The fuel sulfur content limit is 26 ng SO_2/J (0.060 lb SO_2/MMBtu) heat input for turbines located in continental areas and 180 ng SO_2/J (0.42 lb SO_2/MMBtu) heat input in noncontinental areas. This is approximately equivalent to 0.05 percent by weight (500 parts per million by weight (ppmw)) fuel oil and 0.4 percent by weight (4,000 ppmw) fuel oil respectively.

E. If I modify or reconstruct my existing turbine, does the final rule apply to me?

The final rule applies to stationary combustion turbines that are modified or reconstructed after February 18, 2005. The methods for determining whether a source is modified or reconstructed are provided in 40 CFR 60.14 and 40 CFR 60.15, respectively. A turbine that is overhauled as part of a maintenance program is not considered a modification if there is no increase in emissions.

F. How do I demonstrate compliance?

In order to demonstrate compliance with the NO_X limit, an initial performance test is required. If you are using water or steam injection, you must continuously monitor your water or steam to fuel ratio in order to demonstrate compliance and you are not required to perform annual stack testing to demonstrate compliance. If you are not using water or steam injection, you must conduct performance tests annually following the initial performance test in order to demonstrate compliance. Alternatively, you may choose to demonstrate continuous compliance with the use of a continuous emission monitoring system (CEMS) or parametric monitoring; if you choose this option, you are not required to conduct subsequent annual performance tests.

If you are using a NO_X CEMS, the initial performance test required under 40 CFR 60.8 may, alternatively, coincide with the relative accuracy test audit (RATA). If you choose this as your initial performance test, you must perform a minimum of nine reference method runs, with a minimum time per run of 21 minutes, at a single load level, within 75 percent of peak (or the highest achievable) load. You must use the test data both to demonstrate compliance with the applicable NO_X emission limit and to provide the required reference method data for the RATA of the CEMS.

G. What monitoring requirements must I meet?

If you are using water or steam injection to control NO_X emissions, you must install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water or steam to fuel being

fired in the turbine. Alternatively, you could use a CEMS consisting of NO_X and O_2 or carbon dioxide (CO_2) monitors. During each full unit operating hour, each monitor must complete a minimum of one cycle of operation for each 15-minute quadrant of the hour. For partial unit operating hours, at least one valid data point must be obtained for each quadrant of the hour in which the unit operates.

If you operate any new turbine which does not use water or steam injection to control NO_X emissions, you must perform annual stack testing to demonstrate continuous compliance with the NO_X limit. Alternatively, you could elect either to use a NO_X CEMS or perform continuous parameter monitoring as follows:

(1) For a diffusion flame turbine without add-on selective catalytic reduction (SCR) controls, you must define appropriate parameters indicative of the unit's NO_X formation characteristics, and you must monitor these parameters continuously;

(2) For any lean premix stationary combustion turbine, you must continuously monitor the appropriate parameters to determine whether the unit is operating in the low NO_X combustion mode;

(3) For any turbine that uses SCR to reduce NO_X emissions, you must continuously monitor appropriate parameters to verify the proper operation of the emission controls; and

(4) For affected units that are also regulated under part 75 of this chapter, with state approval you can monitor the NO_X emission rate using the methodology in appendix E to part 75 of this chapter, or the low mass emissions methodology in 40 CFR 75.19, the monitoring requirements of the turbine NSPS may be met by performing the parametric monitoring described in section 2.3 of appendix E of part 75 of this chapter or in 40 CFR 75.19(c)(1)(iv)(H).

Alternatively, you can petition the Administrator for other acceptable methods of monitoring your emissions. If you choose to use a CEMS or perform parameter monitoring to demonstrate continuous compliance, annual stack testing is not required.

If you choose to monitor combustion parameters or parameters indicative of proper operation of NO_X emission controls, the appropriate parameters must be continuously monitored and recorded during each run of the initial performance test to establish acceptable operating ranges.

If you operate any stationary combustion turbine subject to the provisions of the final rule, and you choose not to comply with the SO_2 stack limit, you must monitor the total sulfur content of the fuel being fired in the turbine. There are several options for determining the frequency of fuel sampling, consistent with appendix D to part 75 of this chapter for fuel oil; the sulfur content must be determined and recorded once per unit operating day for gaseous fuel, unless a custom fuel sampling schedule is used. Alternatively, you could elect not to monitor the total potential sulfur emissions of the fuel combusted in the turbine, if you demonstrate that the fuel does not exceed 26 ng SO_2/J (0.060 lb SO_2/MMBtu) heat input for turbines located in continental areas and 180 ng SO_2/J (0.42 lb SO_2/MMBtu) heat input in noncontinental areas. This demonstration may be performed by using the fuel quality characteristics in a current, valid purchase contract, tariff sheet, or transportation contract, or through representative fuel sampling data which show that the potential sulfur emissions of the fuel does not exceed the standard. Turbines located in continental areas can demonstrate compliance by burning fuel oil containing 500 parts per million (ppm) or less sulfur or natural gas containing 20 grains or less of sulfur per 100 standard cubic feet. Turbines located in noncontinental areas can demonstrate compliance by burning fuel oil containing 0.4 weight percent (4,000 ppm) sulfur or less or natural gas containing 140 grains or less of sulfur per 100 standard cubic feet.

If you are required to periodically determine the sulfur content of the fuel combusted in the turbine, a fuel sample must be collected during the performance test. For liquid fuels, the sample for the total sulfur content of the fuel must be analyzed using American Society of Testing and Materials (ASTM) methods D129–00 (Reapproved 2005), D1266–98 (Reapproved 2003), D1552–03, D2622–05, D4294–03, or D5453–05. For gaseous fuels, ASTM D1072–90 (Reapproved 1999); D3246–05; D4468–85 (Reapproved 2000); or D6667–04 must be used to analyze the total sulfur content of the fuel.

The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the approval of the Administrator.

H. What reports must I submit?

For each affected unit for which you continuously monitor parameters or emissions, or periodically determine the fuel sulfur content under the final rule, you must submit reports of excess emissions and monitor downtime, in accordance with 40 CFR 60.7(c). For simple cycle turbines, excess emissions must be reported for all 4-hour rolling average periods of unit operation, including start-up, shutdown, and malfunctions where emissions exceed the allowable emission limit or where one or more of the monitored process or control parameters exceeds the acceptable range as determined in the monitoring plan. Combined cycle and combined heat and power units use a 30-day rolling average to determine excess emissions.

For each affected unit for which you perform an annual performance test, you must submit an annual written report of the results of each performance test.

III. Summary of Significant Changes Since Proposal

A. Applicability

The proposed rule applied to owners and operators of stationary combustion turbines with a peak power output at peak load equal to or greater than 1 MW. The final rule applies to stationary combustion turbines with a heat input at peak load equal to or greater than 10.7 GJ (10 MMBtu) per hour, based on the HHV of the fuel. Assuming an efficiency of 23 percent, the final rule applies to stationary combustion turbines with a peak output greater than 0.7 MW. Another change from the proposed rule is the addition of an exemption for stationary combustion turbine test cells/stands.

B. Emission Limitations

The proposed rule established four subcategories of turbines based on fuel type and turbine size, and different NO_X emission standards were proposed for each subcategory. The proposed subcategories were the following: Less than 30 MW and firing natural gas; greater than or equal to 30 MW and firing natural gas; less than 30 MW and firing oil or other fuel; and greater than or equal to 30 MW and firing oil or other fuel. The final rule has 14 subcategories, which are listed in table 1 of this preamble. Instead of the proposed size break at 30 MW, the final rule breaks the turbines into subcategories of less than or equal to 50 MMBtu/h of heat input, greater than 50 MMBtu/h heat input to less than or equal to 850 MMBtu/h heat input, and greater than 850 MMBtu/h heat input. Subcategories have been included for modified and reconstructed turbines, heat recovery units operating independent of the combustion turbine, turbines located north of the Arctic

Circle, and turbines operating at part load. EPA concluded that subcategories based on heat input at peak load rather than power output are more appropriate. The boiler NSPS standards are subcategorized by heat input, and heat input is a better indication than power output of available combustion controls. Basing categories on heat input also eliminates the disincentive of turbine redesign that increases efficiency and output, but not fuel consumption.

The proposed standards for NO_X were output-based limits in units of emissions mass per unit useful recovered energy, ng/J or lb/MWh. This format has been retained in the final rule; however, an optional concentration-based standard in units of ppmv at 15 percent O_2 has also been included for each subcategory.

The proposed SO_2 emission limits were raised slightly in the final rule, and an additional subcategory was created. Different emission limits were provided for turbines located in noncontinental areas; those turbines have an SO_2 emission limit of 780 ng/J (6.2 lb/MWh). The other difference from the proposed rule is that turbines located in Alaska do not have to meet the SO_2 emission limits until January 1, 2008.

C. Testing and Monitoring Procedures

The final rule contains several differences from the proposed testing and monitoring procedures. The performance test for NO_X is not required to be conducted at four load levels; in the final rule the test must be conducted at one load level that is within plus or minus 25 percent of 100 percent of peak load. Testing may be performed at the highest achievable load point, if at least 75 percent of peak load cannot be achieved in practice. We added a requirement that the ambient temperature be greater than 0 °F when the test is conducted. Similarly, we specified in the final rule that turbine owners and operators that are continuously monitoring parameters or emissions have an alternate limit during periods when the turbine operates at less than 75 percent of peak load or the ambient temperature is less than 0 °F.

A provision was added that allows owners and operators of stationary combustion turbines to reduce the frequency of subsequent NO_X performance tests to once every 2 years if the NO_X emission result from the performance test is less than or equal to 75 percent of the NO_X emission limit for the turbine. If the results of any subsequent performance test exceed 75 percent of the NO_X emission limit for the turbine, annual performance tests must be resumed.

The sulfur sampling requirements in the final rule also contain some differences from the proposed requirements. Acceptable custom schedules for determining the total sulfur content of gaseous fuels were added in the final rule. We removed the statement that was in the proposed rule that required at least one fuel sample to be collected during each load condition, since we are no longer requiring performance tests to be conducted at multiple loads.

Finally, the proposed rule required that diffusion flame turbines without SCR controls continuously monitor at least four parameters indicative of the unit's NO_X formation characteristics; the final rule does not specify a minimum number of parameters that must be continuously monitored by these units.

D. Reporting

The reporting requirements in the final rule contain two differences from the proposed reporting requirements. The proposed 40 CFR 60.4395 said that reports should be postmarked by the 30th day following the end of each calendar quarter. The proposed rule actually required semiannual reports, therefore, that section should have read that the reports should be postmarked by the end of each 6-month period, and the final rule has been written to correct this error. Also, we specified that turbines that are conducting annual performance testing should submit annual reports with the results of the performance testing.

E. Other

Several modifications were made to the definitions in the proposed rule. The definition of efficiency was clarified to indicate that it is based on the HHV of the fuel. The definitions for lean premix stationary combustion turbine and diffusion flame stationary combustion turbine were modified to alleviate any potential ambiguity about which definition a turbine would fall under. Lastly, the definition of natural gas was revised to remove references to pipeline natural gas.

IV. Summary of Responses to Major Comments

A more detailed summary of comments and our responses can be found in the Response to Public Comments on Proposed Standards of Performance for Stationary Combustion Turbines document, which can be obtained from the docket.

A. Applicability

Comment: Several commenters suggested changing the minimum size threshold for applicability of the rule, as proposed. Some suggested 3 MW, while others suggested 3.5 MW. Reasons included the fact that lean premix technology is not available for turbines less than 3 MW, other control options are not feasible, no commercially available small units were identified that can achieve the proposed emission levels, and no emission test data were provided in the docket for small units.

Another reason given was that there was some ambiguity because of the differing minimum size criteria between the rule, as proposed, and 40 CFR part 60, subpart GG. Two commenters suggested that EPA clarify that subpart KKKK, 40 CFR part 60, is the effective NSPS, and that 40 CFR part 60, subpart GG, no longer applies for all new, reconstructed, or modified stationary combustion turbines. The commenters said that it is not clear if 40 CFR part 60, subpart GG, will no longer apply after the effective date of the final rule. Since the minimum size criterion was slightly different in the two subparts, the commenters requested clarification of this issue to avoid future confusion. The commenters requested that EPA clarify that 40 CFR part 60, subpart GG, no longer applies after the effective date of the final rule.

Response: This comment addresses the minimum size threshold for the final rule. In 40 CFR 60.4305 of the rule, as proposed, the applicability criteria stated that the applicable units are turbines with a peak load power output equal to or greater than 1 MW. This minimum size threshold is marginally higher than the minimum threshold in 40 CFR part 60, subpart GG, which affects turbines with a minimum heat input at peak load of 10.7 GJ per hour or larger based on the lower heating value of the fuel (approximately 10 MMBtu/h). With a lower heating value (LHV) thermal efficiency of 23 to 25 percent, which is typical at full load for older small industrial turbines, this firing rate is equivalent to 0.7 MW. While the difference between the 40 CFR part 60, subpart GG, and the proposed 40 CFR part 60, subpart KKKK, applicability thresholds was initially believed to be minor, the natural gas industry representatives pointed out that there is a class of turbines used in natural gas transmission that fall within this range. Solar Saturn units, which are widely used in the gas transmission industry, include a peak load between 0.7 and 1.0 MW. While the industry has said that

not many new units are sold in this range, there are many already in existence, which may be modified or reconstructed, which would need to be addressed by one of the rules. Therefore, the final rule has been written to include the minimum size applicability threshold of 10.7 GJ per hour.

While we do not agree that the size cutoff should be established to exempt turbines less than 3.5 MW, EPA has concluded that it is appropriate to create a new subcategory. Discussions with turbine manufacturers suggest that a subcategory for small turbines, between the minimum size threshold for the final rule and 50 MMBtu/h (HHV), should be created. This division is based on the fuel input to a 23 percent efficient 3.5 MW turbine. The only turbine identifiable in this size range that can be used for mechanical drive applications is a Solar Saturn, and Solar Turbines does not plan to further develop dry low NO_X technology on the Saturn line, nor does it have that capability at the current time. According to the gas transmission industry representatives, there are about 300 turbines in this small size range, comprising over 25 percent of the existing turbines in gas transmission. None of these units include lean premixed combustion. Other add-on controls have not been applied to the variable load operating profile characteristic of gas transmission equipment, nor would such add-on controls be economically feasible for these small units with minimal emissions. Therefore, the final rule has incorporated a new subcategory of small turbines, ranging from the applicability limit to 50 MMBtu/h.

Comment: Several commenters suggested that modified and reconstructed units should be treated differently than new units. Reasons provided by the commenters included costs for retrofitting being excessive, and weight and space needs being prohibitive. One commenter stated that there are many existing turbines that could be affected by the modification section of the rule for which there is no cost effective technology that achieves emissions lower than those suggested by the commenter. One commenter stated that the terms ''modification'' and ''reconstruction'' were not clearly defined, and that requiring these units to meet the same limits as new units may discourage existing turbine users from modifying units to improve efficiency or lower emissions, if such modifications do not ensure compliance with the limit for new units.

Options recommended by the commenters included removing them from the applicability of 40 CFR part 60, subpart KKKK, giving them separate limits under subpart KKKK, or making them subject to 40 CFR part 60, subpart GG. One commenter recommended that units manufactured through 1985 (20 years and older) be exempted from the requirements of the proposed NSPS, and the previous NSPS levels should apply.

Response: We acknowledge the commenters' views, and in the final rule there are new subcategories for some modified and reconstructed units. While we provided more flexibility in the final rule for small and medium sized turbines (ranging from the applicability threshold to 850 MMBtu/h), we had no information on large turbines (greater than 850 MMBtu/h) which would suggest any compliance issues for modified or reconstructed units. Therefore, no subcategory was added for large (greater than 850 MMBtu/h) modified or reconstructed units.

Comment: Several commenters suggested that EPA include an exemption for offshore turbines, turbines located north of the Arctic Circle, and turbines in other existing remote locations. Alternatively, the commenters suggested subcategorizing them separately. The commenters said that due to a harsh environment and fuel availability and variability, these turbines are commonly diffusion flame, and land-based emissions abatement techniques are unsuitable; space limitations are also a concern. One commenter said that the rule, as proposed, would preclude the use of new, modified or reconstructed turbines located in electric utility service in Alaska, because of the additional costs associated with meeting the proposed limits.

Response: EPA has concluded that a subcategory should be created for modified and reconstructed offshore turbines and turbines installed north of the Arctic Circle to recognize their distinct differences. There is a substantial difference in temperature between the North Slope of Alaska and even the coldest areas in the lower 48 States. As noted by the commenters, turbine operators on the North Slope of Alaska have experienced problems with operation of the turbines in lean premix mode, and turbine manufacturers do not guarantee the performance of their turbines at the ambient temperatures typically found north of the Arctic Circle. Therefore, a subcategory for turbines operated north of the Arctic Circle has been established.

With regards to the rest of Alaska, EPA concluded that the final rule includes limits which will reduce or eliminate the need for add-on controls for the vast majority of turbines, and that these new emission limitations address the concerns of the commenters.

Modified and reconstructed offshore turbines have been given a subcategory due to the lack of space on platforms for additional controls.

The subcategories for these turbines are based on power output instead of heat input at peak load. Since the standards for these subcategories are similar to 40 CFR part 60, subpart GG, EPA used the same categories as subpart GG to avoid being less stringent than the existing emissions standards.

Comment: Several commenters had issues with periods of startup, shutdown and malfunction. Some commenters believed that the averaging times that are specified for continuous monitoring (using either a CEMS or parametric monitoring) were too short to accommodate such periods. The commenters believed that exceptions should be developed for periods of startup, shutdown and maintenance if 4-hour averages were maintained. One commenter suggested 30-day rolling averages, one commenter suggested 24-hour rolling averages, and one commenter suggested 12-month rolling averages.

One commenter wanted clarification of the applicability of the NO_X standards during periods of startup, shutdown and malfunction. Two commenters pointed out that while these periods of excess emissions were not considered violations, they might appear to be to State regulatory agencies or the public. Another commenter requested that EPA allow sources to permit emissions associated with startup and shutdown events where it is not feasible to have the same emission profile as normal operating conditions. This commenter requested that a clarification be made that deviating from a monitored parameter only results in excess emissions if emissions calculated from that parameter result in exceeding an emission limit for the averaging period used to demonstrate compliance.

One commenter was particularly concerned about combined cycle units with longer startup periods as part of a normal startup cycle. The commenter felt that this should not constitute a malfunction, and should not be reported in an excess emissions report. Another commenter asked that a reasonable startup period (up to 24 hours) be provided for units with SCR, since minimum temperatures must be met.

Response: The final rule states that excess emissions and deviations must be recorded during periods of startup, shutdown, and malfunction. We recognize that even for well-operated

units with efficient NO_X emission controls, excess emission ''spikes'' during unit startup and shutdown are inevitable, and malfunctions of emission controls and process equipment occasionally occur. However, at all times, including periods of startup, shutdown, and malfunction, 40 CFR 60.11(d) requires affected units to be operated in a manner consistent with good air pollution control practice for minimizing emissions. Excess emissions data may be used to determine whether a facility's operation and maintenance procedures are consistent with 40 CFR 60.11(d). While continuous compliance is not required, excess emissions during startup, shutdown, and malfunction must be reported. Thus, we retained the 4-hour rolling average period in the final rule for simple cycle units. We realize that including units with heat recovery under the combustion turbine NSPS adds additional compliance issues for those units. Boiler NO_X emissions vary over short time periods and short averaging times make the output-based options unworkable due to the difficulty in continuously taking full advantage of the recovered thermal energy. For units with heat recovery and CEMS, the standard is therefore determined on a 30-day rolling average. Under the previous NSPS, heat recovery units are covered under either subpart Da, Db, or Dc, 40 CFR part 60. Those standards determine compliance based on a 30-day rolling average. In recognition of these factors, EPA concluded that a 30-day rolling average is the appropriate averaging time for units that are using recovered thermal energy. Since simple cycle turbines are used primarily for peaking applications, a 30-day average is not practical for these units. Initial compliance determinations could take several years, and once a unit is determined to be out of compliance it could take several years for the 30-day average to return below the standard.

In regards to parametric monitoring, a deviation from a monitored parameter only results in excess emissions if the calculations show an exceedence of the emission limit. This is clearly communicated in the final rule, in the section entitled ''How do I establish and document a proper parameter monitoring plan?'' Regarding the negative stigma, we cannot determine how other parties interpret the final rule. It is clear that continuous compliance is not a requirement of the final rule during periods of startup, shutdown, and malfunction.

B. NO_X Emission Standards

Comment: Numerous commenters recommended that there be some type of concentration-based standards for NO_X. One commenter said that while it applauds EPA's proposed shift to output-based standards, they might not be applicable in all situations. The commenter said that it is unclear how the calculation would work for a turbine with a bypass stack or another situation where heat is wasted. In addition, the commenter believed that an increased level of effort for monitoring parameters is required, which creates financial and technical burdens for compliance. The commenter recommended that EPA provide an optional concentration-based standard that can be used where data for calculating an output-based standard are unavailable or inappropriate.

One commenter recommended a ppmv standard consistent with current regulations, or a separate standard for simple cycle and combined cycle units. The commenter cited some of the following as rationale for its suggestion: Many State implementation plan regulations and best available control technology analyses are in ppmv, and 40 CFR part 60, subpart GG, is in ppmv; efficiency varies over load; carbon monoxide (CO) needs to be balanced; there are a limited number of units able to meet output-based limits without SCR; and output-based standards add complexity and computational and measurement uncertainty. Another commenter recommended that EPA allow optional concentration-based standards (i.e., ppmv corrected to 15 percent oxygen) so that if a source does not need energy efficiency adjustments to show compliance, it could choose to measure only emission concentrations at the stack.

Two commenters said that EPA should replace the output-based NO_X emission limit with a concentration-based standard for turbines less than 30 MW, which are primarily mechanical drive units. Similarly, several commenters said that EPA should provide optional concentration-based standards for all non-utility (mechanical drive) turbines; another solution would be to revise the monitoring approach to reduce cost and burden. The commenters' rationale was that mechanical drive units do not always include instruments that allow heat balance calculation of power output, and are frequently running at partial loads.

According to the commenters, a concentration-based limit would eliminate the need for variables that are difficult to accurately and readily obtain. Alternatively, these commenters felt that modifications should be made to include provisions in equation 4 of 40 CFR 60.4350(f)(3) for waste heat recovery when it is installed.

One commenter believed that limits should be specified on a concentration basis rather than on an output basis because some data show that lower concentrations can be attained at lower loads, yet, due to decreased efficiencies at lower loads, these emissions would exceed limitations on an output basis.

One commenter recommended a NO_X standard in ppm rather than an output-based standard for alternative fuels. The commenter said that in many cases, there is no demand for steam or thermal energy at or near landfills, so combined heat and power projects are unwarranted.

Response: We have considered the commenters' concerns, and have included an alternative concentration-based limit in the final rule for all turbines. Some units have difficulty with determining their power output, and adding a concentration-based emission limit significantly simplifies the regulation.

Comment: Several commenters said that turbines operating at partial load might not be able to meet the output-based limit. The commenters said that there are times when combustion turbines will run at partial load conditions, for example when a facility has not yet geared up to full production or when power is available from the grid at a lower cost than can be produced by the nonutility. According to the commenters, the turbine efficiency is lower at partial load operation, which leads to higher output-based emissions. Three commenters made the point that many combustion turbines shift out of lean premix mode into diffusion flame mode at lower loads, leading to increased NO_X emissions.

One commenter requested that the NO_X limits for partial loads be increased to account for lower thermal efficiencies at partial loads. One commenter suggested that part load operation for both gas and distillate oil revert to limits set on the basis of corrected NO_X concentrations (parts per million by volume dry (ppmvd) at 15 percent O_2). The commenter said that this coincides with operating schedules for existing General Electric dry low NO_X turbines, which are tuned to yield constant NO_X ppm throughout the operating load range. The commenter believed that this limit basis is also advantageous from the standpoint of compliance monitoring, since NO_X concentration can be measured directly on site when equipped with CEMS. Several

commenters said that the NO_X emission standards should only apply at full load, and performance testing should be conducted at 90 to 100 percent of peak load or the highest load point achievable in practice. The commenters said that if EPA does not make this change, EPA should provide data and analysis supporting the applicability of the NO_X standard at partial load outside of the typical range for manufacturer guarantees.

One commenter said that the requirement in 40 CFR 60.4400(b) of the proposed rule to perform four tests between 70 and 100 percent load seems excessive. The commenter requested that this section also clarify that the four load points should be based upon the ambient conditions and fuel characteristics realized during the time of testing, since ambient temperature can affect the maximum or minimum operating load during a given test program. The commenter noted that operating at greater than 100 percent of peak load may also be possible, especially during cold (much less than 59 °F) ambient conditions.

Response: We indicated in the final rule that the NO_X performance testing should be conducted at full load operation, which is defined as plus or minus 25 percent of 100 percent of peak load, or the highest load physically achievable in practice. Only one load point is required for testing for the annual performance test. For continuous monitoring, an alternate limit has been established when the turbine is not operating at full load. Conducting the annual test at full load is consistent with the Stationary Combustion Turbines NESHAP, 40 CFR part 63, subpart YYYY.

Comment: Several commenters requested that EPA specify that the emission standards only apply for ambient temperatures ranging from 0 to 100 °F. Alternatively, the commenters asked EPA to provide data and analysis supporting the applicability of the NO_X standard at ambient temperatures outside of the typical range for manufacturer guarantees. Two commenters said that NO_X is higher at lower ambient temperatures, efficiencies are compromised at lower ambient temperatures, and cold intake air causes flame stability issues. The commenters also noted that EPA data in Alaska does not cover the winter operating season. The commenter provided some plots of emissions data for operations at low temperatures.

Response: EPA concluded that turbines do not operate optimally at ambient temperatures below 0 °F. Therefore, compliance demonstrations, such as annual testing, are required at ambient temperatures greater than 0 °F in the final rule. If you are using a CEMS for demonstrating compliance, alternate emissions standards apply when the ambient temperature is below 0 °F. We recognize that these temperatures may increase emissions from the turbine.

Comment: A number of commenters had concerns with the efficiencies that EPA used to determine the values for the output-based emission standards. One commenter stated that if EPA retained an output-based NO_X standard for units less than 30 MW, EPA should revise the efficiency basis for the standard, which is not supported by the docket material for industrial scale units. Three commenters said that the proposed NO_X emission standards needed to be revised to reflect the full range of turbine efficiencies that may be encountered during operation. Three commenters said that during the first 5 years of operation, the maximum load that can be achieved can decrease by as much as 5 percent while the thermal efficiency can decrease by as much as 2.5 percent.

One commenter said that 30 percent efficiency is not consistently achieved for small simple cycle turbines. The commenter recommended using 23 percent efficiency (LHV) at full load for turbines less than 3.5 MW, and 25 percent efficiency (LHV) at full load for the 3.5–30 MW turbines, to ensure that smaller turbines can achieve the NSPS at site conditions, which provide variability in efficiency.

Four commenters observed that the efficiencies on which the proposed output-based emissions were based only apply at full loads. One commenter said that the *Gas Turbine World* specifications show more than half of all models less than 30 MW have efficiencies lower than 30 percent. The commenter also said that lower loads have lower efficiencies, also many combined cycle units have efficiencies less than what EPA assumes. Another commenter asserted that EPA's standard is based on stack tests, conducted at steady state, so efficiency losses associated with changing load are not captured. In addition, the commenter believed that these efficiencies are only for ''out of the box'' turbines.

Two commenters said that EPA determined the 30 percent value based on turbine efficiency data in *Gas Turbine World*, which is based on LHV, but the commenters believed that EPA may have applied it inappropriately, as if it were HHV. If EPA had intended to base the efficiency assumption on HHV, it appears that the limit for turbines less than 30 MW was rounded down from 1.046 to 1.0 lb/MWh, according to the commenters. But if EPA intended to base the efficiency assumption on LHV, then the commenters determined that the limit should be 1.147 lb/MWh. The commenters said that even if EPA had intended the HHV efficiency, the rounding difference is almost 5 percent for the smaller turbine category, and this could be significant for turbines just meeting the 25 ppmv vendor guarantee.

Response: We developed alternative concentration-based standards, so that efficiency is no longer an issue if this alternative is chosen. In the final rule, we used a baseline efficiency of 23 percent for small turbines, 27 percent for medium turbines, and 44 percent for large turbines. The small turbine efficiency is based on the 40 CFR part 60, subpart GG, lowest efficiency, 25 percent based on LHV. The medium turbine efficiency is based on the top 90 percent of the medium turbine efficiencies listed in the 2005 Global Sourcing Guide for Gas Turbine Engines (*http://www.dieselpub.com/gsg*). The large turbine efficiency is based on the top 90 percent of the combined cycle efficiencies listed in the 2005 Global Sourcing Guide for Gas Turbine Engines. EPA concluded that these efficiencies are appropriate for turbines that elect to comply with the output-based standard.

Comment: Several commenters strongly opposed the NO_X emission limits established in the rule, as proposed. They contended that EPA's basis for establishing the limits was fundamentally flawed and not representative of current combustion turbines without the use of add-on controls. The commenters said that the proposed limits have no support in the docket's actual test data, and are the product of generalizations and faulty assumptions about the data, and must be withdrawn until they can be properly based on the data they cite.

According to the commenters, over 35 percent of the reported emission rates from natural gas-fired units and nearly all of those from fuel oil-fired units exceed the proposed output-based limits. Other concerns with the data expressed by the commenters included: Some power ranges are insufficiently represented because there are no data between 80 and 150 MW and there are few data over 160 MW; aeroderivative turbines are underrepresented; there were no useable emission rate data for several manufacturers; and EPA did not consider variability in load and may not have had adequate data for low temperatures. Another commenter believed that EPA did not heed the recommendations of the Gas Turbine

Association in their November 11, 2004, memorandum. In addition, this commenter believed that EPA did not match the population percentages to the data they reviewed. For example, the commenter said that almost 68 percent of the recent turbine orders are in the small category, yet only 21 percent of the data reviewed by EPA were in this subcategory. Additionally, the commenter said that for this subcategory, the maximum NO_X emission concentration listed is 27.8 ppm, which is above the level of 25 ppm used in proposing the standard for the small subcategory.

Many of the commenters provided suggested NO_X emission standards to EPA.

Response: While not all turbine models were represented in the data set, we concluded that it is representative of today's population of turbines. In addition, we obtained more data during the comment period, including emissions information for turbines less than 50 MMBtu/h. Also, our analysis included the addition of manufacturer guarantees and permit information, which, along with emissions data, gave us a clear picture of the achievability of the standards. The emission limits in the final rule have been revised, as appropriate, using these additional data and information. See table 1 of this preamble for the revised emission standards.

Comment: One commenter believed that there is a significant difference between aeroderivative turbines and frame type turbines in that aeroderivatives cannot employ low NO_X burners and must use water injection. While aeroderivatives may be guaranteed by the manufacturer to achieve 25 ppm at full load, the commenter believed that setting a standard at that level affords no cushion for operation below full load, especially in light of the short averaging times. Therefore, the commenter requested that EPA either raise the emission limit to allow for operational flexibility, or set different standards for different types of combustion turbines.

Response: We concluded that the majority of turbines are in some manner related to jet engine designs. The combustion turbine industry began in the aviation industry, and we concluded that it is not appropriate to subcategorize turbines based on design characteristics. The primary difference is the degree to which the turbines have been optimized for stationary applications. Furthermore, EPA concluded that there is no appropriate definition that separates aeroderivative and frame turbines.

In the final rule we increased the upper limit on the medium turbine category to 850 MMBtu/h. The medium turbine category covers the majority of turbines that the comments addressed. This category is based on the heat input to a 44 percent efficient 110 MW turbine. The standards in the final rule address the commenter's concerns.

Comment: Four commenters suggested emission limits for small turbines. One commenter recommended a fuel neutral standard of 150 ppmv for turbines less than 3 MW. Another commenter recommended a NO_X standard of 100 ppmv for natural gas-fired turbines less than 3 MW, and 150 ppmv for distillate oil-fired turbines less than 3 MW. One commenter said that if EPA retains turbines less than 3.5 MW in 40 CFR part 60, subpart KKKK, the NO_X emission limit for new construction should be 100 ppmv for natural gas and 175 ppmv for distillate oil; for modified or reconstructed turbines, the NO_X emission limit should be 150 ppmv for natural gas and 200 ppmv for distillate oil. The commenter recommended a concentration limit for mechanical drive turbines and an output-based limit based on an efficiency of 23 percent for power generators. Another commenter stated that if EPA retains turbines less than 3.5 MW in 40 CFR part 60, subpart KKKK, the NO_X emission limit for turbines between 1 and 3.5 MW should be no more stringent than 6 lb/MWh for natural gas, distillate oil and other fuels. The commenter's rationale was that this level is comparable to 40 CFR part 60, subpart GG, and significant improvements in control technologies have not been made since subpart GG was established.

Response: Based on the comments received, we revised the emission limitations in the final rule for small turbines, as shown in table 1 of this preamble. We received additional data from the turbine manufacturer for small turbines. Based on these data, we concluded that the majority of small turbines will be able to comply with the revised emission limitations given in the final rule. These numbers were based on data received from small turbine manufacturers during the public comment period.

Comment: Six commenters believed that the NO_X standards for turbines less than 30 MW were not consistently achievable in practice. Two of the commenters said that the standard for natural gas turbines 3 to 30 MW should be 42 ppmv. One commenter said that the standard for natural gas turbines 3.5 to 30 MW should be 42 ppmv for mechanical drive units, and based on 42 ppmv with an efficiency of 25 percent for power generation units. For distillate oil turbines 3.5 to 30 MW, the commenter said that the NO_X standard should be 96 ppmv for mechanical drive units, and based on 96 ppmv with an efficiency of 25 percent for power generation units. One commenter recommended a standard of 100 ppmv for oil-fired turbines. Three commenters suggested that EPA provide an option to pursue an alternative emission limit for retrofit applications that do not offer a 42 ppmv NO_X guarantee.

One commenter said that for turbines under 30 MW, a NO_X standard of 1.0 lb/MWh will be too stringent for some projects, particularly the smaller (less than 3.5 MW) facilities. The commenter believed that this will prevent the implementation of some projects that could provide lower emissions than the generation sources they are displacing. The commenter suggested that the limit should be no more stringent than 1.4 lb/MWh (25 ppm at 25 percent efficiency, LHV) for natural gas-fired turbines.

One commenter did not believe that any turbines less than 30 MW could meet the proposed emission limits. The commenter said that peaking turbines would not be able to meet the emission limits because they must operate at variable loads and also low temperatures increase NO_X emissions. The commenter believed that even at full load and 60 °F ambient temperature, a dry low NO_X turbine would just barely make the NO_X limit. Therefore, the commenter suggested that EPA increase the limit in combination with defining a limited range over which the limit is applicable. The commenter also noted that SCR has only been installed in a handful of simple cycle units and high temperature SCR is less reliable than standard SCR.

Response: We revised the emission limitations as well as the subcategory for medium turbines, as presented in table 1 of this preamble. The medium subcategory has been extended to cover additional turbines. The new subcategory on which these comments are based is from 50 MMBtu/h to 850 MMBtu/h. We concluded that, based on data submitted during the comment period, the new emission limitations in the final rule are achievable by most turbines in this subcategory without the use of add-on controls.

Comment: Several commenters said that the proposed NO_X limits for oil-fired units were too low. One commenter said that EPA's proposed output-based limits for oil-fired units cannot be achieved on simple cycle turbines with combustion controls. The commenter felt that the limit for oil-

fired turbines, 1.2 lb/MWh, is de facto too stringent, and imposing an efficiency of 48 percent would be arbitrary and capricious. The commenter requested that EPA separate simple cycle from combined cycle, particularly for oil-fired units. One commenter requested that EPA either raise the emission limit for oil-fired combustion turbines, or at least allow large oil-fired peaking units to comply with the emission limit for small oil-fired units. Many of the commenters provided suggested emission levels for oil-fired units to EPA.

Response: EPA concluded that, based on data submitted during the comment period, the new emission limitations in the final rule for oil-fired turbines are achievable by most turbines without the use of add-on controls.

C. Definitions

Comment: Four commenters requested that EPA clarify the definition of efficiency. The commenters stated that the proposed definition is based on the LHV, but that EPA usually defines regulations based on HHV. The commenters believed that EPA may have intended to use HHV and requested clarification on whether efficiency should be based on the LHV or the HHV. One commenter stated that the LHV clause is unnecessary and should be removed because most air permits are written, modeled and reviewed upon the premise of the HHV of the fuel.

Response: In the proposed rule, we inadvertently defined efficiency in terms of LHV. Our intent was to use HHV. This change is reflected in the final rule.

V. Environmental and Economic Impacts

A. What are the air impacts?

We estimate that approximately 355 new stationary combustion turbines will be installed in the United States over the next 5 years and affected by the final rule. None of these units may need to install add-on controls to meet the NO_X limits required under the final rule. However, many new turbines will already be required to install add-on controls to meet NO_X reduction requirements under Prevention of Significant Deterioration (PSD) and New Source Review (NSR). Thus, we concluded that the NO_X reductions resulting from the final rule will essentially be zero. The expected SO2 reductions as a result of the final rule are approximately 830 tons per year (tpy) in the 5th year after promulgation of the standards.

Although we expect the final rule to result in a slight increase in electrical supply generated by unaffected sources (e.g., existing stationary combustion turbines), we concluded that this will not result in higher NO_X and SO_2 emissions from these sources. Other emission control programs such as the Acid Rain Program and PSD/NSR already promote or require emission controls that would effectively prevent emissions from increasing. All the emissions reductions estimates and assumptions have been documented in the docket to the final rule.

B. What are the energy impacts?

We do not expect any significant energy impacts resulting from the final rule. The only energy requirement is a potential small increase in fuel consumption, resulting from back pressure caused by operating an add-on emission control device, such as an SCR. However, most entities would be able to comply with the final rule without the use of any add-on control devices.

C. What are the economic impacts?

EPA prepared an economic impact analysis to evaluate the impacts the final rule would have on combustion turbines producers, consumers of goods and services produced by combustion turbines, and society. The analysis showed minimal changes in prices and output for products made by the industries affected by the final rule. The price increase for affected output is less than 0.003 percent, and the reduction in output is less than 0.003 percent for each affected industry. Estimates of impacts on fuel markets show price increases of less than 0.01 percent for petroleum products and natural gas, and price increases of 0.04 and 0.06 percent for base-load and peak-load electricity, respectively. The price of coal is expected to decline by about 0.002 percent, and that is due to a small reduction in demand for this fuel type. Reductions in output are expected to be less than 0.02 percent for each energy type, including base-load and peak-load electricity.

The social costs of the final rule are estimated at $0.4 million (2002 dollars). Social costs include the compliance costs, but also include those costs that reflect changes in the national economy due to changes in consumer and producer behavior in response to the compliance costs associated with a regulation. For the final rule, changes in energy use among both consumers and producers to reduce the impact of the regulatory requirements of the rule lead to the estimated social costs being less than the total annualized compliance cost estimate of $3.4 million (2002 dollars). The primary reason for the lower social cost estimate is the increase in electricity supply generated by unaffected sources (e.g., existing stationary combustion turbines), which offsets mostly the impact of increased electricity prices to consumers. The social cost estimates discussed above do not account for any benefits from emission reductions associated with the final rule.

For more information on these impacts, please refer to the economic impact analysis in the public docket.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq*. The Information Collection Request (ICR) document prepared by EPA has been assigned ICR No. 2177.01.

The final rule contains monitoring, reporting, and recordkeeping requirements. The information would be used by EPA to identify any new, modified, or reconstructed stationary combustion turbines subject to the NSPS and to ensure that any new stationary combustion turbines comply with the emission limits and other requirements. Records and reports would be necessary to enable EPA or States to identify new stationary combustion turbines that may not be in compliance with the requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected.

The final rule does not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after July 6, 2006) is estimated to be 20,542 labor hours per year at an average total annual cost of $1,797,264. This estimate includes performance testing, continuous monitoring, semiannual excess emission reports, notifications, and recordkeeping. There are no capital/start-up costs or operation and maintenance costs associated with the monitoring requirements over the 3-year period of the ICR.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, depending on size definition for the affected North American Industry Classification System (NAICS) code, or fewer than 4 billion kilowatt-hours (kW-hr) per year of electricity usage; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in one NAICS code would be affected by the final rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

After considering the economic impacts of today's final rule on small entities, we conclude that today's action will not have a significant economic impact on a substantial number of small entities. We determined, based on the existing combustion turbines inventory and presuming the percentage of small entities in that inventory is representative of the percentage of small entities owning new turbines in the 5th year after promulgation, that one small entity out of 29 in the industries impacted by the final rule will incur compliance costs (in this case, only monitoring, recordkeeping, and reporting costs since control costs are zero) associated with the final rule. This small entity owns one affected turbine in the projected set of new combustion turbines. This affected small entity is estimated to have annual compliance costs of 0.3 percent of its revenues. The final rule is likely to also increase profits for the small firms and increase revenues for the many small communities (in total, 28 small entities) using combustion turbines that are not affected by the final rule as a result of the very slight increase in market prices. For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule on small entities. In the final rule, the Agency is applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. In addition, as mentioned earlier in this preamble, new turbines with heat inputs less than 10.7 GJ (10 MMBtu) per hour are not subject to the final rule. This provision should reduce the size of small entity impacts. We continue to be interested in the potential impacts of the final rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed

under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule contains no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. We do not know of any stationary combustion turbines owned or operated by Indian tribal governments. However, if there are any, the effect of the final rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

The final rule is not subject to Executive Order 13045 because it is not an economically significant action as defined under Executive Order 12866.

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

Today's action is not a ''significant energy action'' as defined in Executive Order 13211 because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

An increase in petroleum product output, which includes increases in fuel production, is estimated at less than 0.01 percent, or about 600 barrels per day based on 2004 U.S. fuel production nationwide. A reduction in coal production is estimated at 0.00003 percent, or about 3,000 short tpy based on 2004 U.S. coal production nationwide. The reduction in electricity output is estimated at 0.02 percent, or about 5 billion kW-hr per year based on 2000 U.S. electricity production nationwide.

Production of natural gas is expected to increase by 4 million cubic feet per day. The maximum of all energy price increases, which include increases in natural gas prices as well as those for petroleum products, coal, and electricity, is estimated to be a 0.04 percent increase in peak-load electricity rates nationwide. Energy distribution costs may increase by no more than the same amount as electricity rates. We expect that there will be no discernable impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies.

Also, the increase in the cost of energy production should be minimal given the very small increase in fuel consumption resulting from back pressure related to operation of add-on emission control devices, such as SCR. All of the estimates presented above account for some passthrough of costs to consumers as well as the direct cost impact to producers.

For more information on these estimated energy effects, please refer to the economic impact analysis for the final rule. This analysis is available in the public docket.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. EPA cites the following methods in the final rule: EPA Methods 1, 2, 3A, 6, 6C, 7E, 8, 19, and 20 of 40 CFR part 60, appendix A; and Performance Specifications (PS) 2 of 40 CFR part 60, appendix B.

In addition, the final rule cites the following standards that are also incorporated by reference in 40 CFR part 60, section 17: ASTM D129–00

(Reapproved 2005), ASTM D1072–90 (Reapproved 1999), ASTM D1266 98 (Reapproved 2003), ASTM D1552–03, ASTM D2622–05, ASTM D3246–05, ASTM D4057–95 (Reapproved 2000), ASTM D4084–05, ASTM D4177–95 (Reapproved 2000), ASTM D4294–03, ASTM D4468–85 (Reapproved 2000), ASTM D4810–88 (Reapproved 1999), ASTM D5287–97 (Reapproved 2002), ASTM D5453–05, ASTM D5504–01, ASTM D6228–98 (Reapproved 2003), ASTM D6667–04, and Gas Processors Association Standard 2377–86.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 8 and 19. The search and review results have been documented and are placed in the docket for the final rule.

One voluntary consensus standard was identified as an acceptable alternative for the EPA methods cited in this rule. The voluntary consensus standard ASME PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in this rule for its manual method for measuring the sulfur dioxide content of exhaust gas. This part of ASME PTC 19–10–1981—Part 10 is an acceptable alternative to EPA Methods 6 and 20 (sulfur dioxide only).

In addition to the voluntary consensus standards EPA uses in the final rule, the search for emissions measurement procedures identified 11 other voluntary consensus standards. EPA determined that nine of these 11 standards identified for measuring air emissions or surrogates subject to emission standards in the final rule were impractical alternatives to EPA test methods/performance specifications for the purposes of the final rule. Therefore, EPA does not intend to adopt these standards. See the docket for the reasons for the determinations of these methods.

Two of the 11 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body. See the docket for the list of these methods.

Sections 60.4345, 60.4360, 60.4400 and 60.4415 of the final rule discuss EPA testing methods, performance specifications, and procedures required. Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et. seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on July 6, 2006.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 9, 2006.

Stephen L. Johnson,

Administrator.

Editorial Note: This document was received by the Office of the Federal Register on June 28, 2006.

■ For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 60.17 is amended by revising paragraphs (a), (h)(4), and (m)(1), and reserving paragraph (m)(2) to read as follows:

§ 60.17 Incorporation by reference.

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

(1) ASTM A99–76, 82 (Reapproved 1987), Standard Specification for Ferromanganese, incorporation by reference (IBR) approved for § 60.261.

(2) ASTM A100–69, 74, 93, Standard Specification for Ferrosilicon, IBR approved for § 60.261.

(3) ASTM A101–73, 93, Standard Specification for Ferrochromium, IBR approved for § 60.261.

(4) ASTM A482–76, 93, Standard Specification for Ferrochromesilicon, IBR approved for § 60.261.

(5) ASTM A483–64, 74 (Reapproved 1988), Standard Specification for Silicomanganese, IBR approved for § 60.261.

(6) ASTM A495–76, 94, Standard Specification for Calcium-Silicon and Calcium Manganese-Silicon, IBR approved for § 60.261.

(7) ASTM D86–78, 82, 90, 93, 95, 96, Distillation of Petroleum Products, IBR approved for §§ 60.562–2(d), 60.593(d), and 60.633(h).

(8) ASTM D129–64, 78, 95, 00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and Appendix A: Method 19, 12.5.2.2.3.

(9) ASTM D129–00 (Reapproved 2005), Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for § 60.4415(a)(1)(i).

(10) ASTM D240–76, 92, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter, IBR approved for §§ 60.46(c), 60.296(b), and Appendix A: Method 19, Section 12.5.2.2.3.

(11) ASTM D270–65, 75, Standard Method of Sampling Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.1.

(12) ASTM D323–82, 94, Test Method for Vapor Pressure of Petroleum Products (Reid Method), IBR approved for §§ 60.111(l), 60.111a(g), 60.111b(g), and 60.116b(f)(2)(ii).

(13) ASTM D388–77, 90, 91, 95, 98a, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.41(f) of subpart D of this part, 60.45(f)(4)(i), 60.45(f)(4)(ii), 60.45(f)(4)(vi), 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part, and 60.251(b) and (c) of subpart Y of this part.

(14) ASTM D388–77, 90, 91, 95, 98a, 99 (Reapproved 2004) $^{\varepsilon 1}$, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.24(h)(8), 60.41Da of subpart Da of this part, and 60.4102.

(15) ASTM D396–78, 89, 90, 92, 96, 98, Standard Specification for Fuel Oils,

IBR approved for §§ 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part, 60.111(b) of subpart K of this part, and 60.111a(b) of subpart Ka of this part.

(16) ASTM D975–78, 96, 98a, Standard Specification for Diesel Fuel Oils, IBR approved for §§ 60.111(b) of subpart K of this part and 60.111a(b) of subpart Ka of this part.

(17) ASTM D1072–80, 90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b)(10)(ii).

(18) ASTM D1072–90 (Reapproved 1999), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.4415(a)(1)(ii).

(19) ASTM D1137–53, 75, Standard Method for Analysis of Natural Gases and Related Types of Gaseous Mixtures by the Mass Spectrometer, IBR approved for § 60.45(f)(5)(i).

(20) ASTM D1193–77, 91, Standard Specification for Reagent Water, IBR approved for Appendix A: Method 5, Section 7.1.3; Method 5E, Section 7.2.1; Method 5F, Section 7.2.1; Method 6, Section 7.1.1; Method 7, Section 7.1.1; Method 7C, Section 7.1.1; Method 7D, Section 7.1.1; Method 10A, Section 7.1.1; Method 11, Section 7.1.3; Method 12, Section 7.1.3; Method 13A, Section 7.1.2; Method 26, Section 7.1.2; Method 26A, Section 7.1.2; and Method 29, Section 7.2.2.

(21) ASTM D1266–87, 91, 98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

(22) ASTM D1266–98 (Reapproved 2003) ε^1, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for § 60.4415(a)(1)(i).

(23) ASTM D1475–60 (Reapproved 1980), 90, Standard Test Method for Density of Paint, Varnish Lacquer, and Related Products, IBR approved for § 60.435(d)(1), Appendix A: Method 24, Section 6.1; and Method 24A, Sections 6.5 and 7.1.

(24) ASTM D1552–83, 95, 01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for §§ 60.106(j)(2), 60.335(b)(10)(i), and Appendix A: Method 19, Section 12.5.2.2.3.

(25) ASTM D1552–03, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for § 60.4415(a)(1)(i).

(26) ASTM D1826–77, 94, Standard Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, IBR approved for §§ 60.45(f)(5)(ii), 60.46(c)(2), 60.296(b)(3), and Appendix A: Method 19, Section 12.3.2.4.

(27) ASTM D1835–87, 91, 97, 03a, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for § 60.41Da of subpart Da of this part.

(28) ASTM D1835–82, 86, 87, 91, 97, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for § 60.41b of subpart Db of this part.

(29) ASTM D1835–86, 87, 91, 97, Standard Specification for Liquefied Petroleum (LP) Gases, IBR approved for § 60.41c of subpart Dc of this part.

(30) ASTM D1945–64, 76, 91, 96, Standard Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 60.45(f)(5)(i).

(31) ASTM D1946–77, 90 (Reapproved 1994), Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved for §§ 60.18(f)(3), 60.45(f)(5)(i), 60.564(f)(1), 60.614(e)(2)(ii), 60.614(e)(4), 60.664(e)(2)(ii), 60.664(e)(4), 60.704(d)(2)(ii), and 60.704(d)(4).

(32) ASTM D2013–72, 86, Standard Method of Preparing Coal Samples for Analysis, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(33) ASTM D2015–77 (Reapproved 1978), 96, Standard Test Method for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter, IBR approved for § 60.45(f)(5)(ii), 60.46(c)(2), and Appendix A: Method 19, Section 12.5.2.1.3.

(34) ASTM D2016–74, 83, Standard Test Methods for Moisture Content of Wood, IBR approved for Appendix A: Method 28, Section 16.1.1.

(35) ASTM D2234–76, 96, 97b, 98, Standard Methods for Collection of a Gross Sample of Coal, IBR approved for Appendix A: Method 19, Section 12.5.2.1.1.

(36) ASTM D2369–81, 87, 90, 92, 93, 95, Standard Test Method for Volatile Content of Coatings, IBR approved for Appendix A: Method 24, Section 6.2.

(37) ASTM D2382–76, 88, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.564(f)(3), 60.614(e)(4), 60.664(e)(4), and 60.704(d)(4).

(38) ASTM D2504–67, 77, 88 (Reapproved 1993), Noncondensable Gases in C3 and Lighter Hydrocarbon Products by Gas Chromatography, IBR approved for § 60.485(g)(5).

(39) ASTM D2584–68 (Reapproved 1985), 94, Standard Test Method for Ignition Loss of Cured Reinforced Resins, IBR approved for § 60.685(c)(3)(i).

(40) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography, IBR approved for § 60.335(b)(9)(i).

(41) ASTM D2622–87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry,'' IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

(42) ASTM D2622–05, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry,'' IBR approved for § 60.4415(a)(1)(i).

(43) ASTM D2879–83, 96, 97, Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved for §§ 60.111b(f)(3), 60.116b(e)(3)(ii), 60.116b(f)(2)(i), and 60.485(e)(1).

(44) ASTM D2880–78, 96, Standard Specification for Gas Turbine Fuel Oils, IBR approved for §§ 60.111(b), 60.111a(b), and 60.335(d).

(45) ASTM D2908–74, 91, Standard Practice for Measuring Volatile Organic Matter in Water by Aqueous-Injection Gas Chromatography, IBR approved for § 60.564(j).

(46) ASTM D2986–71, 78, 95a, Standard Method for Evaluation of Air, Assay Media by the Monodisperse DOP (Dioctyl Phthalate) Smoke Test, IBR approved for Appendix A: Method 5, Section 7.1.1; Method 12, Section 7.1.1; and Method 13A, Section 7.1.1.2.

(47) ASTM D3173–73, 87, Standard Test Method for Moisture in the Analysis Sample of Coal and Coke, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(48) ASTM D3176–74, 89, Standard Method for Ultimate Analysis of Coal and Coke, IBR approved for § 60.45(f)(5)(i) and Appendix A: Method 19, Section 12.3.2.3.

(49) ASTM D3177–75, 89, Standard Test Method for Total Sulfur in the Analysis Sample of Coal and Coke, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(50) ASTM D3178–73 (Reapproved 1979), 89, Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coal and Coke, IBR approved for § 60.45(f)(5)(i).

(51) ASTM D3246–81, 92, 96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b)(10)(ii).

(52) ASTM D3246–05, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.4415(a)(1)(ii).

(53) ASTM D3270–73T, 80, 91, 95, Standard Test Methods for Analysis for Fluoride Content of the Atmosphere and Plant Tissues (Semiautomated Method), IBR approved for Appendix A: Method 13A, Section 16.1.

(54) ASTM D3286–85, 96, Standard Test Method for Gross Calorific Value of Coal and Coke by the Isoperibol Bomb Calorimeter, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(55) ASTM D3370–76, 95a, Standard Practices for Sampling Water, IBR approved for § 60.564(j).

(56) ASTM D3792–79, 91, Standard Test Method for Water Content of Water-Reducible Paints by Direct Injection into a Gas Chromatograph, IBR approved for Appendix A: Method 24, Section 6.3.

(57) ASTM D4017–81, 90, 96a, Standard Test Method for Water in Paints and Paint Materials by the Karl Fischer Titration Method, IBR approved for Appendix A: Method 24, Section 6.4.

(58) ASTM D4057–81, 95, Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.3.

(59) ASTM D4057–95 (Reapproved 2000), Standard Practice for Manual Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a)(1).

(60) ASTM D4084–82, 94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h)(1).

(61) ASTM D4084–05, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for §§ 60.4360 and 60.4415(a)(1)(ii).

(62) ASTM D4177–95, Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for Appendix A: Method 19, Section 12.5.2.2.1.

(63) ASTM D4177–95 (Reapproved 2000), Standard Practice for Automatic Sampling of Petroleum and Petroleum Products, IBR approved for § 60.4415(a)(1).

(64) ASTM D4239–85, 94, 97, Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods, IBR approved for Appendix A: Method 19, Section 12.5.2.1.3.

(65) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.335(b)(10)(i).

(66) ASTM D4294–03, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.4415(a)(1)(i).

(67) ASTM D4442–84, 92, Standard Test Methods for Direct Moisture Content Measurement in Wood and Wood-base Materials, IBR approved for Appendix A: Method 28, Section 16.1.1.

(68) ASTM D4444–92, Standard Test Methods for Use and Calibration of Hand-Held Moisture Meters, IBR approved for Appendix A: Method 28, Section 16.1.1.

(69) ASTM D4457–85 (Reapproved 1991), Test Method for Determination of Dichloromethane and 1, 1, 1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph, IBR approved for Appendix A: Method 24, Section 6.5.

(70) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for §§ 60.335(b)(10)(ii) and 60.4415(a)(1)(ii).

(71) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection, IBR approved for § 60.335(b)(9)(i).

(72) ASTM D4809–95, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method), IBR approved for §§ 60.18(f)(3), 60.485(g)(6), 60.564(f)(3), 60.614(d)(4), 60.664(e)(4), and 60.704(d)(4).

(73) ASTM D4810–88 (Reapproved 1999), Standard Test Method for Hydrogen Sulfide in Natural Gas Using Length of Stain Detector Tubes, IBR approved for §§ 60.4360 and 60.4415(a)(1)(ii).

(74) ASTM D5287–97 (Reapproved 2002), Standard Practice for Automatic Sampling of Gaseous Fuels, IBR approved for § 60.4415(a)(1).

(75) ASTM D5403–93, Standard Test Methods for Volatile Content of Radiation Curable Materials, IBR approved for Appendix A: Method 24, Section 6.6.

(76) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(i).

(77) ASTM D5453–05, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.4415(a)(1)(i).

(78) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for §§ 60.334(h)(1) and 60.4360.

(79) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence, IBR approved for § 60.335(b)(9)(i).

(80) ASTM D5865–98, Standard Test Method for Gross Calorific Value of Coal and Coke, IBR approved for § 60.45(f)(5)(ii), 60.46(c)(2), and Appendix A: Method 19, Section 12.5.2.1.3.

(81) ASTM D6216–98, Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, IBR approved for Appendix B, Performance Specification 1.

(82) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h)(1).

(83) ASTM D6228–98 (Reapproved 2003), Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for §§ 60.4360 and 60.4415.

(84) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection, IBR approved for § 60.335(b)(9)(i).

(85) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 60.335(a).

(86) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(ii).

(87) ASTM D6667–04, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.4415(a)(1)(ii).

(88) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method), IBR approved for Appendix B

to part 60, Performance Specification 12A, Section 8.6.2.

(89) ASTM E168–67, 77, 92, General Techniques of Infrared Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(90) ASTM E169–63, 77, 93, General Techniques of Ultraviolet Quantitative Analysis, IBR approved for §§ 60.593(b)(2) and 60.632(f).

(91) ASTM E260–73, 91, 96, General Gas Chromatography Procedures, IBR approved for §§ 60.593(b)(2) and 60.632(f).

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(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for Tables 1 and 3 of subpart EEEE, Tables 2 and 4 of subpart FFFF, and §§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

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(m) * * *

(1) Gas Processors Association Method 2377–86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, IBR approved for §§ 60.334(h)(1), 60.4360, and 60.4415(a)(1)(ii).

(2) [Reserved]

■ 3. Part 60 is amended by reserving subpart IIII and subpart JJJJ and by adding subpart KKKK to read as follows:

Subpart KKKK—Standards of Performance for Stationary Combustion Turbines

Introduction

Applicability

Emission Limits

General Compliance Requirements

Monitoring

Reporting

Performance Tests

Definitions

Table 1 to Subpart KKKK of Part 60–Nitrogen Oxide Emission Limits for New Stationary Combustion Turbines

Subpart KKKK—Standards of Performance for Stationary Combustion Turbines

Introduction

§ 60.4300 What is the purpose of this subpart?

This subpart establishes emission standards and compliance schedules for the control of emissions from stationary combustion turbines that commenced construction, modification or reconstruction after February 18, 2005.

Applicability

§ 60.4305 Does this subpart apply to my stationary combustion turbine?

(a) If you are the owner or operator of a stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour, based on the higher heating value of the fuel, which commenced construction, modification, or reconstruction after February 18, 2005, your turbine is subject to this subpart. Only heat input to the combustion turbine should be included when determining whether or not this subpart is applicable to your turbine. Any additional heat input to associated heat recovery steam generators (HRSG) or duct burners should not be included when determining your peak heat input. However, this subpart does apply to emissions from any associated HRSG and duct burners.

(b) Stationary combustion turbines regulated under this subpart are exempt from the requirements of subpart GG of this part. Heat recovery steam generators and duct burners regulated under this subpart are exempted from the requirements of subparts Da, Db, and Dc of this part.

§ 60.4310 What types of operations are exempt from these standards of performance?

(a) Emergency combustion turbines, as defined in § 60.4420(i), are exempt from the nitrogen oxides (NO_X) emission limits in § 60.4320.

(b) Stationary combustion turbines engaged by manufacturers in research and development of equipment for both combustion turbine emission control techniques and combustion turbine efficiency improvements are exempt from the NO_X emission limits in § 60.4320 on a case-by-case basis as determined by the Administrator.

(c) Stationary combustion turbines at integrated gasification combined cycle electric utility steam generating units that are subject to subpart Da of this part are exempt from this subpart.

(d) Combustion turbine test cells/stands are exempt from this subpart.

Emission Limits

§ 60.4315 What pollutants are regulated by this subpart?

The pollutants regulated by this subpart are nitrogen oxide (NO_X) and sulfur dioxide (SO_2).

§ 60.4320 What emission limits must I meet for nitrogen oxides (NO_X)?

(a) You must meet the emission limits for NO_X specified in Table 1 to this subpart.

(b) If you have two or more turbines that are connected to a single generator, each turbine must meet the emission limits for NO_X.

§ 60.4325 What emission limits must I meet for NO_X if my turbine burns both natural gas and distillate oil (or some other combination of fuels)?

You must meet the emission limits specified in Table 1 to this subpart. If your total heat input is greater than or equal to 50 percent natural gas, you must meet the corresponding limit for a natural gas-fired turbine when you are burning that fuel. Similarly, when your total heat input is greater than 50 percent distillate oil and fuels other than natural gas, you must meet the corresponding limit for distillate oil and fuels other than natural gas for the duration of the time that you burn that particular fuel.

§ 60.4330 What emission limits must I meet for sulfur dioxide (SO_2)?

(a) If your turbine is located in a continental area, you must comply with either paragraph (a)(1) or (a)(2) of this section. If your turbine is located in Alaska, you do not have to comply with the requirements in paragraph (a) of this section until January 1, 2008.

(1) You must not cause to be discharged into the atmosphere from the subject stationary combustion turbine any gases which contain SO_2 in excess of 110 nanograms per Joule (ng/J) (0.90 pounds per megawatt-hour (lb/MWh)) gross output, or

(2) You must not burn in the subject stationary combustion turbine any fuel which contains total potential sulfur emissions in excess of 26 ng SO_2/J (0.060 lb SO_2/MMBtu) heat input. If your turbine simultaneously fires multiple fuels, each fuel must meet this requirement.

(b) If your turbine is located in a noncontinental area or a continental area that the Administrator determines does not have access to natural gas and that the removal of sulfur compounds would cause more environmental harm than benefit, you must comply with one or the other of the following conditions:

(1) You must not cause to be discharged into the atmosphere from the subject stationary combustion turbine any gases which contain SO_2 in excess of 780 ng/J (6.2 lb/MWh) gross output, or

(2) You must not burn in the subject stationary combustion turbine any fuel which contains total sulfur with potential sulfur emissions in excess of 180 ng SO_2/J (0.42 lb SO_2/MMBtu) heat input. If your turbine simultaneously fires multiple fuels, each fuel must meet this requirement.

General Compliance Requirements

§ 60.4333 What are my general requirements for complying with this subpart?

(a) You must operate and maintain your stationary combustion turbine, air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times including during startup, shutdown, and malfunction.

(b) When an affected unit with heat recovery utilizes a common steam header with one or more combustion turbines, the owner or operator shall either:

(1) Determine compliance with the applicable NO_X emissions limits by measuring the emissions combined with the emissions from the other unit(s) utilizing the common heat recovery unit; or

(2) Develop, demonstrate, and provide information satisfactory to the Administrator on methods for apportioning the combined gross energy output from the heat recovery unit for each of the affected combustion turbines. The Administrator may approve such demonstrated substitute methods for apportioning the combined gross energy output measured at the steam turbine whenever the demonstration ensures accurate estimation of emissions related under this part.

Monitoring

§ 60.4335 How do I demonstrate compliance for NO_X if I use water or steam injection?

(a) If you are using water or steam injection to control NO_X emissions, you must install, calibrate, maintain and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water or steam to fuel being fired in the turbine when burning a fuel that requires water or steam injection for compliance.

(b) Alternatively, you may use continuous emission monitoring, as follows:

(1) Install, certify, maintain, and operate a continuous emission monitoring system (CEMS) consisting of a NO_X monitor and a diluent gas (oxygen (O_2) or carbon dioxide (CO_2)) monitor, to determine the hourly NO_X emission rate in parts per million (ppm) or pounds per million British thermal units (lb/MMBtu); and

(2) For units complying with the output-based standard, install, calibrate, maintain, and operate a fuel flow meter (or flow meters) to continuously measure the heat input to the affected unit; and

(3) For units complying with the output-based standard, install, calibrate, maintain, and operate a watt meter (or meters) to continuously measure the gross electrical output of the unit in megawatt-hours; and

(4) For combined heat and power units complying with the output-based standard, install, calibrate, maintain, and operate meters for useful recovered energy flow rate, temperature, and pressure, to continuously measure the total thermal energy output in British thermal units per hour (Btu/h).

§ 60.4340 How do I demonstrate continuous compliance for NO_X if I do not use water or steam injection?

(a) If you are not using water or steam injection to control NO_X emissions, you must perform annual performance tests in accordance with § 60.4400 to demonstrate continuous compliance. If the NO_X emission result from the performance test is less than or equal to 75 percent of the NO_X emission limit for the turbine, you may reduce the frequency of subsequent performance tests to once every 2 years (no more than 26 calendar months following the previous performance test). If the results of any subsequent performance test exceed 75 percent of the NO_X emission limit for the turbine, you must resume annual performance tests.

(b) As an alternative, you may install, calibrate, maintain and operate one of the following continuous monitoring systems:

(1) Continuous emission monitoring as described in §§ 60.4335(b) and 60.4345, or

(2) Continuous parameter monitoring as follows:

(i) For a diffusion flame turbine without add-on selective catalytic reduction (SCR) controls, you must define parameters indicative of the unit's NO_X formation characteristics, and you must monitor these parameters continuously.

(ii) For any lean premix stationary combustion turbine, you must continuously monitor the appropriate parameters to determine whether the unit is operating in low-NO_X mode.

(iii) For any turbine that uses SCR to reduce NO_X emissions, you must continuously monitor appropriate parameters to verify the proper operation of the emission controls.

(iv) For affected units that are also regulated under part 75 of this chapter, with state approval you can monitor the NO_X emission rate using the methodology in appendix E to part 75 of this chapter, or the low mass

emissions methodology in § 75.19, the requirements of this paragraph (b) may be met by performing the parametric monitoring described in section 2.3 of part 75 appendix E or in § 75.19(c)(1)(iv)(H).

§ 60.4345 What are the requirements for the continuous emission monitoring system equipment, if I choose to use this option?

If the option to use a NO_X CEMS is chosen:

(a) Each NO_X diluent CEMS must be installed and certified according to Performance Specification 2 (PS 2) in appendix B to this part, except the 7-day calibration drift is based on unit operating days, not calendar days. With state approval, Procedure 1 in appendix F to this part is not required. Alternatively, a NO_X diluent CEMS that is installed and certified according to appendix A of part 75 of this chapter is acceptable for use under this subpart. The relative accuracy test audit (RATA) of the CEMS shall be performed on a lb/MMBtu basis.

(b) As specified in § 60.13(e)(2), during each full unit operating hour, both the NO_X monitor and the diluent monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each 15-minute quadrant of the hour, to validate the hour. For partial unit operating hours, at least one valid data point must be obtained with each monitor for each quadrant of the hour in which the unit operates. For unit operating hours in which required quality assurance and maintenance activities are performed on the CEMS, a minimum of two valid data points (one in each of two quadrants) are required for each monitor to validate the NO_X emission rate for the hour.

(c) Each fuel flowmeter shall be installed, calibrated, maintained, and operated according to the manufacturer's instructions. Alternatively, with state approval, fuel flowmeters that meet the installation, certification, and quality assurance requirements of appendix D to part 75 of this chapter are acceptable for use under this subpart.

(d) Each watt meter, steam flow meter, and each pressure or temperature measurement device shall be installed, calibrated, maintained, and operated according to manufacturer's instructions.

(e) The owner or operator shall develop and keep on-site a quality assurance (QA) plan for all of the continuous monitoring equipment described in paragraphs (a), (c), and (d) of this section. For the CEMS and fuel flow meters, the owner or operator may, with state approval, satisfy the requirements of this paragraph by implementing the QA program and plan described in section 1 of appendix B to part 75 of this chapter.

§ 60.4350 How do I use data from the continuous emission monitoring equipment to identify excess emissions?

For purposes of identifying excess emissions:

(a) All CEMS data must be reduced to hourly averages as specified in § 60.13(h).

(b) For each unit operating hour in which a valid hourly average, as described in § 60.4345(b), is obtained for both NO_X and diluent monitors, the data acquisition and handling system must calculate and record the hourly NO_X emission rate in units of ppm or lb/MMBtu, using the appropriate equation from method 19 in appendix A of this part. For any hour in which the hourly average O_2 concentration exceeds 19.0 percent O_2 (or the hourly average CO_2 concentration is less than 1.0 percent CO_2), a diluent cap value of 19.0 percent O_2 or 1.0 percent CO_2 (as applicable) may be used in the emission calculations.

(c) Correction of measured NO_X concentrations to 15 percent O_2 is not allowed.

(d) If you have installed and certified a NO_X diluent CEMS to meet the requirements of part 75 of this chapter, states can approve that only quality assured data from the CEMS shall be used to identify excess emissions under this subpart. Periods where the missing data substitution procedures in subpart D of part 75 are applied are to be reported as monitor downtime in the excess emissions and monitoring performance report required under § 60.7(c).

(e) All required fuel flow rate, steam flow rate, temperature, pressure, and megawatt data must be reduced to hourly averages.

(f) Calculate the hourly average NO_X emission rates, in units of the emission standards under § 60.4320, using either ppm for units complying with the concentration limit or the following equation for units complying with the output based standard:

(1) For simple-cycle operation:

$$E = \frac{(NO_X)_h * (HI)_h}{P} \qquad \text{(Eq. 1)}$$

Where:

E = hourly NO_X emission rate, in lb/MWh,
$(NO_X)_h$ = hourly NO_X emission rate, in lb/MMBtu,
$(HI)_h$ = hourly heat input rate to the unit, in MMBtu/h, measured using the fuel flowmeter(s), *e.g.*, calculated using Equation D–15a in appendix D to part 75 of this chapter, and
P = gross energy output of the combustion turbine in MW.

(2) For combined-cycle and combined heat and power complying with the output-based standard, use Equation 1 of this subpart, except that the gross energy output is calculated as the sum of the total electrical and mechanical energy generated by the combustion turbine, the additional electrical or mechanical energy (if any) generated by the steam turbine following the heat recovery steam generator, and 100 percent of the total useful thermal energy output that is not used to generate additional electricity or mechanical output, expressed in equivalent MW, as in the following equations:

$$P = (Pe)_t + (Pe)_c + Ps + Po \qquad \text{(Eq. 2)}$$

Where:

P = gross energy output of the stationary combustion turbine system in MW.
$(Pe)_t$ = electrical or mechanical energy output of the combustion turbine in MW,
$(Pe)_c$ = electrical or mechanical energy output (if any) of the steam turbine in MW, and

$$Ps = \frac{Q * H}{3.413 \times 10^6 \text{ Btu/MWh}} \qquad \text{(Eq. 3)}$$

Where:

Ps = useful thermal energy of the steam, measured relative to ISO conditions, not used to generate additional electric or mechanical output, in MW,
Q = measured steam flow rate in lb/h,
H = enthalpy of the steam at measured temperature and pressure relative to ISO conditions, in Btu/lb, and 3.413 x 10_6 = conversion from Btu/h to MW.

Po = other useful heat recovery, measured relative to ISO conditions, not used for steam generation or performance enhancement of the combustion turbine.

(3) For mechanical drive applications complying with the output-based standard, use the following equation:

$$E = \frac{(NO_X)_m}{BL * AL} \qquad \text{(Eq. 4)}$$

Where:

E = NO_X emission rate in lb/MWh,
$(NO_X)_m$ = NO_X emission rate in lb/h,
BL = manufacturer's base load rating of turbine, in MW, and
AL = actual load as a percentage of the base load.

(g) For simple cycle units without heat recovery, use the calculated hourly average emission rates from paragraph (f) of this section to assess excess emissions on a 4-hour rolling average basis, as described in § 60.4380(b)(1).

(h) For combined cycle and combined heat and power units with heat recovery, use the calculated hourly average emission rates from paragraph (f) of this section to assess excess emissions on a 30 unit operating day rolling average basis, as described in § 60.4380(b)(1).

§ 60.4355 How do I establish and document a proper parameter monitoring plan?

(a) The steam or water to fuel ratio or other parameters that are continuously monitored as described in §§ 60.4335 and 60.4340 must be monitored during the performance test required under § 60.8, to establish acceptable values and ranges. You may supplement the performance test data with engineering analyses, design specifications, manufacturer's recommendations and other relevant information to define the acceptable parametric ranges more precisely. You must develop and keep on-site a parameter monitoring plan which explains the procedures used to document proper operation of the NO_X emission controls. The plan must:

(1) Include the indicators to be monitored and show there is a significant relationship to emissions and proper operation of the NO_X emission controls,

(2) Pick ranges (or designated conditions) of the indicators, or describe the process by which such range (or designated condition) will be established,

(3) Explain the process you will use to make certain that you obtain data that are representative of the emissions or parameters being monitored (such as detector location, installation specification if applicable),

(4) Describe quality assurance and control practices that are adequate to ensure the continuing validity of the data,

(5) Describe the frequency of monitoring and the data collection procedures which you will use (e.g., you are using a computerized data acquisition over a number of discrete data points with the average (or maximum value) being used for purposes of determining whether an exceedance has occurred), and

(6) Submit justification for the proposed elements of the monitoring. If a proposed performance specification differs from manufacturer recommendation, you must explain the reasons for the differences. You must submit the data supporting the justification, but you may refer to generally available sources of information used to support the justification. You may rely on engineering assessments and other data, provided you demonstrate factors which assure compliance or explain why performance testing is unnecessary to establish indicator ranges. When establishing indicator ranges, you may choose to simplify the process by treating the parameters as if they were correlated. Using this assumption, testing can be divided into two cases:

(i) All indicators are significant only on one end of range (e.g., for a thermal incinerator controlling volatile organic compounds (VOC) it is only important to insure a minimum temperature, not a maximum). In this case, you may conduct your study so that each parameter is at the significant limit of its range while you conduct your emissions testing. If the emissions tests show that the source is in compliance at the significant limit of each parameter, then as long as each parameter is within its limit, you are presumed to be in compliance.

(ii) Some or all indicators are significant on both ends of the range. In this case, you may conduct your study so that each parameter that is significant at both ends of its range assumes its extreme values in all possible combinations of the extreme values (either single or double) of all of the other parameters. For example, if there were only two parameters, A and B, and A had a range of values while B had only a minimum value, the combinations would be A high with B minimum and A low with B minimum. If both A and B had a range, the combinations would be A high and B high, A low and B low, A high and B low, A low and B high. For the case of four parameters all having a range, there are 16 possible combinations.

(b) For affected units that are also subject to part 75 of this chapter and that have state approval to use the low mass emissions methodology in § 75.19 or the NO_X emission measurement methodology in appendix E to part 75, you may meet the requirements of this paragraph by developing and keeping on-site (or at a central location for unmanned facilities) a QA plan, as described in § 75.19(e)(5) or in section 2.3 of appendix E to part 75 of this chapter and section 1.3.6 of appendix B to part 75 of this chapter.

§ 60.4360 How do I determine the total sulfur content of the turbine's combustion fuel?

You must monitor the total sulfur content of the fuel being fired in the turbine, except as provided in § 60.4365. The sulfur content of the fuel must be determined using total sulfur methods described in § 60.4415. Alternatively, if the total sulfur content of the gaseous fuel during the most recent performance test was less than half the applicable limit, ASTM D4084, D4810, D5504, or D6228, or Gas Processors Association Standard 2377 (all of which are incorporated by reference, see § 60.17), which measure the major sulfur compounds, may be used.

§ 60.4365 How can I be exempted from monitoring the total sulfur content of the fuel?

You may elect not to monitor the total sulfur content of the fuel combusted in the turbine, if the fuel is demonstrated not to exceed potential sulfur emissions of 26 ng SO_2/J (0.060 lb SO_2/MMBtu) heat input for units located in continental areas and 180 ng SO_2/J (0.42 lb SO_2/MMBtu) heat input for units located in noncontinental areas or a continental area that the Administrator determines does not have access to natural gas and that the removal of sulfur compounds would cause more environmental harm than benefit. You must use one of the following sources of information to make the required demonstration:

(a) The fuel quality characteristics in a current, valid purchase contract, tariff sheet or transportation contract for the fuel, specifying that the maximum total sulfur content for oil use in continental areas is 0.05 weight percent (500 ppmw) or less and 0.4 weight percent (4,000 ppmw) or less for noncontinental areas, the total sulfur content for natural gas use in continental areas is 20 grains of sulfur or less per 100 standard cubic feet and 140 grains of sulfur or less per 100 standard cubic feet for noncontinental areas, has potential sulfur emissions of less than less than 26 ng SO_2/J (0.060 lb SO_2/MMBtu) heat input for continental areas and has potential sulfur emissions of less than less than 180 ng SO_2/J (0.42 lb SO_2/MMBtu) heat input for noncontinental areas; or

(b) Representative fuel sampling data which show that the sulfur content of the fuel does not exceed 26 ng SO_2/J (0.060 lb SO_2/MMBtu) heat input for continental areas or 180 ng SO_2/J (0.42 lb SO_2/MMBtu) heat input for noncontinental areas. At a minimum, the amount of fuel sampling data specified in section 2.3.1.4 or 2.3.2.4 of appendix D to part 75 of this chapter is required.

§ 60.4370 How often must I determine the sulfur content of the fuel?

The frequency of determining the sulfur content of the fuel must be as follows:

(a) *Fuel oil.* For fuel oil, use one of the total sulfur sampling options and the

associated sampling frequency described in sections 2.2.3, 2.2.4.1, 2.2.4.2, and 2.2.4.3 of appendix D to part 75 of this chapter (*i.e.*, flow proportional sampling, daily sampling, sampling from the unit's storage tank after each addition of fuel to the tank, or sampling each delivery prior to combining it with fuel oil already in the intended storage tank).

(b) *Gaseous fuel.* If you elect not to demonstrate sulfur content using options in § 60.4365, and the fuel is supplied without intermediate bulk storage, the sulfur content value of the gaseous fuel must be determined and recorded once per unit operating day.

(c) *Custom schedules.* Notwithstanding the requirements of paragraph (b) of this section, operators or fuel vendors may develop custom schedules for determination of the total sulfur content of gaseous fuels, based on the design and operation of the affected facility and the characteristics of the fuel supply. Except as provided in paragraphs (c)(1) and (c)(2) of this section, custom schedules shall be substantiated with data and shall be approved by the Administrator before they can be used to comply with the standard in § 60.4330.

(1) The two custom sulfur monitoring schedules set forth in paragraphs (c)(1)(i) through (iv) and in paragraph (c)(2) of this section are acceptable, without prior Administrative approval:

(i) The owner or operator shall obtain daily total sulfur content measurements for 30 consecutive unit operating days, using the applicable methods specified in this subpart. Based on the results of the 30 daily samples, the required frequency for subsequent monitoring of the fuel's total sulfur content shall be as specified in paragraph (c)(1)(ii), (iii), or (iv) of this section, as applicable.

(ii) If none of the 30 daily measurements of the fuel's total sulfur content exceeds half the applicable standard, subsequent sulfur content monitoring may be performed at 12-month intervals. If any of the samples taken at 12-month intervals has a total sulfur content greater than half but less than the applicable limit, follow the procedures in paragraph (c)(1)(iii) of this section. If any measurement exceeds the applicable limit, follow the procedures in paragraph (c)(1)(iv) of this section.

(iii) If at least one of the 30 daily measurements of the fuel's total sulfur content is greater than half but less than the applicable limit, but none exceeds the applicable limit, then:

(A) Collect and analyze a sample every 30 days for 3 months. If any sulfur content measurement exceeds the applicable limit, follow the procedures in paragraph (c)(1)(iv) of this section. Otherwise, follow the procedures in paragraph (c)(1)(iii)(B) of this section.

(B) Begin monitoring at 6-month intervals for 12 months. If any sulfur content measurement exceeds the applicable limit, follow the procedures in paragraph (c)(1)(iv) of this section. Otherwise, follow the procedures in paragraph (c)(1)(iii)(C) of this section.

(C) Begin monitoring at 12-month intervals. If any sulfur content measurement exceeds the applicable limit, follow the procedures in paragraph (c)(1)(iv) of this section. Otherwise, continue to monitor at this frequency.

(iv) If a sulfur content measurement exceeds the applicable limit, immediately begin daily monitoring according to paragraph (c)(1)(i) of this section. Daily monitoring shall continue until 30 consecutive daily samples, each having a sulfur content no greater than the applicable limit, are obtained. At that point, the applicable procedures of paragraph (c)(1)(ii) or (iii) of this section shall be followed.

(2) The owner or operator may use the data collected from the 720-hour sulfur sampling demonstration described in section 2.3.6 of appendix D to part 75 of this chapter to determine a custom sulfur sampling schedule, as follows:

(i) If the maximum fuel sulfur content obtained from the 720 hourly samples does not exceed 20 grains/100 scf, no additional monitoring of the sulfur content of the gas is required, for the purposes of this subpart.

(ii) If the maximum fuel sulfur content obtained from any of the 720 hourly samples exceeds 20 grains/100 scf, but none of the sulfur content values (when converted to weight percent sulfur) exceeds half the applicable limit, then the minimum required sampling frequency shall be one sample at 12 month intervals.

(iii) If any sample result exceeds half the applicable limit, but none exceeds the applicable limit, follow the provisions of paragraph (c)(1)(iii) of this section.

(iv) If the sulfur content of any of the 720 hourly samples exceeds the applicable limit, follow the provisions of paragraph (c)(1)(iv) of this section.

Reporting

§ 60.4375 What reports must I submit?

(a) For each affected unit required to continuously monitor parameters or emissions, or to periodically determine the fuel sulfur content under this subpart, you must submit reports of excess emissions and monitor downtime, in accordance with § 60.7(c). Excess emissions must be reported for all periods of unit operation, including start-up, shutdown, and malfunction.

(b) For each affected unit that performs annual performance tests in accordance with § 60.4340(a), you must submit a written report of the results of each performance test before the close of business on the 60th day following the completion of the performance test.

§ 60.4380 How are excess emissions and monitor downtime defined for NO_X?

For the purpose of reports required under § 60.7(c), periods of excess emissions and monitor downtime that must be reported are defined as follows:

(a) For turbines using water or steam to fuel ratio monitoring:

(1) An excess emission is any unit operating hour for which the 4-hour rolling average steam or water to fuel ratio, as measured by the continuous monitoring system, falls below the acceptable steam or water to fuel ratio needed to demonstrate compliance with § 60.4320, as established during the performance test required in § 60.8. Any unit operating hour in which no water or steam is injected into the turbine when a fuel is being burned that requires water or steam injection for NO_X control will also be considered an excess emission.

(2) A period of monitor downtime is any unit operating hour in which water or steam is injected into the turbine, but the essential parametric data needed to determine the steam or water to fuel ratio are unavailable or invalid.

(3) Each report must include the average steam or water to fuel ratio, average fuel consumption, and the combustion turbine load during each excess emission.

(b) For turbines using continuous emission monitoring, as described in §§ 60.4335(b) and 60.4345:

(1) An excess emissions is any unit operating period in which the 4-hour or 30-day rolling average NO_X emission rate exceeds the applicable emission limit in § 60.4320. For the purposes of this subpart, a ''4-hour rolling average NO_X emission rate'' is the arithmetic average of the average NO_X emission rate in ppm or ng/J (lb/MWh) measured by the continuous emission monitoring equipment for a given hour and the three unit operating hour average NO_X emission rates immediately preceding that unit operating hour. Calculate the rolling average if a valid NO_X emission rate is obtained for at least 3 of the 4 hours. For the purposes of this subpart, a ''30-day rolling average NO_X emission rate'' is the arithmetic average of all hourly NO_X emission data in ppm or

ng/J (lb/MWh) measured by the continuous emission monitoring equipment for a given day and the twenty-nine unit operating days immediately preceding that unit operating day. A new 30-day average is calculated each unit operating day as the average of all hourly NO_X emissions rates for the preceding 30 unit operating days if a valid NO_X emission rate is obtained for at least 75 percent of all operating hours.

(2) A period of monitor downtime is any unit operating hour in which the data for any of the following parameters are either missing or invalid: NO_X concentration, CO2 or O_2 concentration, fuel flow rate, steam flow rate, steam temperature, steam pressure, or megawatts. The steam flow rate, steam temperature, and steam pressure are only required if you will use this information for compliance purposes.

(3) For operating periods during which multiple emissions standards apply, the applicable standard is the average of the applicable standards during each hour. For hours with multiple emissions standards, the applicable limit for that hour is determined based on the condition that corresponded to the highest emissions standard.

(c) For turbines required to monitor combustion parameters or parameters that document proper operation of the NO_X emission controls:

(1) An excess emission is a 4-hour rolling unit operating hour average in which any monitored parameter does not achieve the target value or is outside the acceptable range defined in the parameter monitoring plan for the unit.

(2) A period of monitor downtime is a unit operating hour in which any of the required parametric data are either not recorded or are invalid.

§ 60.4385 How are excess emissions and monitoring downtime defined for SO_2?

If you choose the option to monitor the sulfur content of the fuel, excess emissions and monitoring downtime are defined as follows:

(a) For samples of gaseous fuel and for oil samples obtained using daily sampling, flow proportional sampling, or sampling from the unit's storage tank, an excess emission occurs each unit operating hour included in the period beginning on the date and hour of any sample for which the sulfur content of the fuel being fired in the combustion turbine exceeds the applicable limit and ending on the date and hour that a subsequent sample is taken that demonstrates compliance with the sulfur limit.

(b) If the option to sample each delivery of fuel oil has been selected, you must immediately switch to one of the other oil sampling options (i.e., daily sampling, flow proportional sampling, or sampling from the unit's storage tank) if the sulfur content of a delivery exceeds 0.05 weight percent. You must continue to use one of the other sampling options until all of the oil from the delivery has been combusted, and you must evaluate excess emissions according to paragraph (a) of this section. When all of the fuel from the delivery has been burned, you may resume using the as-delivered sampling option.

(c) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour of a required sample, if invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample.

§ 60.4390 What are my reporting requirements if I operate an emergency combustion turbine or a research and development turbine?

(a) If you operate an emergency combustion turbine, you are exempt from the NO_X limit and must submit an initial report to the Administrator stating your case.

(b) Combustion turbines engaged by manufacturers in research and development of equipment for both combustion turbine emission control techniques and combustion turbine efficiency improvements may be exempted from the NO_X limit on a case-by-case basis as determined by the Administrator. You must petition for the exemption.

§ 60.4395 When must I submit my reports?

All reports required under § 60.7(c) must be postmarked by the 30th day following the end of each 6-month period.

Performance Tests

§ 60.4400 How do I conduct the initial and subsequent performance tests, regarding NO_X?

(a) You must conduct an initial performance test, as required in § 60.8. Subsequent NO_X performance tests shall be conducted on an annual basis (no more than 14 calendar months following the previous performance test).

(1) There are two general methodologies that you may use to conduct the performance tests. For each test run:

(i) Measure the NO_X concentration (in parts per million (ppm)), using EPA Method 7E or EPA Method 20 in appendix A of this part. For units complying with the output based standard, concurrently measure the stack gas flow rate, using EPA Methods 1 and 2 in appendix A of this part, and measure and record the electrical and thermal output from the unit. Then, use the following equation to calculate the NO_X emission rate:

$$E = \frac{1.194 \times 10^{-7} * (NO_X)_c * Q_{std}}{P} \qquad (Eq.\ 5)$$

Where:

E = NO_X emission rate, in lb/MWh

1.194×10^{-7} = conversion constant, in lb/dscf-ppm

$(NO_X)_c$ = average NO_X concentration for the run, in ppm

Q_{std} = stack gas volumetric flow rate, in dscf/hr

P = gross electrical and mechanical energy output of the combustion turbine, in MW (for simple-cycle operation), for combined-cycle operation, the sum of all electrical and mechanical output from the combustion and steam turbines, or, for combined heat and power operation, the sum of all electrical and mechanical output from the combustion and steam turbines plus all useful recovered thermal output not used for additional electric or mechanical generation, in MW, calculated according to § 60.4350(f)(2); or

(ii) Measure the NO_X and diluent gas concentrations, using either EPA Methods 7E and 3A, or EPA Method 20 in appendix A of this part. Concurrently measure the heat input to the unit, using a fuel flowmeter (or flowmeters), and measure the electrical and thermal output of the unit. Use EPA Method 19 in appendix A of this part to calculate the NO_X emission rate in lb/MMBtu. Then, use Equations 1 and, if necessary, 2 and 3 in § 60.4350(f) to calculate the NO_X emission rate in lb/MWh.

(2) Sampling traverse points for NO_X and (if applicable) diluent gas are to be selected following EPA Method 20 or EPA Method 1 (non-particulate procedures), and sampled for equal time intervals. The sampling must be performed with a traversing single-hole probe, or, if feasible, with a stationary multi-hole probe that samples each of the points sequentially. Alternatively, a multi-hole probe designed and documented to sample equal volumes from each hole may be used to sample simultaneously at the required points.

(3) Notwithstanding paragraph (a)(2) of this section, you may test at fewer points than are specified in EPA Method 1 or EPA Method 20 in appendix A of this part if the following conditions are met:

(i) You may perform a stratification test for NO_X and diluent pursuant to

(A) [Reserved], or

(B) The procedures specified in section 6.5.6.1(a) through (e) of appendix A of part 75 of this chapter.

(ii) Once the stratification sampling is completed, you may use the following alternative sample point selection criteria for the performance test:

(A) If each of the individual traverse point NO_X concentrations is within ±10 percent of the mean concentration for all traverse points, or the individual traverse point diluent concentrations differs by no more than ±5ppm or ±0.5 percent CO_2 (or O_2) from the mean for all traverse points, then you may use three points (located either 16.7, 50.0 and 83.3 percent of the way across the stack or duct, or, for circular stacks or ducts greater than 2.4 meters (7.8 feet) in diameter, at 0.4, 1.2, and 2.0 meters from the wall). The three points must be located along the measurement line that exhibited the highest average NO_X concentration during the stratification test; or

(B) For turbines with a NO_X standard greater than 15 ppm @ 15% O_2, you may sample at a single point, located at least 1 meter from the stack wall or at the stack centroid if each of the individual traverse point NO_X concentrations is within ±5 percent of the mean concentration for all traverse points, or the individual traverse point diluent concentrations differs by no more than ±3ppm or ±0.3 percent CO_2 (or O_2) from the mean for all traverse points; or

(C) For turbines with a NO_X standard less than or equal to 15 ppm @ 15% O_2, you may sample at a single point, located at least 1 meter from the stack wall or at the stack centroid if each of the individual traverse point NO_X concentrations is within ±2.5 percent of the mean concentration for all traverse points, or the individual traverse point diluent concentrations differs by no more than ±1ppm or ±0.15 percent CO_2 (or O_2) from the mean for all traverse points.

(b) The performance test must be done at any load condition within plus or minus 25 percent of 100 percent of peak load. You may perform testing at the highest achievable load point, if at least 75 percent of peak load cannot be achieved in practice. You must conduct three separate test runs for each performance test. The minimum time per run is 20 minutes.

(1) If the stationary combustion turbine combusts both oil and gas as primary or backup fuels, separate performance testing is required for each fuel.

(2) For a combined cycle and CHP turbine systems with supplemental heat (duct burner), you must measure the total NO_X emissions after the duct burner rather than directly after the turbine. The duct burner must be in operation during the performance test.

(3) If water or steam injection is used to control NO_X with no additional post-combustion NO_X control and you choose to monitor the steam or water to fuel ratio in accordance with § 60.4335, then that monitoring system must be operated concurrently with each EPA Method 20 or EPA Method 7E run and must be used to determine the fuel consumption and the steam or water to fuel ratio necessary to comply with the applicable § 60.4320 NO_X emission limit.

(4) Compliance with the applicable emission limit in § 60.4320 must be demonstrated at each tested load level. Compliance is achieved if the three-run arithmetic average NO_X emission rate at each tested level meets the applicable emission limit in § 60.4320.

(5) If you elect to install a CEMS, the performance evaluation of the CEMS may either be conducted separately or (as described in § 60.4405) as part of the initial performance test of the affected unit.

(6) The ambient temperature must be greater than 0 °F during the performance test.

§ 60.4405 How do I perform the initial performance test if I have chosen to install a NO_X-diluent CEMS?

If you elect to install and certify a NO_X-diluent CEMS under § 60.4345, then the initial performance test required under § 60.8 may be performed in the following alternative manner:

(a) Perform a minimum of nine RATA reference method runs, with a minimum time per run of 21 minutes, at a single load level, within plus or minus 25 percent of 100 percent of peak load. The ambient temperature must be greater than 0 °F during the RATA runs.

(b) For each RATA run, concurrently measure the heat input to the unit using a fuel flow meter (or flow meters) and measure the electrical and thermal output from the unit.

(c) Use the test data both to demonstrate compliance with the applicable NO_X emission limit under § 60.4320 and to provide the required reference method data for the RATA of the CEMS described under § 60.4335.

(d) Compliance with the applicable emission limit in § 60.4320 is achieved if the arithmetic average of all of the NO_X emission rates for the RATA runs, expressed in units of ppm or lb/MWh, does not exceed the emission limit.

§ 60.4410 How do I establish a valid parameter range if I have chosen to continuously monitor parameters?

If you have chosen to monitor combustion parameters or parameters indicative of proper operation of NO_X emission controls in accordance with § 60.4340, the appropriate parameters must be continuously monitored and recorded during each run of the initial performance test, to establish acceptable operating ranges, for purposes of the parameter monitoring plan for the affected unit, as specified in § 60.4355.

§ 60.4415 How do I conduct the initial and subsequent performance tests for sulfur?

(a) You must conduct an initial performance test, as required in § 60.8. Subsequent SO_2 performance tests shall be conducted on an annual basis (no more than 14 calendar months following the previous performance test). There are three methodologies that you may use to conduct the performance tests.

(1) If you choose to periodically determine the sulfur content of the fuel combusted in the turbine, a representative fuel sample would be collected following ASTM D5287 (incorporated by reference, see § 60.17) for natural gas or ASTM D4177 (incorporated by reference, see § 60.17) for oil. Alternatively, for oil, you may follow the procedures for manual pipeline sampling in section 14 of ASTM D4057 (incorporated by reference, see § 60.17). The fuel analyses of this section may be performed either by you, a service contractor retained by you, the fuel vendor, or any other qualified agency. Analyze the samples for the total sulfur content of the fuel using:

(i) For liquid fuels, ASTM D129, or alternatively D1266, D1552, D2622, D4294, or D5453 (all of which are incorporated by reference, see § 60.17); or

(ii) For gaseous fuels, ASTM D1072, or alternatively D3246, D4084, D4468, D4810, D6228, D6667, or Gas Processors Association Standard 2377 (all of which are incorporated by reference, see § 60.17).

(2) Measure the SO_2 concentration (in parts per million (ppm)), using EPA Methods 6, 6C, 8, or 20 in appendix A of this part. In addition, the American Society of Mechanical Engineers (ASME) standard, ASME PTC 19–10–1981–Part 10, ''Flue and Exhaust Gas Analyses,'' manual methods for sulfur dioxide (incorporated by reference, see § 60.17) can be used instead of EPA Methods 6 or 20. For units complying with the output based standard, concurrently measure the stack gas flow rate, using EPA Methods 1 and 2 in appendix A of this part, and measure and record the electrical and thermal output from the unit. Then use the following equation to calculate the SO_2 emission rate:

$$E = \frac{1.664 \times 10^{-7} * (SO_2)_c * Q_{std}}{P} \qquad \text{(Eq. 6)}$$

Where:

E = SO_2 emission rate, in lb/MWh

1.664×10^{-7} = conversion constant, in lb/dscf-ppm

$(SO_2)_c$ = average SO_2 concentration for the run, in ppm

Q_{std} = stack gas volumetric flow rate, in dscf/hr

P = gross electrical and mechanical energy output of the combustion turbine, in MW (for simple-cycle operation), for combined-cycle operation, the sum of all electrical and mechanical output from the combustion and steam turbines, or, for combined heat and power operation, the sum of all electrical and mechanical output from the combustion and steam turbines plus all useful recovered thermal output not used for additional electric or mechanical generation, in MW, calculated according to § 60.4350(f)(2); or

(3) Measure the SO_2 and diluent gas concentrations, using either EPA Methods 6, 6C, or 8 and 3A, or 20 in appendix A of this part. In addition, you may use the manual methods for sulfur dioxide ASME PTC 19–10–1981–Part 10 (incorporated by reference, see § 60.17). Concurrently measure the heat input to the unit, using a fuel flowmeter (or flowmeters), and measure the electrical and thermal output of the unit. Use EPA Method 19 in appendix A of this part to calculate the SO_2 emission rate in lb/MMBtu. Then, use Equations 1 and, if necessary, 2 and 3 in § 60.4350(f) to calculate the SO_2 emission rate in lb/MWh.

(b) [Reserved]

Definitions

§ 60.4420 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein will have the meaning given them in the Clean Air Act and in subpart A (General Provisions) of this part.

Combined cycle combustion turbine means any stationary combustion turbine which recovers heat from the combustion turbine exhaust gases to generate steam that is only used to create additional power output in a steam turbine.

Combined heat and power combustion turbine means any stationary combustion turbine which recovers heat from the exhaust gases to heat water or another medium, generate steam for useful purposes other than additional electric generation, or directly uses the heat in the exhaust gases for a useful purpose.

Combustion turbine model means a group of combustion turbines having the same nominal air flow, combustor inlet pressure, combustor inlet temperature, firing temperature, turbine inlet temperature and turbine inlet pressure.

Combustion turbine test cell/stand means any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) combustion turbines.

Diffusion flame stationary combustion turbine means any stationary combustion turbine where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition.

Duct burner means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary combustion turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

Efficiency means the combustion turbine manufacturer's rated heat rate at peak load in terms of heat input per unit of power output—based on the higher heating value of the fuel.

Emergency combustion turbine means any stationary combustion turbine which operates in an emergency situation. Examples include stationary combustion turbines used to produce power for critical networks or equipment, including power supplied to portions of a facility, when electric power from the local utility is interrupted, or stationary combustion turbines used to pump water in the case of fire or flood, etc. Emergency stationary combustion turbines do not include stationary combustion turbines used as peaking units at electric utilities or stationary combustion turbines at industrial facilities that typically operate at low capacity factors. Emergency combustion turbines may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are required by the manufacturer, the vendor, or the insurance company associated with the turbine. Required testing of such units should be minimized, but there is no time limit on the use of emergency combustion turbines.

Excess emissions means a specified averaging period over which either (1) the NO_X emissions are higher than the applicable emission limit in § 60.4320; (2) the total sulfur content of the fuel being combusted in the affected facility exceeds the limit specified in § 60.4330; or (3) the recorded value of a particular monitored parameter is outside the acceptable range specified in the parameter monitoring plan for the affected unit.

Gross useful output means the gross useful work performed by the stationary combustion turbine system. For units using the mechanical energy directly or generating only electricity, the gross useful work performed is the gross electrical or mechanical output from the turbine/generator set. For combined heat and power units, the gross useful work performed is the gross electrical or mechanical output plus the useful thermal output (i.e., thermal energy delivered to a process).

Heat recovery steam generating unit means a unit where the hot exhaust gases from the combustion turbine are routed in order to extract heat from the gases and generate steam, for use in a steam turbine or other device that utilizes steam. Heat recovery steam generating units can be used with or without duct burners.

Integrated gasification combined cycle electric utility steam generating unit means a coal-fired electric utility steam generating unit that burns a synthetic gas derived from coal in a

combined-cycle gas turbine. No solid coal is directly burned in the unit during operation.

ISO conditions means 288 Kelvin, 60 percent relative humidity and 101.3 kilopascals pressure.

Lean premix stationary combustion turbine means any stationary combustion turbine where the air and fuel are thoroughly mixed to form a lean mixture before delivery to the combustor. Mixing may occur before or in the combustion chamber. A lean premixed turbine may operate in diffusion flame mode during operating conditions such as startup and shutdown, extreme ambient temperature, or low or transient load.

Natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1,100 British thermal units (Btu) per standard cubic foot. Natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

Noncontinental area means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, the Northern Mariana Islands, or offshore platforms.

Peak load means 100 percent of the manufacturer's design capacity of the combustion turbine at ISO conditions.

Regenerative cycle combustion turbine means any stationary combustion turbine which recovers heat from the combustion turbine exhaust gases to preheat the inlet combustion air to the combustion turbine.

Simple cycle combustion turbine means any stationary combustion turbine which does not recover heat from the combustion turbine exhaust gases to preheat the inlet combustion air to the combustion turbine, or which does not recover heat from the combustion turbine exhaust gases for purposes other than enhancing the performance of the combustion turbine itself.

Stationary combustion turbine means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), heat recovery system, and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system. Stationary means that the combustion turbine is not self propelled or intended to be propelled while performing its function. It may, however, be mounted on a vehicle for portability.

Unit operating day means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

Unit operating hour means a clock hour during which any fuel is combusted in the affected unit. If the unit combusts fuel for the entire clock hour, it is considered to be a full unit operating hour. If the unit combusts fuel for only part of the clock hour, it is considered to be a partial unit operating hour.

Useful thermal output means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application, i.e., total thermal energy made available for processes and applications other than electrical or mechanical generation. Thermal output for this subpart means the energy in recovered thermal output measured against the energy in the thermal output at 15 degrees Celsius and 101.325 kilopascals of pressure.

TABLE 1.—TO SUBPART KKKK OF PART 60.—NITROGEN OXIDE EMISSION LIMITS FOR NEW STATIONARY COMBUSTION TURBINES

Combustion turbine type	Combustion turbine heat input at peak load (HHV)	NO_X emission standard
New turbine firing natural gas, electric generating.	≤ 50 MMBtu/h	42 ppm at 15 percent O_2 or 290 ng/J of useful output (2.3 lb/MWh).
New turbine firing natural gas, mechanical drive	≤ 50 MMBtu/h	100 ppm at 15 percent O_2 or 690 ng/J of useful output (5.5 lb/MWh).
New turbine firing natural gas	> 50 MMBtu/h and ≤ 850 MMBtu/h	25 ppm at 15 percent O_2 or 150 ng/J of useful output (1.2 lb/MWh).
New, modified, or reconstructed turbine firing natural gas.	> 850 MMBtu/h	15 ppm at 15 percent O_2 or 54 ng/J of useful output (0.43 lb/MWh)
New turbine firing fuels other than natural gas, electric generating.	≤ 50 MMBtu/h	96 ppm at 15 percent O_2 or 700 ng/J of useful output (5.5 lb/MWh).
New turbine firing fuels other than natural gas, mechanical drive.	≤ 50 MMBtu/h	150 ppm at 15 percent O_2 or 1,100 ng/J of useful output (8.7 lb/MWh).
New turbine firing fuels other than natural gas ..	> 50 MMBtu/h and ≤ 850 MMBtu/h	74 ppm at 15 percent O_2 or 460 ng/J of useful output (3.6 lb/MWh).
New, modified, or reconstructed turbine firing fuels other than natural gas.	> 850 MMBtu/h	42 ppm at 15 percent O_2 or 160 ng/J of useful output (1.3 lb/MWh).
Modified or reconstructed turbine	≤ 50 MMBtu/h	150 ppm at 15 percent O_2 or 1,100 ng/J of useful output (8.7 lb/MWh).
Modified or reconstructed turbine firing natural gas.	> 50 MMBtu/h and ≤ 850 MMBtu/h	42 ppm at 15 percent O_2 or 250 ng/J of useful output (2.0 lb/MWh).
Modified or reconstructed turbine firing fuels other than natural gas.	> 50 MMBtu/h and ≤ 850 MMBtu/h	96 ppm at 15 percent O_2 or 590 ng/J of useful output (4.7 lb/MWh).

TABLE 1.—TO SUBPART KKKK OF PART 60.—NITROGEN OXIDE EMISSION LIMITS FOR NEW STATIONARY COMBUSTION TURBINES—Continued

Combustion turbine type	Combustion turbine heat input at peak load (HHV)	NO_X emission standard
Turbines located north of the Arctic Circle (latitude 66.5 degrees north), turbines operating at less than 75 percent of peak load, modified and reconstructed offshore turbines, and turbine operating at temperatures less than 0°F.	≤ 30 MW output	150 ppm at 15 percent O_2 or 1,100 ng/J of useful output (8.7 lb/MWh).
Turbines located north of the Arctic Circle (latitude 66.5 degrees north), turbines operating at less than 75 percent of peak load, modified and reconstructed offshore turbines, and turbine operating at temperatures less than 0°F.	> 30 MW output	96 ppm at 15 percent O_2 or 590 ng/J of useful output (4.7 lb/MWh).
Heat recovery units operating independent of the combustion turbine.	All sizes	54 ppm at 15 percent O_2 or 110 ng/J of useful output (0.86 lb/MWh).

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Part IV

The President

Proclamation 8034—To Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Guatemala, and For Other Purposes

Federal Register
Vol. 71, No. 129
Thursday, July 6, 2006

Presidential Documents

Title 3—

The President

Proclamation 8034 of June 30, 2006

To Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Guatemala, and For Other Purposes

By the President of the United States of America

A Proclamation

1. On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement (Agreement) with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (Agreement countries). The Agreement was approved by the Congress in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''Act'') (Public Law 109–53, 119 Stat. 462) (19 U.S.C. 4001 note).

2. Section 201 of the Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Article 3.3 and Annex 3.3 (including the schedule of United States duty reductions with respect to originating goods) of the Agreement.

3. Consistent with section 201(a)(2) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP) on the date the Agreement enters into force with respect to that country.

4. Consistent with section 201(a)(3) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 *et seq.*) on the date the Agreement enters into force with respect to that country, subject to the exceptions set out in section 201(a)(3)(B) of the Act.

5. Consistent with section 213(b)(5)(D) of the CBERA, as amended by the United States-Caribbean Basin Trade Partnership Act (CBTPA) (Public Law 106–200), each Agreement country is to be removed from the enumeration of designated CBTPA beneficiary countries on the date the Agreement enters into force with respect to that country.

6. Section 604 of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2483), as amended, authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 201 of the Act and section 604 of the 1974 Act, and the Act having taken effect pursuant to section 107(a), do proclaim that:

(1) In order to provide generally for the preferential tariff treatment being accorded under the Agreement to Guatemala, to provide certain other treatment to originating goods for the purposes of the Agreement, to provide

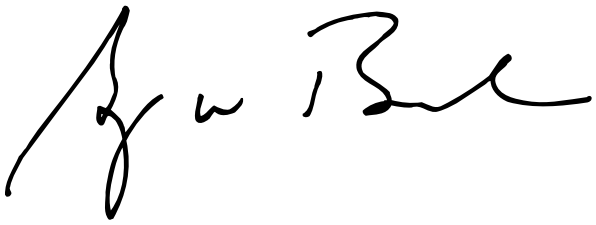
tariff-rate quotas with respect to certain goods, to reflect the removal of Guatemala from the enumeration of designated beneficiary developing countries for purposes of the GSP, to reflect the removal of Guatemala from the enumeration of designated beneficiary countries for purposes of the CBERA and the CBTPA, to implement statistical monitoring relating to tariff provisions that the President previously proclaimed to implement the Agreement, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in the Annex of Publication 3861 of the United States International Trade Commission, entitled ''*Modifications to the Harmonized Tariff Schedule of the United States to Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Guatemala*'' (Publication 3861), which is incorporated by reference into this proclamation.

(2)(a) The amendments to the HTS made by paragraph (1) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in the Annex to Publication 3861.

(b) Except as provided in paragraph (2)(a) of this proclamation, this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 2006.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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



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Stationary combustion turbines; emmissions control standards; published 7-6-06
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Bound printed matter machinable parcels; marking requirement; published 3-15-06
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LIST OF PUBLIC LAWS

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Safe and Timely Interstate Placement of Foster Children Act of 2006 (July 3, 2006; 120 Stat. 508)

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