10–23–06 Monday
Vol. 71 No. 204 Oct. 23, 2006

Pages 62055–62196

Federal Register

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LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Proclamation 8072 of October 18, 2006

50th Anniversary of the Hungarian Revolution

By the President of the United States of America

A Proclamation

On the 50th anniversary of the Hungarian Revolution, we celebrate the Hungarians who defied an empire to demand their liberty, we recognize the friendship between the United States and Hungary, and we reaffirm our shared desire to spread freedom to people around the world.

The story of Hungarian democracy represents the triumph of liberty over tyranny. In the fall of 1956, the Hungarian people demanded change, and tens of thousands of students, workers, and other citizens bravely marched through the streets to call for freedom. Though Soviet tanks brutally crushed the Hungarian uprising, the thirst for freedom lived on, and in 1989 Hungary became the first communist nation in Europe to make the transition to democracy. The lesson of the Hungarian experience is clear: liberty can be delayed, but it cannot be denied. Today, this beautiful country has held democratic elections, established a free economy, and inspired millions around the world.

The United States is grateful for the warm relationship between our countries and for Hungary's efforts to expand freedom and democracy around the world in places such as the Balkans, Iraq, Afghanistan, and Cuba. By spreading the blessings of liberty, Hungary is helping to lay the foundation of peace for generations to come.

As we celebrate this anniversary, we also recognize the many ways Hungarian Americans have enriched and strengthened our country. Their spirit and hard work have contributed to the vitality, success, and prosperity of our Nation, and we continue to be inspired by their courage and conviction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 23, 2006, as a day of recognition in honor of the 50th Anniversary of the Hungarian Revolution. I encourage all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of October, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–8854
Filed 10–20–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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Monday, October 23, 2006

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

RIN 0584–AD66

For-Profit Center Participation in the Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts without change the interim rule, published on July 27, 2005, which added a provision to the Child and Adult Care Food Program (CACFP) regulations authorizing for-profit centers providing child care or outside-school-hours care to participate based on the income eligibility of 25 percent of children in care for free or reduced price meals. This provision, which has been available nationwide through annual appropriation acts since December 2000, was permanently established by the Child Nutrition and WIC Reauthorization Act of 2004. This rule permits the ongoing participation of for-profit centers in the CACFP based on the income eligibility of children in care for free or reduced price meals.

DATES: This final rule is effective November 22, 2006.

FOR FURTHER INFORMATION CONTACT: Keith Churchill or Minh Pham, Child Care and Summer Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Why Was the Interim Rule Published?

An interim rule on the participation of for-profit centers in the CACFP was published on July 27, 2005 (70 FR 43259). The interim rule was issued in response to Section 119(a) of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265), which amended section 17(a)(2)(B)(i) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1766(a)(2)(B)(i)) to permanently authorize for-profit centers that provide child care or outside-school-hours care to participate in the CACFP if 25 percent of the children in care are eligible for free or reduced price meals under the Program.

This criterion provides an additional means by which for-profit centers may qualify for Program participation. For-profit centers in all States have been permitted to participate in the Program since December 2000, when a provision of Public Law 106–554, added Section 17(a)(2)(B)(i) to the NSLA, 42 U.S.C. 1766(a)(2)(B)(i). That time-limited provision was subsequently renewed annually until made permanent by Public Law 108–265 on June 30, 2004. Prior to December 2000, the Food and Nutrition Service (FNS) implemented separate but similar authority in section 17(p) of the NSLA, 42 U.S.C. 1766(p), permitting for-profit centers in three States (Kentucky, Iowa, and Delaware) to participate in the Program. Section 119(a)(2) of Public Law 108–265 struck this provision. As a result of the permanent statutory provision affecting for-profit centers, these States were notified that the pilot projects were eliminated and their affected for-profit centers were incorporated into regular for-profit Program participation under section 17(a)(2)(B)(i).

This authority differs from that in section 17(a)(2)(B)(ii) (42 U.S.C. 1766(a)(2)(B)(ii)), which permits for-profit centers providing child care or outside-school-hours care to participate in the CACFP if they receive compensation from the State title XX funds and if at least 25 percent of the enrolled children or the licensed capacity (whichever is less) receive benefits under title XX of the Social Security Act. This criterion was established by Public Law 101–147, which reauthorized child nutrition programs in November 1989, and is located at section 17(a)(2)(B)(ii) of the NSLA.

This final rule adopts the definition of ''For-profit center'' in § 226.2, which was added to the CACFP regulations by the interim rule. This definition describes the eligibility criteria pertaining to for-profit centers serving children and adults. All other changes, which were made by the interim rule and are adopted by this final rule, stem from this new definition of for-profit center. These changes consist primarily of name changes in which the new term ''For-profit center'' is substituted for ''Proprietary title XIX center'' or ''Proprietary title XX center''.

What Comments Were Received on the Interim Rule?

We did not receive any comments on the interim rule.

II. Procedural Matters

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Roberto Salazar, Administrator for the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This final rule implements a statutory change that permanently authorizes for-profit centers to participate in the Child and Adult Care Food Program on the basis of income eligibility of 25 percent of children in care for free or reduced price meals. This provision has been available to for-profit centers as an eligibility criterion for participation in the Program since FY 2001. Since the provision is not new, the Food and Nutrition Service estimates that the permanent designation of this eligibility criterion will not substantially increase the number of for-profit centers that may apply to participate in the Program.

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,

the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Child and Adult Care Food Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This final rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the Dates paragraph of the rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Food Care Program, the administrative procedures are set forth at 7 CFR 226.6(k), which establishes appeal procedures and 7 CFR 226.22 and 7 CFR parts 3016 and 3019, which address administrative appeal procedures for disputes involving procurement by State agencies and institutions.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that there is no negative effect on these groups. All data available to FNS indicate that protected individuals have the same opportunity to participate in the CACFP as non-protected individuals. Regulations at 7 CFR 226.6(f)(1) require that CACFP institutions agree to operate the Program in compliance with applicable Federal civil rights laws, including title VI of the Civil Rights Act of 1964, title IX of the Education amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Department's regulations concerning nondiscrimination (7 CFR Part 15, 15a, and 15b). At 7 CFR 226.6(m)(1), State agencies are required to monitor CACFP institution compliance with these laws and regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collections of information unless it displays a current valid OMB control number. The rule does not contain any information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

Accordingly, the interim rule amending 7 CFR part 226, which was published at 70 FR 43259 on July 27, 2005, is adopted as a final rule without change.

Dated: October 13, 2006.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E6–17640 Filed 10–20–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–051]

RIN 1625–AA09

Drawbridge Operation Regulations; Saugus River, Lynn and Revere, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the operation of the General Edwards SR1A Bridge, mile 1.7, across the Saugus River, between Lynn and Revere, Massachusetts. This temporary final rule allows the bridge to remain in the closed position from November 1, 2006 through April 30, 2007. This action is necessary to facilitate structural maintenance at the bridge.

DATES: This rule is effective from November 1, 2006 through April 30, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–06–051) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue,

Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This shortened notification period is reasonable because the bridge repairs facilitated by this temporary final rule are vital, necessary repairs that must be performed in order to assure the continued safe and reliable operation of the bridge.

The time period selected to make the necessary repairs, November 1, 2006 through April 30, 2007, is the earliest time period that the work can be performed without disrupting the marine transportation system.

On July 11, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations''; Saugus River, Lynn and Revere, Massachusetts, in the **Federal Register** (71 FR 39028). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The General Edwards SR1A Bridge at mile 1.7, across the Saugus River, has a vertical clearance of 27 feet at mean high water and 36 feet at mean low water. The existing regulations at 33 CFR 117.618(b) required the draw to open on signal, except that, from April 1 through November 30, midnight to 8 a.m. an eight-hour notice is required. From December 1 through March 31, an eight-hour notice is required at all times for bridge openings.

The bridge owner, the Department of Conservation and Recreation (DCR), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2006, through April 30, 2007, to complete structural rehabilitation construction at the bridge. The bridge was closed during the same time period from November 2005 through April 2006, to perform the first phase of this rehabilitation work. Work could not be completed during the closure period in 2005–2006, necessitating a second closure period in 2006–2007.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been mace to this temporary final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order.

This conclusion is based on the fact that the bridge rarely opens during the November through April time period.

Small Entities

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

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

This conclusion is based on the fact that the bridge rarely opens during the November through April time period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

No small entities requested Coast Guard assistance and none was given.

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

Collection of Information

This rule calls for now new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation considering that it relates to the promulgation of operating regulations or procedures for drawbridges. Under figure 2–1, paragraph (32)(e), of the instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From November 1, 2006 through April 30, 2007, § 117.618(b) is suspended and a new paragraph (d) is added to read as follows:

§ 117.618 Saugus River.

* * * * *

(d) The draw of the General Edwards SR1A Bridge at mile 1.7, need not open for the passage of vessel traffic from November 1, 2006 through April 30, 2007.

Dated: October 13, 2006.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 06–8823 Filed 10–20–06; 8:45 am]

BILLING CODE 4910–15–M

Proposed Rules

Federal Register
Vol. 71, No. 204
Monday, October 23, 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.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1266

[Notice (06–079)]

RIN 2700–AB51

Cross-Waiver of Liability

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) is proposing to amend part 1266 of Title 14 to update and ensure consistency in the use of cross-waiver of liability provisions in NASA agreements. Part 1266 provides the regulatory basis for cross-waiver provisions used in the following categories of NASA mission agreements: Agreements for activities in connection with the ''Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station'' (commonly referred to as the ISS Intergovernmental Agreement, or IGA); agreements for use of the Space Shuttle; and agreements for NASA's science and space exploration missions that are launched on Expendable Launch Vehicles (ELVs). Among other generally clerical amendments to this Part, NASA is proposing to delete the subsection regarding the cross-waiver of liability during Space Shuttle operations and expand the scope of the ELV provision to encompass Reusable Launch Vehicles (RLVs) as well as other users of the same launch vehicle during the same launch.

Comment Date: Comments due on or before November 22, 2006.

ADDRESSES: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Steven A. Mirmina, Senior Attorney, Office of the General Counsel, NASA Headquarters, 300 E Street, SW., Washington, DC 20546; telephone: 202/358–2432; e-mail *steve.mirmina@nasa.gov.*

SUPPLEMENTARY INFORMATION: In the 14 years since the current rule's publication (September 25, 1991), shifts in areas of NASA mission and program emphases warrant an adjustment of the NASA cross-waiver provisions to ensure they remain current. Most notably, on January 29, 1998, the United States formally joined with 14 nations in an international partnership in cooperative space exploration for the design, development, operation, and utilization of the International Space Station (ISS) through the IGA. The IGA entered into force for NASA and various other Partners between 1998 and 2005. Article 16 of the IGA establishes a broad cross-waiver of liability among Partner States and their contractually or otherwise related entities by requiring those entities to make similar waivers of liability. Thus, NASA is required to include IGA-based cross-waivers in contracts and agreements for activities related to the ISS.

A second development involves the February 1, 2003, Space Shuttle *Columbia* accident. In the wake of that tragedy, NASA embraced the recommendations of the Columbia Accident Investigation Board (CAIB) that the NASA Space Transportation System (Shuttle) be used chiefly for completion of the ISS and then retired. While NASA is assessing the possibility of a servicing mission for the Hubble Space Telescope using the Shuttle, NASA does not expect to conclude any Space Act agreements with international partners for cooperation on this prospective mission. Since current servicing mission plans envision no other non-ISS missions, there is no longer a need to retain the section of part 1266 regarding a separate cross-waiver of liability to be used during Shuttle operations (formerly § 1266.103), and NASA is proposing to delete it.

Third, NASA has continued to conduct scores of missions for the purpose of furthering science and space exploration unrelated to the ISS and without using the Shuttle. These missions are currently launched using ELVs and Evolved Expendable Launch Vehicles (EELVs). NASA anticipates that missions of this nature may also be launched using commercially available RLVs. Thus, NASA is expanding the scope of the current ELV section to include RLVs as well. NASA has an established practice of including cross-waivers in its mission agreements to lower the risks and costs of space exploration. Revising the present regulation is intended to promote consistency between the general types of cross-waivers NASA uses in its agreement practice for ISS activities and other scientific missions launched by commercial vehicles. Additionally, since commercial launch providers can launch multiple payloads on the same vehicle, NASA is proposing to expand the scope of the waiver in § 1266.104 to include other users of a single launch vehicle.[1]

Fourth, NASA has had a long history and consistent practice of requiring international and domestic partners to cross-waive claims for loss or damage and, thus, assume responsibility for the risks inherent in space exploration. For years, NASA has utilized broad, no-fault, no subrogation cross-waivers. In response to questions raised by the U.S. Department of Justice in 1995 regarding the Agency's authority to waive claims of the U.S. Government, and at NASA's request, President Clinton underscored successive Administrations' acknowledgement of the importance of these liability arrangements by affirming, through a delegation of his constitutional foreign affairs authority, NASA's authority to enter into cross-waivers of liability, on behalf of the Government of the United States, with its Partners in international agreements. In part, the President's delegation provided:

The authority conferred upon the President by the Constitution and the laws of the United States of America to execute mutual waivers of claims of liability on behalf of the

[1] The provisions of this Regulation will be applicable only to NASA launches that are not licensed by the Federal Aviation Administration (FAA). The FAA licenses launch vehicles and reentry of reentry vehicles under authority granted to the Secretary of Transportation in the Commercial Space Launch Act (CSLA) of 1984, as amended, codified in 49 U.S.C. Subtitle IX, chapter 701, and delegated to the FAA Administrator. Licensing authority under the CSLA is carried out by FAA Associate Administrator for Commercial Space Transportation. Where NASA acquires launch services on a commercial basis (such as through contracts for spacecraft delivery on-orbit) the cross-waiver provisions of the CSLA will apply.

United States for damages arising out of cooperative activities is hereby delegated to the Administrator of NASA for agreements with foreign governments and their agents regarding aeronautical, science, and space activities that are executed pursuant to the authority granted NASA by the National Aeronautics and Space Act of 1958, Public Law 85–568, as amended.[2]

However, this delegation of cross-waiver authority for cooperative agreements with foreign entities left unresolved the extent of NASA's authority to execute similar waivers of U.S. Government claims against the Agency's U.S. cooperative partners, such as corporations and universities. Therefore, NASA sought statutory confirmation and clarification of NASA's authority to implement liability cross-waivers with both domestic and international partners.

Congress responded by amending the National Aeronautics and Space Act of 1958 (Space Act) to include Section 309.[3] Specifically, this section, codified at 42 U.S.C. 2458c, confirms and clarifies NASA's authority to waive claims of the U.S. Government in cooperative agreements in exchange for a reciprocal waiver of claims from the cooperating party. In situations where, for example, a foreign space agency lacks fully reciprocal authority to waive claims of its government, special arrangements have been developed to cover the gap, including the requirement to purchase insurance to protect NASA against broader claims of a foreign government that a foreign space agency is unable to waive. A prime example of such arrangements is set forth in Article 16 of the IGA to address potential subrogated claims of the Japanese Government.

Use of Cross-Waivers for ISS and ELV/RLV Activities: The fundamental purpose of cross-waivers of liability in NASA agreements is to encourage participation in the exploration, exploitation, and use of outer space. The IGA declares the Partner States' intention that cross-waivers of liability be broadly construed to achieve this purpose. It is important to underscore the fact that agreements for high-risk activities of very broad and diffuse scope require that both entities be involved in ''Protected Space Operations'' or ''PSO.'' PSO is defined to include a wide range of design, transport, flight, and payload activities. In addition, for many of these higher-risk activities as well as for any activity requiring a significant amount of contractor involvement, NASA typically insists that each party require its own related entities (e.g. contractors, subcontractors, users, and customers, at any tier) to agree to waive claims against similar entities that may be legally related to any other party. This is referred to as the ''flow down'' requirement of the cross-waiver.

The chief differences between the ISS and ELV cross-waivers lie in the broad scope of the ISS activities required to be covered by cross-waivers in contrast with the more limited scope of waivers used for most mission-specific science and space exploration activities. To illustrate, the cross-waiver for ISS activities generally is in effect anywhere in the world when activities are conducted in implementation of any ISS-related agreement. The ELV-based cross-waiver is more limited; it generally is only applied to the parties to an agreement and their related entities, although it is being expanded by this proposed rule to cover other payloads launched on the same vehicle. In essence, however, the operation of the ISS and ELV waivers is comparable; both the party claiming damage and the party causing damage must be participating in ''Protected Space Operations''. More specifically, the term ''Protected Space Operations'' in the IGA cross-waiver includes all activities in implementation of the IGA or Memoranda of Understanding concluded pursuant to the IGA. In contrast, the term ''Protected Space Operations'' in NASA's science and space exploration agreements covers all ELV or RLV activities that are performed in implementation of an agreement for launch services. The specific requirements and precise scope of the term ''Protected Space Operations'' are provided in §§ 1266.102 and 1266.104.

The other changes accomplished in this revision are minor, making uniform the capitalization, use of italics, ordering of listed terms, and general editorial changes to the cross-waiver regulation.

General: This part establishes the regulatory basis for cross-waivers incorporated in NASA agreements implementing the IGA as well as for cooperative ELV or RLV missions that do not involve ISS activities. In addition, this part provides the regulatory basis for NASA to flow down the obligations of these cross-waivers of liability to its related entities through contracts issued pursuant to its mission agreements. To be made fully effective, the cross-waivers required by this part will necessitate concomitant changes to NASA procurement regulations. NASA plans to implement these changes as expeditiously as possible after this proposed rule becomes final.

This regulation is not a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review''. As required by the Regulatory Flexibility Act, NASA certifies that these amendments will not have a significant impact on small business entities.

List of Subjects in 14 CFR Part 1266

Cross-waiver, Evolved expendable launch vehicle, Expendable launch vehicle, Intergovernmental agreement, International Space Station, Liability, Reusable launch vehicle, Space shuttle, Space transportation and exploration.

For the reasons stated in the preamble, NASA proposes to revise 14 CFR part 1266 as follows:

PART 1266—CROSS-WAIVER OF LIABILITY

Sec.

Authority: 42 U.S.C. 2473 (c)(1), (c)(5) and 42 U.S.C. 2458c.

§ 1266.100 Purpose.

The purpose of this regulation is to ensure that consistent cross-waivers of liability are included in NASA agreements for activities related to the ISS and for NASA's other activities of scientific space exploration that do not involve activities in connection with the ISS, whether launched by Expendable Launch Vehicle (ELV) or Reusable Launch Vehicle (RLV).

§ 1266.101 Scope.

The provisions at § 1266.102 are intended to implement the cross-waiver requirement in Article 16 of the intergovernmental agreement entitled, ''Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station (IGA)''. Article 16 establishes a cross-waiver of

[2] Presidential Documents, Memorandum of October 10, 1995, Delegation of Authority to Enter into Mutual Waivers of Liability for Certain Agreements Under the National Aeronautics and Space Act of 1958, 60 FR 53251, October 13, 1995.

[3] The provisions of Section 309 were recently extended in the NASA Authorization Act of 2005, Pub. L. 109–155, which was signed by President Bush on December 30, 2005.

liability for use by the Partner States and their related entities and requires that this reciprocal waiver of claims be extended to contractually or otherwise related entities of NASA by requiring those entities to make similar waivers of liability. Thus, NASA is required to include IGA-based cross-waivers in contracts and agreements for ISS activities that fall within the scope of ''Protected Space Operations,'' as that term is defined in § 1266.102. The purpose of the waiver is to encourage participation in the ''exploration, exploitation, and use of outer space'' through the ISS. The IGA declares the Partner States' intention that this cross-waiver of liability be broadly construed to achieve this purpose. NASA incorporates the provisions of § 1266.102 into its agreements for activities that implement the IGA and the memoranda of understanding between the United States and its respective international partners. The provisions at § 1266.104 of this part provide the regulatory basis for cross-waiver clauses to be incorporated in NASA's science and space exploration agreements that do not involve activities in connection with the ISS and are launched by either ELVs or RLVs.

§ 1266.102 Cross-waiver of liability for agreements involving activities related to the International Space Station (ISS).

(a) The objective of this section is to implement NASA's responsibility to flow down the cross-waiver of liability in Article 16 of the IGA to its related entities in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the ISS. It is intended that the cross-waiver of liability be broadly construed to achieve this objective. Provided that the waiver of claims is reciprocal, the parties may tailor the scope of the cross-waiver clause in these agreements to address the specific circumstances of a particular cooperation.

(b) For the purposes of this section:

(1) The term ''Partner State'' includes each contracting party for which the Agreement Among The Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America Concerning Cooperation on the Civil International Space Station (signed January 29, 1998; hereinafter the ''Intergovernmental Agreement'') has entered into force or become operative (pursuant to Sections 25 and 26, respectively, of the Intergovernmental Agreement), or any successor agreement. A Partner State includes its Cooperating Agency. It also includes any entity specified in the MOU between NASA and the Government of Japan to assist the Government of Japan's Cooperating Agency in the implementation of that MOU.

(2) The term ''related entity'' means:

(i) A contractor or subcontractor of a Party or a Partner State at any tier;

(ii) A user or customer of a Party or a Partner State at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party or a Partner State at any tier. The term ''related entity'' may also apply to a State, or an agency or institution of a State, having the same relationship to a Partner State as described in paragraphs (b)(2)(i) through (b)(2)(iii) of this section or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (b)(3)(vi) of this section. The terms ''contractors'' and ''subcontractors'' include suppliers of any kind.

(3) The term ''damage'' means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect or consequential damage.

(4) The term ''launch vehicle'' means an object or any part thereof intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(5) The term ''payload'' means all property to be flown or used on or in a launch vehicle or the ISS.

(6) The term ''Protected Space Operations'' means all launch vehicle activities, ISS activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of the IGA, MOUs concluded pursuant to the IGA, and implementing arrangements. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, the ISS, payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. ''Protected Space Operations'' also includes all activities related to evolution of the ISS, as provided for in Article 14 of the IGA. ''Protected Space Operations'' excludes activities on Earth which are conducted on return from the ISS to develop further a payload's product or process for use other than for ISS-related activities in implementation of the IGA.

(c)(1) Cross-waiver of liability: Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims against:

(i) Another Party;

(ii) A Partner State other than the United States of America;

(iii) A related entity of any entity identified in paragraph (c)(1)(i) or (c)(1)(ii) of this section; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(2) In addition, each Party shall, by contract or otherwise, extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its related entities by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section; and

(ii) Require that their related entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors or subrogees (except when a subrogee is a Party to this Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of such person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damage resulting from a failure of a Party to extend the cross-waiver of liability to its related entities, pursuant to paragraph (c)(2) of this section; or

(vi) Claims by or against a Party arising out of or relating to the other Party's failure to meet its contractual obligations set forth in the Agreement.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. 70101 *et seq.*) is applicable.

§ 1266.103 [Reserved].

§ 1266.104 Cross-waiver of liability for science and space exploration agreements for missions launched by Expendable Launch Vehicles or Reusable Launch Vehicles.

(a) The purpose of this section is to implement a cross-waiver of liability between the parties to agreements for NASA's science and space exploration missions launched by an Expendable Launch Vehicle (ELV) or Reusable Launch Vehicle (RLV) when those missions do not involve activities in connection with the International Space Station (ISS). This comprehensive cross-waiver of liability is intended to apply both between the parties to those agreements as well as to the parties' related entities, in the interest of furthering participation in space exploration, use, and investment. It is intended that the cross-waiver of liability be broadly construed to achieve this objective. Provided that the waiver of claims is reciprocal, the parties may tailor the scope of the cross-waiver clause in these agreements to address the specific circumstances of a particular cooperation.

(b) For purposes of this section:

(1) The term ''Party'' means a party to a NASA agreement involving a launch of an ELV or RLV not involving activities in connection with the ISS.

(2) The term ''related entity'' means:

(i) A contractor or subcontractor of a Party at any tier;

(ii) A user or customer of a Party at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Party at any tier. The term ''related entity'' may also apply to a State or an agency or institution of a State, having the same relationship to a Party as described in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, or otherwise engaged in the implementation of Protected Space Operations as defined in paragraph (b)(6) of this section. The terms ''contractors'' and ''subcontractors'' include suppliers of any kind.

(3) The term ''damage'' means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect, or consequential damage.

(4) The term ''launch vehicle'' means an object or any part thereof intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(5) The term ''payload'' means all property to be flown or used on or in a launch vehicle.

(6) The term ''Protected Space Operations'' means all ELV or RLV activities and payload activities on Earth, in outer space, or in transit between Earth and outer space in implementation of an agreement for launch services. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, or instruments, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services. The term ''Protected Space Operations'' excludes activities on Earth that are conducted on return from space to develop further a payload's product or process for use other than for the activities within the scope of an Agreement for launch services.

(c) Cross-waiver of liability: (1) Each Party agrees to a cross-waiver of liability pursuant to which each Party waives all claims against any of the entities or persons listed in paragraphs (c)(1)(i) through (c)(1)(iv) of this section based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage against:

(i) Another Party;

(ii) A party to another NASA agreement that includes flight on the same launch vehicle;

(iii) A related entity of any entity identified in paragraphs (c)(1)(i) or (c)(1)(ii) of this section; or

(iv) The employees of any of the entities identified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(2) In addition, each Party shall extend the cross-waiver of liability as set forth in paragraph (c)(1) of this section to its own related entities by requiring them, by contract or otherwise, to:

(i) Waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section; and

(ii) Require that their related entities waive all claims against the entities or persons identified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of claims arising from the Convention on International Liability for Damage Caused by Space Objects, which entered into force on September 1, 1972, where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this section, this cross-waiver of liability shall not be applicable to:

(i) Claims between a Party and its own related entity or between its own related entities;

(ii) Claims made by a natural person, his/her estate, survivors, or subrogees (except when a subrogee is a Party to this Agreement or is otherwise bound by the terms of this cross-waiver) for bodily injury to, or other impairment of health of, or death of such natural person;

(iii) Claims for damage caused by willful misconduct;

(iv) Intellectual property claims;

(v) Claims for damages resulting from a failure of a Party to extend the cross-waiver of liability to its related entities, pursuant to paragraph (c)(2) of this section; or

(vi) Claims by or against a Party arising out of or relating to the other Party's failure to meet its contractual obligations set forth in the Agreement.

(5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

(6) This cross-waiver shall not be applicable when the Commercial Space

Launch Act cross-waiver (49 U.S.C. 70101 *et seq.*) is applicable.

Michael D. Griffin,

Administrator.

[FR Doc. E6–17701 Filed 10–20–06; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 061010262–6262–01]

Effectiveness of Licensing Procedures for Agricultural Commodities to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is requesting public comments on the effectiveness of its licensing procedures as defined in the Export Administration Regulations for the export of agricultural commodities to Cuba. BIS will include a description of these comments in its biennial report to the Congress, as required by the Trade Sanctions Reform and Export Enhancement Act of 2000 (Pub. L. 106–387), as amended.

DATES: Comments must be received by November 22, 2006.

ADDRESSES: Written comments (three copies) should be sent to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2705, Washington, DC 20230 with a reference to TSRA 2006 Report, or to e-mail *publiccomments@bis.doc.gov* with a reference to TSRA 2006 Report in the subject line. Comments may also be emailed to Joan Roberts, Office of Nonproliferation and Treaty Compliance, at *JRoberts@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Office of Nonproliferation and Treaty Compliance, Telephone: (202) 482–4252. Additional information on BIS procedures and our previous biennial report under the Trade Sanctions Reform and Export Enhancement Act, as amended, is available at *http://www.bis.doc.gov/licensing/TSRA_TOC.html.* Copies of these materials may also be requested by contacting the Office of Nonproliferation and Treaty Compliance.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–2165. The Office of Administration displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office 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) 482–2165 for assistance.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) authorizes exports of agricultural commodities to Cuba pursuant to section 906(c) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (22 U.S.C. 7205(a)), under the procedures set forth in § 740.18 of the Export Administration Regulations (EAR) (15 CFR 740.18). These are the only licensing procedures currently in effect pursuant to the requirements of section 906(a) of TSRA. Please include the phrase TSRA 2006 on the envelope or in the subject line of the email as appropriate.

Under the provisions of section 906(c) of TSRA (22 U.S.C. 7205(c)), BIS must submit a biennial report to the Congress on the operation of the licensing system implemented pursuant to section 906(a) for the preceding two-year period. This report is to include the number and types of licenses applied for, the number and types of licenses approved, the average amount of time elapsed from the date of filing of a license application until the date of its approval, the extent to which the licensing procedures were effectively implemented, and a description of comments received from interested parties during a 30-day public comment period about the effectiveness of the licensing procedures. BIS is currently preparing a biennial report on the operation of the licensing system for the two-year period from October 1, 2004 to September 30, 2006.

By this notice, BIS requests public comments on the effectiveness of the licensing procedures for the export of agricultural commodities to Cuba set forth under § 740.18 of the EAR. Parties submitting comments are asked to be as specific as possible. All comments received by the close of the comment period will be considered by BIS in developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–2165. The Office of Administration displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office 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) 482–2165 for assistance.

Dated: October 17, 2006.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E6–17707 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 061005255–6255–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 22, 2006.

ADDRESSES: Written comments may be sent by e-mail to *publiccomments@bis.doc.gov.* Include ''FPBEC'' in the subject line of the message. Written comments (three copies) may be submitted by mail or hand delivery to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include ''FPBEC'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry

and Security, Telephone: (202) 482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http://www.bis.doc.gov/News/2006/foreignPolicyReport/Default.htm* and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

SUPPLEMENTARY INFORMATION: Foreign policy-based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended. The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR, including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items, activities and persons, including: certain general purpose microprocessors for 'military end-uses' and 'military end-users' (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§§ 742.15 and 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability items (§ 742.6); equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, and 746.7); certain entities in Russia (§ 744.10); individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14); certain persons designated by Executive Order 13315 (''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members'') (§ 744.18); and certain sanctioned entities (§ 744.20). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44551, August 7, 2006), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2006, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in receiving comments on the economic impact of proliferation controls. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (i.e., those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre- and post-shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered

by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office 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) 482–0637 for assistance.

Dated: October 12, 2006.

Christopher A. Padilla,

Assistant Secretary for Export Administration.

[FR Doc. E6–17713 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110405–05]

RIN 1545–BE58

Limitations on Transfers of Built-in Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 362(e)(2) of the Internal Revenue Code of 1986 (Code). The proposed regulations reflect changes made to the law by the American Jobs Creation Act of 2004. These proposed regulations provide guidance regarding the determination of the bases of assets and stock transferred in certain nonrecognition transactions and will affect corporations and large shareholders of corporations, including individuals, partnerships, corporations, and tax-exempt entities.

DATES: Written or electronic comments and requests for a public hearing must be received by January 22, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–110405–05), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to CC:PA:LPD:PR (REG–110405–05), Courier's Desk, Internal Revenue Service, Crystal Mall 4 Building, 1901 S. Bell St., Arlington, VA. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs* or Federal e-Rulemaking Portal at *www.regulations.gov* (IRS REG–110405–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jay M. Singer, (202) 622–7530 (not toll-free number), or concerning submissions of comments, Richard A. Hurst, *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Prior to 1999, Congress grew concerned that taxpayers were engaging in corporate nonrecognition transactions in order to accelerate and duplicate losses. See S. Rep. No. 201, 106th Cong., 1st Sess. 46–48 (1999). Congress was primarily concerned with the acceleration and duplication of losses through the assumption of liabilities (including liabilities to which assets transferred in a corporate nonrecognition transaction were subject). As a result, in 1999, Congress enacted section 362(d) of the Code to prevent the bases of assets transferred to a corporation from being increased above such assets' aggregate fair market value as a result of a liability assumption. In addition, in 2000, Congress enacted section 358(h) to reduce the basis of stock received in certain corporate nonrecognition transactions, but not below fair market value, by the amount of any liabilities assumed in the transaction.

Following the enactment of sections 362(d) and 358(h), Congress remained concerned that taxpayers were engaging in various tax-motivated transactions to take more than one tax deduction for a single economic loss. Consequently, in the American Jobs Creation Act of 2004 (Pub. L. 108–357, 188 Stat. 1418), Congress enacted section 362(e), which limits the ability of taxpayers to duplicate net built-in loss in certain nonrecognition transactions.

Section 362(e)(1)(A) provides that if there would be an importation of a net built-in loss in a transaction described in section 362(a) or (b), the basis of certain property acquired in such a transaction shall be its fair market value immediately after the transaction. Section 362(e)(1)(B) provides that property is described in section 362(e)(1) if gain or loss with respect to such property is not subject to tax in the hands of the transferor immediately before the transfer, and gain or loss with respect to such property is subject to tax in the hands of the transferee immediately after the transfer. Further, section 362(e)(1)(C) provides that there is an importation of net built-in loss in a transaction if the transferee's aggregate adjusted basis in such property would (but for the application of section 362(e)(1)) exceed the aggregate fair market value of such property immediately after the transaction.

Section 362(e)(2)(A) provides that if property is transferred by a transferor to a transferee in a transaction described in section 362(a) and not described in section 362(e)(1), and if the transferee's aggregate adjusted basis in the transferred property would (but for the application of section 362(e)(2)) exceed its aggregate fair market value immediately after the transfer, then the transferee's aggregate adjusted basis in the transferred property shall not exceed the fair market value of the property immediately after the transfer. Further, section 362(e)(2)(B) provides that this aggregate reduction in the basis of the transferred property shall be allocated among the property in proportion to their respective built-in losses immediately before the transaction. As an alternative to this reduction in the basis of the transferred assets, section 362(e)(2)(C) provides that if the transferor and the transferee both so elect, section 362(e)(2)(A) shall not apply, and the transferor's basis in the stock of the transferee received in exchange for the property that would otherwise be subject to basis reduction under section 362(e)(2)(A) shall not exceed its fair market value.

Since the enactment of section 362(e)(2), the IRS and Treasury Department have been exploring issues concerning the interpretation, scope, and application of the section and have proposed these regulations to address these issues. Additional guidance regarding the application of section 362(e)(2) to transfers between members of a consolidated group and the treatment of transactions that have the effect of importing losses into the U.S. tax system (to which section 362(e)(1) applies) will be addressed in separate guidance projects.

Explanation of Provisions

1. General Provisions

In general, these proposed regulations apply to transfers of net built-in loss property within the U.S. tax system in

which the Code otherwise would duplicate the net built-in asset loss in the stock of the transferee. Such transfers include exchanges subject to section 351, capital contributions, and transfers of paid-in surplus. However, these proposed regulations do not apply to a transfer where the duplicated loss is imported into the U.S. tax system and the transfer is subject to section 362(e)(1), which addresses certain loss importation transactions. Property is net built-in loss property if the transferee corporation's aggregate basis in the property, but for the application of section 362(e)(2), would exceed the aggregate fair market value of such property immediately after the transfer.

If section 362(e)(2) applies to a transfer, the transferee corporation receives the property with an aggregate basis not exceeding the aggregate fair market value of the property immediately after the transfer. The transferee allocates the basis reduction among the transferred loss properties in proportion to the amount of loss in each such property immediately before the transfer.

Taxpayers have questioned the effect of any gain taken into account as a result of the transfer. The IRS and Treasury Department have determined that any gain recognized by the transferor that increases the transferee corporation's basis in the transferred property must be taken into account in order to determine the full amount of loss duplication. Accordingly, these proposed regulations provide that in determining whether the transferred property has a net built-in loss in the hands of the transferee, the bases of such property first must be increased under section 362(a) or (b) for any gain recognized by the transferor on the transfer of the property.

There also have been questions about the application of section 362(e)(2) in the case of multiple transferors. The legislative history to section 362(e)(2) contains some potentially conflicting language that refers to the aggregate adjusted basis of property contributed by a transferor or a control group of which the transferor is a member. See Conf. Rep. No. 108–755, 108th Cong., 2d Sess. 635 (2004). However, because the basis rules in section 362 and section 358 are applied on a transferor-by-transferor basis, applying section 362(e)(2) to an aggregated group of transferors would undermine Congress' intent to prevent loss duplication. Further, section 362(e)(2) specifically refers to property ''transferred by a transferor.'' Accordingly, these proposed regulations clarify that section 362(e)(2) applies separately to each transferor. Thus, each transferor's transfer is measured separately, and the determination of whether that transfer is subject to these provisions is made solely by reference to the property transferred by such transferor. Consequently, the treatment of one transferor is unaffected by the transfer of property by any other transferor for purposes of section 362(e)(2).

In addition, these proposed regulations clarify that, even if part of a transaction is subject to section 362(e)(1), section 362(e)(2) can apply to the portion of the transaction that is not described in section 362(e)(1).

2. Application of Section 362(e)(2) to Transfers Outside of the U.S. Tax System

Under general principles of law, the Code applies to all transactions without regard to whether such application has any current U.S. tax consequences. In the case of transfers that are wholly outside the U.S. tax system, section 362(e)(2) applies but does not have relevance unless and until the assets transferred or the stock received in the exchange enter the U.S. tax system. Such assets or stock may subsequently enter the U.S. tax system either directly or indirectly. For example, the assets or stock could directly enter the U.S. tax system through a transfer of all or a portion of such assets or stock to a U.S. person, or as a result of the original transferor or original transferee becoming a U.S. person. Further, the assets or stock could indirectly enter the U.S. tax system, for example, through a transfer of all or a portion of such assets or stock to a CFC, or as a result of the original transferor or original transferee becoming a CFC. However, in many cases the U.S. tax treatment of a transfer that is wholly outside the U.S. tax system will never become relevant. The IRS and Treasury Department recognize that, if a transferor does not anticipate the transfer becoming U.S. tax relevant, it is not likely to undertake the valuation and record-keeping that section 362(e)(2) would generally require. If circumstances change at some later date, the administrative burden of reconstructing appropriate records may be substantial.

The IRS and Treasury Department have determined that relief is appropriate when transactions are consummated with no plan or intention to enter the U.S. tax system. Thus, if assets are transferred in a transaction that is potentially subject to section 362(e)(2) more than two years before entering the U.S. tax system, then, solely for purposes of section 362(e)(2), these proposed regulations generally presume that the aggregate fair market value of the transferred assets equals their aggregate adjusted basis in the hands of the transferee immediately after the transfer. This presumption applies only if neither the original transfer nor the later entry of any portion of the assets into the U.S. tax system was undertaken with a view to reducing the U.S. tax liability of any person or duplicating loss by avoiding the application of section 362(e)(2).

If a transfer subject to section 362(e)(2) occurs within the two-year period immediately before becoming U.S. tax relevant, the IRS and Treasury Department do not believe that relief from the administrative burden is either necessary or appropriate. Thus, in such a case, the fair market value presumption does not apply, and section 362(e)(2) applies to the original transfer. The proposed regulations provide the relevant parties a means by which to make an election under section 362(e)(2)(C), if desired, at the time of entry into the U.S. tax system.

3. General Application of Section 362(e)(2) to Reorganizations

Taxpayers have questioned whether a transaction described in both sections 362(a) and 362(b) may be subject to section 362(e)(2). The IRS and Treasury Department believe that, if there is a duplication of loss in a transaction described in section 362(a) (and not subject to section 362(e)(1)), Congressional intent requires that the transaction be recognized as described in section 362(a) notwithstanding that it is also described in section 362(b). The proposed regulations clarify that section 362(e)(2) can apply to such transactions.

4. Exception for Transactions in Which Net Built-in Loss Is Eliminated Without Recognition

In certain transactions, the transferor's duplicated basis in the transferee stock or securities is eliminated by operation of statute without recognition or benefit. For example, in a transaction meeting the requirements of both sections 351 and 368(a)(1)(D), the transferor ordinarily receives stock with an aggregate basis equal to that of the transferred property. As a result, where the transferred property has a net-built in loss, but for section 362(e)(2), the transferor would receive the transferee stock with an adjusted basis that duplicates the built-in loss in the transferred property. However, if the transferor distributes the transferee stock pursuant to a section 368(a)(1)(D) acquisitive reorganization or pursuant to section 355, no taxpayer will recognize the duplicated loss because the

distributee will determine its basis in the transferee stock by reference to its basis in surrendered stock of the transferor.

The IRS and Treasury Department have concluded that, even if a transaction is described in section 362(e)(2), if there is no duplicated loss that can be recognized, section 362(e)(2) should not apply. Accordingly, these proposed regulations provide that section 362(e)(2) will not apply to transactions to the extent that loss duplication is prevented or eliminated where the transferor distributes the transferee stock and/or securities received in the transaction without recognizing gain or loss, and, upon completion of the transaction, no person holds any asset with a basis determined in whole or in part by reference to the transferor's basis in the transferee stock and/or securities.

5. Application of Section 362(e)(2) to Transfers in Exchange for Securities

In certain transactions, net built-in loss also can be duplicated in securities received without the recognition of gain or loss. For example, a U.S. transferor duplicates a net built-in loss when it transfers property with a net built-in loss to a U.S. controlled corporation in exchange for stock and securities and all or part of the securities are retained following the distribution of the stock of the controlled corporation pursuant to section 355. Such a transaction is described in section 362(a) but not section 362(e)(1) and, accordingly, may be subject to section 362(e)(2).

Although the statute is silent about the treatment of securities received in such a property transfer, the IRS and Treasury Department have concluded that Congressional intent would be circumvented if section 362(e)(2) were treated as not applying to both stock and securities received in transactions to which section 362(e)(2) applies. Accordingly, these proposed regulations apply section 362(e)(2) to transfers in exchange for both stock and securities to the extent necessary to eliminate loss duplication.

Because the section applies equally to transfers in exchange for both stock and securities, the IRS and Treasury Department have concluded that taxpayers must be allowed to make an election under section 362(e)(2)(C) for both stock and securities. Accordingly, these proposed regulations allow the transferor and transferee to elect to apply section 362(e)(2)(C) to the transferee stock and securities received in the exchange.

6. Election To Reduce Stock Basis

Section 362(e)(2)(C) permits transferors and transferees that engage in transactions to which section 362(e)(2) applies to elect to reduce the transferor's basis in the stock received instead of reducing the transferee corporation's basis in the property transferred. As described in this preamble, section 362(e)(2)(C) provides that if the election is made, section 362(e)(2)(A) shall not apply, and the transferor's basis in the transferee stock received in the exchange shall not exceed its fair market value immediately after the exchange. The statutory language might be interpreted to require the transferor to reduce its basis in the stock received by an amount that is larger than the amount by which the transferee otherwise would have been required to reduce its aggregate basis in the assets under section 362(e)(2)(A). For example, assume a corporation, P, contributes a trade or business to a subsidiary, S, in a transaction to which section 351 applies. The assets of the business have an aggregate adjusted basis of $100 and a value of $90, and the business has $20 of associated contingent liabilities. Even if section 358(h)(2)(A) applies to prevent section 358 from reducing P's basis in the S stock by the amount of the contingent liabilities, section 362(e)(2)(C) might be interpreted to limit P's basis in the S stock to $70 (notwithstanding that section 362(e)(2)(A) would only require a $10 reduction in the basis of the assets in the hands of S). Thus, a section 362(e)(2)(C) election might result in a larger basis reduction in the stock than would be required in the assets absent an election.

The IRS and Treasury Department believe that, because section 362(e)(2) is intended to prevent the duplication of net built-in loss in the transferred assets, the amount of basis reduction resulting from an election under section 362(e)(2)(C) should not be any larger than what is necessary to eliminate the duplication of loss in the transferred assets. Therefore, these proposed regulations clarify that the amount of the reduction in the basis of the transferee stock (and securities) as a result of an election to apply section 362(e)(2)(C) is equal to the net built-in loss in the transferred assets in the hands of the transferee. In other words, under the proposed regulations, the amount of the reduction in the basis of the transferee stock (and securities) resulting from such an election equals the amount of the reduction in the basis of the assets required by section 362(e)(2)(A) absent the election.

These proposed regulations also implement Notice 2005–70, 2005–41 IRB 694, see § 601.601(d)(2), which instructs taxpayers how to elect to apply section 362(e)(2)(C). These proposed regulations revise and expand upon the procedures in Notice 2005–70 to provide more methods and time periods in which to make the section 362(e)(2)(C) election. Specifically, the regulations expand the classifications of persons who can attach the required election statement to a tax return (including an information return).

The ''protective election'' referenced in Notice 2005–70 also is included in the proposed regulations because the IRS and Treasury Department anticipate that, at the time of the transaction, taxpayers may not always be able to determine with reasonable certainty whether section 362(e)(2) applies to a transfer.

The IRS and Treasury Department request comments on whether the instructions provided in these proposed regulations adequately address the needs of taxpayers. In particular, the IRS and Treasury Department invite comments regarding whether, alternatively, a separate form should be developed and made available to enable taxpayers to make the section 362(e)(2)(C) election prior to and apart from filing it with a U.S. return.

The basis tracing provisions in § 1.358–2 apply to certain transfers to which section 351 and either section 354 or section 356 apply. However, the IRS and Treasury Department believe that the basis tracing provisions in § 1.358–2 should not apply to a transfer to which section 362(e)(2) also applies if the transferor and transferee make an election to apply section 362(e)(2)(C). The IRS and Treasury Department believe that the statutory language in section 362(e)(2)(C) and the policy of preventing loss duplication precludes the application of the basis tracing provisions because basis tracing could allow the transferor to hold transferee stock or securities with a basis in excess of fair market value even after a reduction under section 362(e)(2)(C). Accordingly, these proposed regulations provide that the provisions of § 1.358–2(a)(2) will not apply to a transaction to which section 362(e)(2) applies if the transferor and transferee elect to apply section 362(e)(2)(C). The IRS and Treasury Department request comments regarding whether this treatment is appropriate.

7. Transfers by Partnerships and S Corporations

The proposed regulations also provide that, where the transferor is a

partnership and a section 362(e)(2)(C) election is made, any reduction to the partnership's basis in the transferee stock received is treated as an expenditure of the partnership, as described in section 705(a)(2)(B). The proposed regulations provide a similar rule applicable to transfers by S corporations that elect to apply section 362(e)(2)(C).

The IRS and Treasury Department are further exploring how the provisions of section 362(e)(2) apply to partnerships. The IRS and Treasury Department invite comments on this general issue and specifically invite comments regarding the transfer of a partnership interest in exchange for stock in a section 351 transaction to which section 362(e)(2) applies. For example, individuals A and B contribute cash to form a partnership, PRS. PRS purchases property that subsequently decreases in value. A contributes his PRS interest to a corporation in a transaction that qualifies under section 351. PRS does not make an election under section 754. Comments are invited regarding the interaction of section 362(e)(2) and the partnership provisions under these and similar facts.

8. Application of Section 336(d) to Property Previously Transferred in a Section 362(e)(2) Transaction

Commentators have questioned how section 362(e)(2) interacts with other Code sections. Specifically, some have asked how section 362(e)(2) applies when section 336(d) might be implicated. Section 336(d) provides various limitations on a liquidating corporation's ability to recognize loss when it distributes property acquired in a section 351 transaction or as a contribution to capital. The IRS and Treasury Department believe that, generally, sections 336(d) and 362(e)(2) are fully compatible where the parties do not make an election to apply section 362(e)(2)(C). However, where an election has been made, the two sections may operate to deny part or all of an economic loss. The IRS and Treasury Department invite comments regarding this issue.

9. Application to Section 304 Transactions

In response to inquiries, the proposed regulations contain an example demonstrating how section 362(e)(2) applies to a section 351 transaction treated as occurring under section 304. The IRS and Treasury Department are considering whether the regulations should deem an election to apply section 362(e)(2)(C) to have been made in section 304 transactions. The IRS and Treasury Department invite comments regarding this issue.

Proposed Effective Date

These proposed regulations are proposed to apply to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

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 has also 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, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its 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 written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules 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 any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Jay M. Singer and Filiz A. Serbes of the Office of Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.362–4 also issued under 26 U.S.C. 362. * * *

Par. 2. Section 1.358–2 is amended by revising paragraphs (a)(2)(viii) and adding a new sentence at the end of paragraph (d) to read as follows:

§ 1.358–2 Allocation of basis among nonrecognition property.

(a) * * *

(2) * * *

(viii) This paragraph (a)(2) shall not apply to determine the basis of a share of stock or security received by a shareholder or security holder in an exchange described in both section 351 and either section 354 or section 356, if, in connection with the exchange, the shareholder or security holder exchanges property for stock or securities in an exchange to which neither section 354 nor section 356 applies, the shareholder or security holder exchanges property for stock or securities to which it elects to apply section 362(e)(2)(C), or liabilities of the shareholder or security holder are assumed.

* * * * *

(d) * * * Paragraph (a)(2)(viii) of this section applies to exchanges and distributions of stock occurring after the date these regulations are published as final regulations in the **Federal Register**.

Par. 3. In § 1.362–3, the section heading is added and reserved to read as follows:

§ 1.362–3 Limitations on loss importation. [Reserved].

Par. 4. Section 1.362–4 is added to read as follows:

§ 1.362–4 Limitations on built-in loss duplication.

(a) *Purpose and scope.* The purpose of this section is to prevent the duplication of net built-in loss in transactions described in section 362(e)(2). Section 362(e)(2) applies to transfers of net built-in loss property described in section 362(a) but only to the extent not described in section 362(e)(1).

(b) *Application*—(1) *In general.* If property is transferred in any transaction described in section 362(a) but not section 362(e)(1), and, in the hands of the transferee, the transferred property would otherwise have a net built-in loss immediately after the transfer, then the transferee corporation receives such property with an aggregate

adjusted basis not exceeding the aggregate fair market value of such property immediately after the transfer. If multiple built-in loss properties are transferred, the aggregate reduction in basis shall be allocated among the built-in loss properties so transferred in proportion to the relative amount of built-in loss in each property.

(2) *Multiple transferors.* If more than one transferor transfers property to a corporation in a transaction described in section 362(a), whether and the extent to which this section applies is determined separately for each transferor.

(3) *Transactions described in section 362(e)(1).* A transfer of property to a corporation is described in section 362(e)(1) only if and to the extent that the transferred property described in section 362(e)(1)(B) (section 362(e)(1)(B) property) would otherwise have a net built-in loss in the hands of the transferee. Thus, if a transferor transfers net built-in loss section 362(e)(1)(B) property together with property not described in section 362(e)(1)(B), the transfer of the net built-in loss section 362(e)(1)(B) property is described in section 362(e)(1). Accordingly, the net built-in loss section 362(e)(1)(B) property is not taken into account for purposes of determining whether section 362(e)(2) applies to the transfer of the other property. Alternatively, if a transferor transfers net built-in gain section 362(e)(1)(B) property together with property not described in section 362(e)(1)(B), no portion of the transfer is described in section 362(e)(1).

(4) *Net built*-in loss—(i) *In general.* Transferred property has a net built-in loss if its aggregate adjusted basis exceeds its aggregate fair market value.

(ii) *Basis adjustments for gain recognized on the transfer.* For purposes of determining whether the transferred property has a net built-in loss in the hands of the transferee, the bases of such property first must be increased under section 362(a) or (b) for any gain recognized by the transferor on the transfer of such property.

(5) *Application of section 362(e)(2) to reorganizations.* Section 362(e)(2) can apply to a transfer regardless of whether the basis of the property would, but for section 362(e)(2), be determined under section 362(b).

(6) *Exception for transactions in which net built-in loss is eliminated without recognition.* Section 362(e)(2) does not apply to a transfer of property to the extent that—

(i) The transferor distributes, without recognizing gain or loss, all of the transferee stock received in exchange for the transferred property; and

(ii) Upon completion of the transaction, no person holds transferee stock or any other asset with a basis determined in whole or in part by reference to the transferor's basis in the transferee stock.

(7) *Transfers where neither party is a U.S. person, a person otherwise required to file a U.S. return, or a CFC.* If property is transferred in a transaction described in section 362(a) but not section 362(e)(1), then, solely for purposes of section 362(e)(2), the aggregate fair market value of the transferred property shall be deemed to equal the aggregate adjusted basis of such property in the hands of the transferee immediately after the transfer if—

(i) Neither party to the transfer was a United States (U.S.) person (as defined in section 7701(a)(30)) on the date of the transfer;

(ii) Neither party to the transfer was required to file a return of tax under Subtitle A of the Internal Revenue Code (including an information return) for the year of the transfer;

(iii) Neither party to the transfer was a controlled foreign corporation (CFC), as defined in section 957, on the date of the transfer;

(iv) The transfer occurred more than two years prior to the date on which the transferor, transferee, or transferred assets are first described in paragraph (c)(5)(iii) of this section; and

(v) Neither the transfer nor the later entry into the U.S. tax system was entered into with a view to reducing the U.S. Federal income tax liability of any person or duplicating loss by avoiding the application of section 362(e)(2).

(c) *Section 362(e)(2)(C) election to apply limitation to transferor's stock basis*—(1) *In general.* If section 362(e)(2) applies to a transfer, the transferor and the transferee may make a joint election to reduce the transferor's basis in the transferee stock instead of reducing the transferee's basis in the property received under paragraph (b) of this section. Once made, the election is irrevocable. If the election is made, the transferor's basis in the transferee stock is reduced upon receipt by the transferor. The transferor and the transferee may make a protective election under this section, which will have no effect if section 362(e)(2) does not apply to the transfer, but which will otherwise be binding and irrevocable.

(2) *Stock and securities to which this section applies.* For purposes of this section, the term *stock* means stock and securities received without the recognition of gain or loss in a transaction to which section 362(e)(2) applies. See, for example, transactions described in sections 368(a)(1)(D) and 355.

(3) *Amount of basis reduction.* If an election is made pursuant to paragraph (c)(1) of this section, the amount of the basis reduction in the transferee stock received by the transferor in the transaction is equal to the total amount by which the aggregate basis of the transferred property would have been reduced under paragraph (b) of this section had such election not been made.

(4) *Allocation of basis reduction.* The transferor shall allocate the amount of the basis reduction under this paragraph (c) among all transferee stock received in the transaction in proportion to fair market value.

(5) *Procedures for making the election*—(i) *In general.* To make an election to apply section 362(e)(2)(C)—

(A) Prior to filing the election statement as described in paragraph (c)(5)(ii) or (c)(5)(iii) of this section, the transferor and transferee must execute a written, binding agreement electing to apply section 362(e)(2)(C); and

(B) An election statement must be filed pursuant to paragraph (c)(5)(ii) or (c)(5)(iii) of this section.

(ii) *Election statement where the transferor or transferee is a U.S. person, a person otherwise required to file a U.S. return for the year of the transfer, or a CFC on the date of the transfer*—(A) *Transferor is a U.S. person or a person otherwise required to file a U.S. return for the year of the transfer.* If the transferor is a U.S. person on the date of the transfer or a person otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return) for the year of the transfer, the election statement is filed by including the following statement on or with the transferor's timely filed original return (including extensions) for the taxable year in which the transfer occurred: ''[insert name and tax identification number of transferor] certifies that [insert name and tax identification number of transferor] and [insert name and tax identification number, if any, of transferee] elect to apply section 362(e)(2)(C) with respect to a transfer of property described in section 362(e)(2)(A) on [insert date(s) of transfer(s)].''

(B) *Transferor is a CFC on the date of the transfer.* If, on the date of the transfer, the transferor is a CFC that is not required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return) for the year of the transfer, the election statement is filed by including the following statement on or with the

timely filed original return (including extensions) of each one of the transferor's controlling U.S. shareholders, as defined in § 1.964–1(c)(5), for the taxable year within which the transfer occurred: ''[insert name and tax identification number of controlling U.S. shareholder filing return] certifies that [insert name and tax identification number, if any, of transferor (the CFC)] and [insert name and tax identification number, if any, of transferee] elect to apply section 362(e)(2)(C) with respect to a transfer of property described in section 362(e)(2)(A) on [insert date(s) of transfer(s)]. [insert name(s) and tax identification number(s) of any other controlling U.S. shareholder(s) of the CFC, or, if none, state that there are no other controlling U.S. shareholders of the CFC].''

(C) *Transferor is not a U.S. person on the date of the transfer, a person otherwise required to file a U.S. return for the year of the transfer, or a CFC on the date of the transfer, and transferee is a U.S. person on the date of the transfer or a person otherwise required to file a U.S. return for the year of the transfer.* If the transferor is not described in paragraph (c)(5)(ii)(A) or (c)(5)(ii)(B) of this section and the transferee is a U.S. person on the date of the transfer or otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return) for the year of the transfer, the election statement is filed by including the following statement on or with the transferee's timely filed original return (including extensions) for the taxable year in which the transfer occurred: ''[insert name and tax identification number of transferee] certifies that [insert name and tax identification number, if any, of transferor] and [insert name and tax identification number of transferee] elect to apply section 362(e)(2)(C) with respect to a transfer of property described in section 362(e)(2)(A) on [insert date(s) of transfer(s)].''

(D) *Transferor is not a U.S. person on the date of the transfer, a person otherwise required to file a U.S. return for the year of the transfer, or a CFC on the date of the transfer, and transferee is a CFC on the date of the transfer.* If the transferor is not described in paragraph (c)(5)(ii)(A) or (c)(5)(ii)(B) of this section, and, on the date of the transfer, the transferee is a CFC that is not required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return) for the year of the transfer, the election statement is filed by including the following statement on or with the timely filed original return (including extensions) of each one of the transferee's controlling U.S. shareholders as defined in § 1.964–1(c)(5) for the taxable year within which the transfer occurred: ''[insert name and tax identification number of controlling U.S. shareholder filing return] certifies that [insert name and tax identification number, if any, of transferor] and [insert name and tax identification number, if any, of transferee (the CFC)] elect to apply section 362(e)(2)(C) with respect to a transfer of property described in section 362(e)(2)(A) on [insert date(s) of transfer(s)]. [insert name(s) and tax identification number(s) of any other controlling U.S. shareholder(s) of the CFC, or, if none, state that there are no other controlling U.S. shareholders of the CFC].''

(iii) *Election where neither the transferor nor the transferee is a U.S. person on the date of the transfer, a person otherwise required to file a U.S. return for the year of the transfer, or a CFC on the date of the transfer.* If the parties to a transfer to which section 362(e)(2) applies are not described in any of the classifications set forth in paragraph (c)(5)(ii) of this section, then the election statement under this paragraph (c) is made as described in this paragraph (c)(5)(iii).

(A) *Transferor later becomes a U.S. person, a person otherwise required to file a U.S. return, or a CFC.* If the transferor later becomes a U.S. person, a person otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return), or a CFC, an election statement under this paragraph (c) is filed as described in this paragraph (c)(5)(iii)(A).

(*1*) If the transferor becomes a U.S. person or a person otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return), the election statement is filed by including the statement described in paragraph (c)(5)(ii)(A) of this section on or with the transferor's timely filed original return (including extensions) for the taxable year in which the transferor first becomes a U.S. person or a person otherwise required to make a return.

(*2*) If the transferor becomes a CFC that is not required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return), the election statement is filed by including the statement described in paragraph (c)(5)(ii)(B) of this section on or with the timely filed original return (including extensions) of each one of the transferor's controlling U.S. shareholders, as defined in § 1.964–1(c)(5), for the taxable year within which the transferor becomes a CFC.

(B) *Transferee later becomes a U.S. person, a person otherwise required to file a U.S. return, or a CFC.* If the transferor is not described in paragraph (c)(5)(iii)(A) of this section, and the transferee later becomes a U.S. person, a person otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return), or a CFC, an election statement under this paragraph (c) is filed as described in this paragraph (c)(5)(iii)(B).

(*1*) If the transferee becomes a U.S. person or a person otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return), the election statement is filed by including the statement described in paragraph (c)(5)(ii)(C) of this section on or with the transferee's timely filed original return (including extensions) for the taxable year in which the transferee first becomes required to make a return.

(*2*) If the transferee becomes a CFC that is not required to make any return of tax under Subtitle A of the Internal Revenue Code (including an information return), the election statement is filed by including the statement described in paragraph (c)(5)(ii)(D) of this section on or with the timely filed original return (including extensions) of each one of the transferee's controlling U.S. shareholders as defined in § 1.964–1(c)(5) for the taxable year within which the transferee becomes a CFC.

(C) *A U.S. person, a person otherwise required to file a U.S. return, or a CFC later acquires the transferred assets or transferee stock in a transferred basis transaction.* If neither the transferor nor the transferee is described in paragraph (c)(5)(iii)(A) or (c)(5)(iii)(B) of this section and a U.S. person, a person otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return), or a CFC not required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return) later acquires, in a transferred basis transaction, any portion of the assets that were transferred in a prior transaction to which section 362(e)(2) applied (section 362(e)(2) assets) or stock of the transferee corporation received in such prior transaction (section 362(e)(2) stock), then the election statement under this paragraph (c) is filed as described in this paragraph (c)(5)(iii)(C).

(*1*) If a U.S. person or a person otherwise required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return) later acquires, in a transferred basis transaction, any portion of the section 362(e)(2) assets or section 362(e)(2) stock, the election statement is filed by including the following statement on or with such acquiror's timely filed original return (including extensions) for the taxable year in which the acquiror first acquires any portion of the section 362(e)(2) assets or section 362(e)(2) stock: ''[insert name and tax identification number of the acquiror] certifies that [insert name and tax identification number, if any, of transferor] and [insert name and tax identification number, if any, of transferee] elect to apply section 362(e)(2)(C) with respect to a transfer of property described in section 362(e)(2)(A) on [insert date(s) of transfer(s)].''

(*2*) If no person described in paragraph (c)(5)(iii)(C)(*1*) of this section has acquired any portion of the section 362(e)(2) assets or section 362(e)(2) stock, and a CFC not required to make a return of tax under Subtitle A of the Internal Revenue Code (including an information return) later acquires, in a transferred basis transaction, any portion of the section 362(e)(2) assets or section 362(e)(2) stock, the election statement is filed by including the following statement on or with each of the CFC's controlling U.S. shareholders' timely filed original returns (including extensions) for the taxable year within which the CFC first acquires any portion of the section 362(e)(2) assets or section 362(e)(2) stock: ''[insert name and tax identification number of controlling U.S. shareholder filing return] certifies that [insert name and tax identification number, if any, of transferor] and [insert name and tax identification number, if any, of transferee] elect to apply section 362(e)(2)(C) with respect to a transfer of property described in section 362(e)(2)(A) on [insert date(s) of transfer(s)]. [insert name(s) and tax identification number(s) of any other controlling U.S. shareholder(s) of the CFC, or, if none, state that there are no other controlling U.S. shareholders of the CFC].''

(6) *Transfers by partnerships.* If the transferor is a partnership, for purposes of applying section 705 (determination of basis of partner's interest), any reduction under this section to the transferor's basis in the stock received in exchange for the transferred property is treated as an expenditure of the partnership described in section 705(a)(2)(B).

(7) *Transfers by S corporations.* If the transferor is an S corporation, for purposes of applying section 1367 (adjustments to basis of stock of shareholders, etc.), any reduction under this section to the transferor's basis in the stock received in exchange for the transferred property is treated as an expense of the S corporation described in section 1367(a)(2)(D).

(d) *Examples.* The following examples illustrate paragraphs (a) through (c) of this section. Unless otherwise indicated, all transferred property is subject to tax under Subtitle A of the Internal Revenue Code in the hands of the transferor, and, accordingly, section 362(e)(1) does not apply to the transaction. In addition, all assets are capital assets in the hands of the transferor and have been held for more than one year.

Example 1. Property transfer qualifying under section 351. (i) *Facts.* Individual A owns Asset 1 with a basis of $90 and a fair market value of $60, and Asset 2 with a basis of basis of $110 and a fair market value of $120. In a transaction qualifying under section 351, A transfers Asset 1 and Asset 2 to newly formed corporation X in exchange for all of the X common stock. A and X do not elect to apply section 362(e)(2)(C) to reduce A's basis in the X stock received.

(ii) *Analysis.* Under section 362(a), X would otherwise receive Asset 1 and Asset 2 with an aggregate basis of $200 ($90+$110), which exceeds their aggregate fair market value of $180 ($60+$120). As a result, the assets have a net built-in loss of $20, and this section applies to the transfer. Under paragraph (b)(1) of this section, X reduces its basis in Asset 1 by $20 to $70 and, under section 362(a), takes a basis in Asset 2 of $110. Under section 358(a), A receives X stock with a basis of $200.

(iii) *Election to apply section 362(e)(2)(C).* The facts are the same as in paragraph (i) of this *Example 1*, except that A and X elect to apply section 362(e)(2)(C) to reduce A's basis in the X stock received. Under paragraph (c)(3) of this section, A reduces its basis in the X stock received by the amount X would have been required to reduce its basis in the transferred assets had the election to apply section 362(e)(2)(C) not been made. Accordingly, A receives X stock with an aggregate basis of $180, and, under section 362(a), X receives Asset 1 with a basis of $90 and Asset 2 with a basis of $110.

Example 2. Property transfer qualifying under section 351 and described in section 368(a)(1)(B). (i) *Facts.* Corporation P owns all of the outstanding stock of corporations S1 and S2. In a transaction qualifying under section 351 and described in section 368(a)(1)(B), P transfers all 10 shares of its S2 stock to S1 in exchange for an additional 10 shares of S1 voting stock. At the time of the transfer, each share of the S2 stock has a basis of $10 and a fair market value of $7. P and S1 do not elect to apply section 362(e)(2)(C) to reduce P's basis in its S1 stock.

(ii) *Analysis.* Under section 362, S1 would otherwise receive the 10 shares of S2 stock with a basis of $10 per share, which exceeds their fair market value of $7 per share. As a result, the S2 stock has a net built-in loss of $30, and this section applies to the transfer. Under paragraph (b)(1) of this section, S1 reduces its basis in the S2 stock by $30 to $70. Under section 358(a), P receives the additional 10 shares of S1 stock with a basis of $10 per share.

(iii) *Election under section 362(e)(2)(C).* (A) The facts are the same as in paragraph (i) of this *Example 2*, except that P and S1 elect to apply section 362(e)(2)(C) to reduce P's basis in its S1 stock received. Under paragraph (c)(3) of this section, P reduces its basis in the S1 stock received by the amount S1 would have been required to reduce its basis in the transferred S2 stock had the election to apply section 362(e)(2)(C) not been made. Accordingly, under paragraph (c)(4) of this section, P receives the additional 10 shares of S1 stock each with a basis of $7. Under section 362, S1 receives the 10 shares of S2 stock each with a basis of $10.

(B) The facts are the same as in paragraph (i) of this *Example 2*, except that five shares of the S2 stock have a basis of $10 each, five shares have a basis of $5 each, and P and S1 elect to apply section 362(e)(2)(C) to reduce P's basis in its S1 stock. The $75 ((5 × $10) + (5 × $5)) aggregate basis in the S2 stock exceeds the $70 aggregate fair market value of the S2 stock, and this section applies to the transfer. Under paragraph (c)(3) of this section, P reduces its basis in the S1 stock received by the amount S1 would have been required to reduce its basis in the transferred S2 stock had the election to apply section 362(e)(2)(C) not been made. Accordingly, under paragraph (c)(4) of this section and § 1.358–2(a)(2)(viii), P receives the additional 10 shares of S1 stock each with a basis of $7. Under section 362, S1 receives five shares of the S2 stock with a basis of $10 each and five shares of the S2 stock with a basis of $5 each.

Example 3. Property transfer qualifying under section 351 and described in section 368(a)(1)(A). (i) *Facts.* Individual A owns all of the outstanding stock of corporation X and corporation Y, which owns Asset 1 with an adjusted basis of $250 and a fair market value of $210. A also owns Asset 2 with an adjusted basis of $120 and a fair market value of $130. In a transaction qualifying as a reorganization described in section 368(a)(1)(A), Y merges with and into X. Pursuant to the same plan, A transfers Asset 2 to X in exchange for additional X stock. Y's transfer of Asset 1 to X in the merger coupled with A's transfer of Asset 2 to X in exchange for X stock qualifies as a section 351 contribution.

(ii) *Analysis.* Under paragraph (b)(2) of this section, the potential application of section 362(e)(2) is determined separately for each transferor. Y is treated as having transferred Asset 1 to X in exchange for X stock, and X would otherwise take Asset 1 with a basis of $250, which exceeds its fair market value of $210. As a result, Asset 1 has a built-in loss of $40. Under paragraph (b)(6) of this section, section 362(e)(2) does not apply to Y's transfer of property to X because Y distributes all of the X stock received in the exchange without recognizing gain or loss pursuant to section 361(c), and, upon

completion of the transaction, no person holds X stock or any other asset with a basis determined in whole or in part by reference to Y's basis in the X stock received in the exchange. As a result, under section 362, X receives Asset 1 with a basis of $250. A's transfer of Asset 2 to X is not subject to section 362(e)(2) because X receives Asset 2 with a basis of $120, which is less than its fair market value of $130.

Example 4. Property transfers qualifying under section 351 and described in section 368(a)(1)(D), followed by a section 355 distribution. (i) *Facts.* Individual A and individual B each own 50 percent of corporation X. X owns Asset 1 with an adjusted basis of $120 and a fair market value of $70, Asset 2 with an adjusted basis of $160 and a fair market value of $110, and Asset 3 with an adjusted basis of $220 and a fair market value of $240. In a transaction qualifying under section 351(a) and described in section 368(a)(1)(D), X transfers Asset 1, Asset 2, and Asset 3 to Y, a newly formed corporation, in exchange for all of the Y stock, and then distributes all of the Y stock to A in exchange for all of A's X stock in a distribution qualifying under section 355. At the time of the transaction, A has no plan or intention to dispose of his Y stock, and B has no plan or intention to dispose of his X stock.

(ii) *Analysis.* The aggregate adjusted basis of the properties transferred to Y ($120 + $160 + $220 = $500) exceeds their aggregate fair market value ($70 + $110 + $240 = $420). As a result, the assets have a total net built-in loss of $80. Under paragraph (b)(6) of this section, section 362(e)(2) does not apply to this transfer of property because X distributes all of the Y stock received in the exchange without recognizing gain or loss under section 361(c), and, upon completion of the transaction, no person holds Y stock or any other asset with a basis determined in whole or in part by reference to X's basis in the Y stock received in the exchange. A's basis in the Y stock is determined under section 358 by reference to his basis in the X stock he surrenders.

(iii) *Section 355(e).* (A) The facts are the same as in paragraph (i) of this *Example 4*, except that, one year after the section 355 distribution, Y is acquired pursuant to a plan, resulting in the application of section 355(e) to the transaction. X and Y do not elect to apply section 362(e)(2)(C).

(B) *Analysis.* Due to the application of section 355(e), section 361(c) will not apply and X will not be granted nonrecognition treatment on the distribution of the Y stock. As a result, paragraph (b)(6) of this section does not apply, and section 362(e)(2) applies to X's transfer of assets to Y. Under paragraph (b)(1) of this section, Y reduces its basis in Asset 1 and Asset 2 by the amount of the net built-in loss in the transferred assets, or $80 ($500 − $420). The $80 basis reduction is allocated between Asset 1 and Asset 2 in proportion to their respective built-in losses. Prior to reduction, Asset 1 had a built-in loss of $50 ($120 − $70), and Asset 2 had a built-in loss of $50 ($160 − $110). As a result, the basis of Asset 1 is reduced by $40 (50/100 × $80), and the basis of Asset 2 is reduced by $40 (50/100 × $80), and Y receives Asset 1 with a basis of $80 ($120 − $40) and Asset 2 with a basis of $120 ($160 − $40).

(iv) *Retained stock and securities without a section 362(e)(2)(C) election.* (A) The facts are the same as in paragraph (i) of this *Example 4*, except that X transfers Asset 1, Asset 2, and Asset 3 to Y in exchange for an equal amount of Y stock and Y securities. For a valid business purpose, X retains Y stock and Y securities each worth 1 percent of the total consideration. X and Y do not elect to apply section 362(e)(2)(C).

(B) *Analysis.* The aggregate basis of the properties transferred ($120 + $160 + $220 = $500) exceeds their aggregate fair market value ($70 + $110 + $240 = $420) by $80 ($500 − $420), and this section applies to the transfer. Under paragraph (b)(6) of this section, section 362(e)(2) applies to X's transfer of assets to Y in exchange for the Y stock and the Y securities to the extent X does not distribute the Y stock and Y securities without the recognition of gain or loss. Accordingly, section 362(e)(2)(A) applies to the extent property was exchanged for the retained Y stock and Y securities (2 percent of the total). Under paragraph (b)(1) of this section, Y reduces its basis in Asset 1 and in Asset 2 by 2 percent of the amount of the net built-in loss in the transferred assets ($80), or $1.60. The $1.60 basis reduction is allocated between Asset 1 and Asset 2 in proportion to their respective built-in losses before reduction under paragraph (b)(1) of this section. Prior to reduction, Asset 1 had a built-in loss of $50 ($120 − $70), and Asset 2 had a built-in loss of $50 ($160 − $110). As a result, the basis of Asset 1 is reduced by $.80 (50/100 × $1.60), the basis of Asset 2 is reduced by $.80 (50/100 × $1.60), and Y receives Asset 1 with a basis of $119.20 ($120 − $.80) and Asset 2 with a basis of $159.20 ($160 − $.80).

(v) *Retained stock and securities with a section 362(e)(2)(C) election.* (A) The facts are the same as in paragraph (iv)(A) of this *Example 4*, except that X and Y elect to apply section 362(e)(2)(C) to reduce X's basis in its retained Y stock and retained Y securities.

(B) *Analysis.* Under paragraph (b)(6) of this section, section 362(e)(2) applies to X's transfer of assets to Y in exchange for the Y stock and the Y securities to the extent X does not distribute the Y stock and Y securities without the recognition of gain or loss. Under paragraph (c) of this section, the election to apply section 362(e)(2)(C) applies to both the retained Y stock and the retained Y securities. Accordingly, under paragraph (c)(3) of this section, X reduces its basis in the retained Y stock and the retained Y securities by the amount Y would have been required to reduce its basis in the transferred assets had the election to apply section 362(e)(2)(C) not been made. As described in paragraph (iv)(B) of this *Example 4*, under paragraphs (b)(1) and (b)(6) of this section, Y would have been required to reduce its basis in the transferred assets by $1.60. Accordingly, X is required to reduce its basis in the retained Y stock and Y securities by $1.60, and, under paragraph (c)(4) of this section, this $1.60 basis reduction is allocated between the retained Y stock and Y securities in proportion to fair market value. Because X retained Y stock and Y securities with equal values, X holds the retained Y stock with an adjusted basis of $1.70 ((($500/2) × .01) − $.80) and the retained Y securities with an adjusted basis of $1.70 ((($500/2) × .01) − $.80).

Example 5. Transfer of contingent liabilities subject to section 358(h)(2)(A) with section 362(e)(2)(C) election. (i) *Facts.* Corporation P owns Asset 1 with a basis of $800 and a fair market value of $700. Asset 1 constitutes a trade or business for purposes of section 358(h)(2)(A). Contingent liabilities of $200 are associated with the Asset 1 business. P transfers Asset 1 to newly formed corporation S in exchange for all of the S stock and assumption of the contingent liabilities in a transaction qualifying under section 351. P and S elect to apply section 362(e)(2)(C).

(ii) *Analysis.* Under section 362(a), S would otherwise receive Asset 1 with a basis of $800, which exceeds it fair market value of $700. As a result, Asset 1 has a net built-in loss of $100, and this section applies to the transfer. Under paragraph (c)(3) of this section, P reduces its basis in the S stock received by the amount S would have been required to reduce its basis in Asset 1 had the election to apply section 362(e)(2)(C) not been made ($100). Accordingly, A receives S stock with an aggregate basis of $700, and, under section 362(a), S receives Asset 1 with a basis of $800.

Example 6. Property transfer qualifying under section 351 with boot. (i) *Facts.* Individual A owns Asset 1 with a basis of $80 and a fair market value of $100, and Asset 2 with a basis of $30 and a fair market value of $25. In a transaction qualifying under section 351, A transfers Asset 1 and Asset 2 to newly formed corporation N in exchange for 10 shares of N stock and $25. A and N do not elect to apply section 362(e)(2)(C) to reduce A's basis in the N stock received.

(ii) *Analysis.* Under paragraph (b)(4)(iii) of this section, for purposes of determining whether the transferred property has a net built-in loss in the hands of the transferee, the transferee's basis in the transferred property must be adjusted for any gain recognized by the transferor on the transfer. Section 351(b) requires transferors in transactions otherwise qualifying under section 351(a) for nonrecognition treatment to recognize gain (but not loss) to the extent the transferor receives other property or money in addition to the stock permitted to be received. For purposes of computing the amount of gain recognized under section 351(b), the consideration is allocated pro rata among the transferred properties according to their fair market values. As a result, to compute the amount of gain recognized on the transfer, A is treated as having received eight shares of N stock and $20 in exchange for Asset 1, and two shares of N stock and $5 in exchange for Asset 2. Under section 351(b), A must recognize $20 of gain for the cash received in exchange for Asset 1. Thus, under section 362(a), N would otherwise have a basis of $100 in Asset 1 and $30 in Asset 2. N's total basis in Asset 1 and Asset 2 of $130 ($100 + $30) would exceed the total fair market value of Asset 1 and Asset 2 of $125 ($100 + $25). As a result, this section

applies to the transfer. Under paragraph (b)(1) of this section, N reduces its basis in Asset 2 by $5 to $25 and, under section 362(a), takes a basis in Asset 1 of $100. Under section 358(a), A receives N stock with a basis of $105.

Example 7. Property transfer subject to both sections 362(e)(1) and 362(e)(2). (i) *Facts.* Foreign corporation FP transfers Asset 1 and Asset 2 to a domestic corporation DS in a transaction that qualifies under section 351. Asset 1 is not property described in section 362(e)(1)(B) and has a basis of $80 and a fair market value of $50. Asset 2 is property described in section 362(e)(1)(B) and has a basis of $120 and a value of $110. Section 367(b) does not apply to the transfer of Asset 1 or Asset 2.

(ii) *Analysis.* Under paragraphs (b)(1) and (b)(3) of this section, a transfer is described in section 362(e)(1), and thus not subject to this section, only if and to the extent there is a transfer of property described in section 362(e)(1)(B) that otherwise would have a net built-in loss in the hands of the transferee. Because Asset 2 is property described in section 362(e)(1)(B) and DS would otherwise receive Asset 2 with a basis of $120 and a value of $110, FP's transfer of property to DS is described in section 362(e)(1) only to the extent of the transfer of Asset 2. Asset 1 is not property described in section 362(e)(1)(B), and under section 362(a), DS would receive Asset 1 with a basis ($80) in excess of its fair market value ($50). Accordingly, this section applies solely to the transfer of Asset 1. Under paragraph (b)(1) of this section, DS reduces its basis in Asset 1 by $30 to $50. Under section 358(a), FP receives the DS stock with a basis of $200.

Example 8. Section 304 sale of built-in loss stock. (i) *Facts.* Individual A owns all the stock of corporation X and corporation Y. A sells all his X stock to Y for $60. Under section 304, A is treated as though he transferred the X stock to Y in exchange for Y stock in a transaction to which section 351 applies. Then, Y is treated as redeeming the Y stock it was treated as having issued to A in the section 351 transaction. At the time of the transaction, A holds X stock with a basis of $90 and a fair market value of $60. A and Y do not elect to apply section 362(e)(2)(C) to reduce A's basis in the Y stock deemed received.

(ii) *Analysis.* Under section 362(a), Y would otherwise receive X stock with an aggregate basis of $90, which exceeds its aggregate fair market value of $60. As a result, the X stock has a net built-in loss of $30, and, under paragraph (b)(1) of this section, Y reduces its basis in the X stock received by $30 to $60. Under section 358(a), A receives the deemed issued Y stock with a basis of $90.

(e) *Effective date.* This section applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.705–1(a)(9) is added to read as follows:

§ 1.705–1 Determination of basis of partner's interest.

(a) * * *

(9) For basis adjustments necessary to coordinate sections 705 and 362(e)(2), see § 1.362–4(c)(6).

* * * * *

Par. 6. In § 1.1367–1, a new sentence is added at the end of paragraph (c)(2) to read as follows:

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

* * * * *

(c) * * *

(2) * * * For basis adjustments necessary to coordinate sections 1367 and 362(e)(2), see § 1.362–4(c)(7).

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E6–17649 Filed 10–20–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2006–25767; CGD09–06–123]

Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings.

SUMMARY: This document provides the times and locations of for the additional public meetings which will be held by the Coast Guard to discuss issues relating to the proposed permanent safety zones located in the Great Lakes to conduct live gunnery training exercises. These meetings will be open to the public and are in addition to the four currently scheduled public meetings.

DATES: The Coast Guard will hold five additional public meetings as follows: Monday, October 30, 2006 in Rochester, NY; Wednesday November 1, Waukegan, IL (Milwaukee, WI / Chicago, IL area); Friday November 3, in Charlevoix, MI; Monday, November 6, in Erie, PA; and Wednesday, November 8, Sturgeon Bay, WI. If you are unable to attend, you may submit comments to the Docket Management Facility by November 13, 2006.

ADDRESSES: The Coast Guard will hold additional public meetings at the following addresses:

1. Rochester, NY: Rochester Fast Ferry Terminal, 1000 N. River Street, Rochester, NY 14612, (877) 283–7327;

2. Chicago, IL/ Milwaukee, WI: Genesee Theatre, 203 N. Genesee Street, Waukegan, IL 60085, (847) 782–2366;

3. Charlevoix, MI: Charlevoix Public Library, 220 W. Clinton Street, Charlevoix, MI 49720, (231) 547–2651;

4. Erie, PA: Port of Erie Cruise Boat Terminal, 1 Holland Street, Erie PA 16507, (814) 455–7557; and

5. Sturgeon Bay, WI: Stoneharbor Resort, 107 North First Avenue, Sturgeon Bay, WI (877) 746–0700.

You may submit your comments and related material by one of the following means:

(1) By mail to the Docket Management Facility (USCG–2006–2567), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for the rulemaking. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket by performing a ''Simple Search'' for docket number 25767 on the Internet at *http://dms.dot.gov.*

Electronic forms of all comments received into any of our dockets can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor unit, etc.) and is open to the public without restriction. You may review the Department of Transportation'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.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice and the public meeting, contact Commander Gustav Wulfkuhle, Chief Enforcement Branch, Ninth Coast Guard District, Cleveland, Ohio at (216) 902–6091. If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program

Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meetings

The Coast Guard will hold five additional public meetings as follows: Monday, October 30, 2006 in Rochester, NY; Wednesday November 1, Waukegan, IL (Milwaukee, WI/Chicago, IL area); Friday, November 3, in Charlevoix, MI; Monday, November 6, in Erie, PA; and Wednesday, November 8, in Sturgeon Bay, WI. These meetings will be held to take comments regarding the proposed Safety Zones; U.S. Coast Guard Water Training Areas, Great Lakes, published on August 1, 2006, in the **Federal Register** at 71 FR 43402.

The Coast Guard encourages interested persons to submit written data, views, or comments. Persons submitting comments should please include their name and address and identify the docket number (USCG–2006–25767). You may submit your comments and material by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address under **ADDRESSES.**

Regulatory History

On August 1, 2006, the Coast Guard published a notice of proposed rulemaking (NPRM) (71 FR 43402) to establish permanent safety zones throughout the Great Lakes, which would restrict vessels from portions of the Great Lakes during live fire gun exercises that will be conducted by Coast Guard cutters and small boats. The initial comment period for this NPRM ended on August 31, 2006. In response to public requests, the Coast Guard re-opened the comment period on this NPRM. (71 FR 53629, September 12, 2006) Re-opening the comment period from September 12, 2006 to November 13, 2006, provides the public more time to submit comments and recommendations. On September 19, 2006, the Coast Guard published a brief document announcing the dates of public meetings. (71 FR 54792) On September 27, 2006 we published a document containing detailed information about the first set of meetings. (71 FR 56420)

On October 12, 2006, the Coast Guard announced that the addition of three more public meetings and again stated that more detailed information related to the meetings would be published at a later date. (71 FR 60094) This document provides detailed information regarding these additional meetings by providing the locations of the public meetings and the topics to be discussed. We are also announcing the addition of public meetings to be held in Erie, PA and Sturgeon Bay, WI.

Background and Purpose

The thirty-four permanent safety zones proposed in the NPRM will be located throughout the Great Lakes in order to accommodate the training needs of 57 separate Coast Guard units. The proposed safety zones are all located more than three nautical miles from the shoreline. Establishing permanent training areas serves to notify the public and solicit its input on selection of the training locations.

The proposed safety zones will be enforced only when training is conducted, and then only after notice by the Captain of the Port for the area in which the exercise will be held. The Captain of the Port will use all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the **Federal Register** if practicable, in accordance with 33 CFR 65.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The appropriate Captain of the Port will also issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of a live fire exercise safety zone is suspended.

Interested individuals are encouraged to attend the open house forums and public meetings, provide comments and ask questions about the weapons training areas. In the event that the Coast Guard decides to conduct a higher level of environmental analysis pursuant to the National Environmental Policy Act, input received from all nine public meetings in the Great Lakes area will serve as ''scoping,'' to determine the issues to be addressed in that analysis.

Meeting Times and Topics

The meetings are expected to run from 5:30 p.m. to 8 p.m. (local). We may end the meetings early if there are no additional comments or questions.

Topics to be covered during the public meetings include the following:

(1) Introduction of the proposed zones and the need to train on the Great Lakes;

(2) How the Coast Guard determined the locations of the zones;

(3) Scheduling and frequency of training in the zones;

(4) Notification procedures;

(5) Safety procedures;

(6) Weapons and munitions; and

(7) Environmental risk assessment overview.

Before the start of the formal public meetings, from 4 p.m. to 5:30 p.m. (local), the Coast Guard is hosting an open house so that the public can speak with Coast Guard personnel and obtain more information on the proposed zones.

Procedure

Each open house and meeting is open to the public. Ideally, comments will provide specific information and facts related to the impact of the zone(s) on the commenter. Detailed and focused comments will enable the Coast Guard to address identified areas of concern in the rulemaking process. Please note that the meeting may close early if all business is finished. If you are unable to attend, you may submit comments to the Docket Management Facility at the address under **ADDRESSES** by November 13, 2006.

Information on Services for Individuals With Disabilities

If you plan to attend any of the public meetings and require special assistance, such as sign language interpretation or other reasonable accommodations, please contact us as indicated in **FOR FURTHER INFORMATION CONTACT.**

Dated: October 18, 2006.

John E. Crowley, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 06–8849 Filed 10–19–06; 3:10 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0064; FRL–8233–4]

RIN 2060–AL75

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The EPA is announcing a public hearing to be held on November 6, 2006, for the proposed rule on ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting.'' This rulemaking action was published in the **Federal Register** on September 14, 2006 and proposes to revise the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act. The public hearing will provide interested parties the opportunity to

present data, views, or arguments concerning these proposed changes.

DATES: The public hearing will convene at 9 a.m. on November 6, 2006, and continue until 1 hour after the last registered speaker has spoken. People wishing to present oral testimony must pre-register by 5 p.m. on November 3, 2006. The EPA is willing to keep the public hearing open into the evening hours of November 6, 2006, if speakers are pre-registered by the registration deadline of 5 p.m. on November 3, 2006, and have registered to speak during evening hours. For updates and additional information on the public hearing, please check EPA's Web site for this rulemaking at *http://www.epa.gov.nsr/.*

ADDRESSES: The public hearing will be held at U.S. Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, North Carolina 27709, Building C, Classroom C112. Because this hearing is being held at U.S. Government facilities, everyone planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used inside the classroom and outside of the building, and demonstrations will not be allowed on Federal property for security reasons. Directions to the EPA Campus are available on the Internet at *http://www.epa.gov/rtp/facilities/maindirections.htm*, along with a map showing the area designated for visitor parking. From there, walk toward the main facility and enter the center building (by the U.S. and EPA flags).

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing or have questions concerning the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, OAQPS, Air Quality Planning Division, (C504–03), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, e-mail address *long.pam@epa.gov.*

Questions concerning the September 14, 2006, proposed rule should be addressed to Mr. David Svendsgaard, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, (C504–03), Research Triangle Park, NC 27711, telephone number (919) 541–2380, e-mail at *Svendsgaard.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: The September 14, 2006, proposed rule changes reflect EPA's consideration of the Agency's 2002 Report to the President and its associated recommendations as well as discussions with various stakeholders including representatives of environmental groups, State and local governments, and industry. It proposes to change how emissions from units upstream or downstream from the unit(s) undergoing a physical change or change in the method of operation are included in the calculation of an emissions increase for the project. It also proposes to clarify and codify our policy of when emissions increases from multiple projects are to be aggregated together to determine NSR applicability. Finally, it proposes to clarify how emissions decreases from a project may be included in the calculation to determine if a significant emissions increase will result from a project. The EPA expects that these proposed rule changes will improve implementation of the program by articulating and codifying principles for determining major NSR applicability that we currently address through guidance only.

Public hearing: The proposal for which EPA is holding the public hearing was published in the **Federal Register** on September 14, 2006, (71 FR 54235) and is available at: *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6–15248.pdf.* The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments on the proposed rule must be postmarked by November 13, 2006, which is the closing date for the comment period, as specified in the proposal for the rule. However, the record will remain open until December 6, 2006, to allow 30 days for submittal of additional information related to the hearing.

Commenters should notify Ms. Long if they will need specific equipment, or if there are other special needs related to providing comments at the hearing. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide EPA with a copy of their oral testimony electronically (via e-mail, computer disk, or CD) or in hard copy form.

The hearing schedule, including lists of speakers, will be posted on EPA's Web site *http://www.epa.gov/nsr/.* Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking.

How Can I Get Copies of This Document and Other Related Information?

The EPA has established the official public docket for the proposed rule entitled ''Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting'' under Docket ID No. EPA–HQ–OAR–2003–0064. **Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

As stated previously, the proposed rule was published in the **Federal Register** on September 14, 2006 (71 FR 54235) and is available at *http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6–15248.pdf.*

Dated: October 11, 2006.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 06–8842 Filed 10–20–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU99

Endangered and Threatened Wildlife and Plants; Determination of Status for *Lepidium Papilliferum* (Slickspot Peppergrass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public of the reinstatement of our July 15, 2002 proposed rule to list *Lepidium papilliferum* (slickspot peppergrass) as endangered under the Endangered Species Act of 1973, as amended (Act), and announce the reopening of the public comment period on that proposed listing.

DATES: We will accept comments from all interested parties until 5 p.m. Mountain Standard Time on November 13, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may mail or hand-deliver written comments and information to Field Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, ID 83709.

(2) You may send comments by electronic mail (e-mail) to: *fw1srbocomment@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may fax your comments to 208–378–5262.

(4) You may submit comments online via the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jeffery Foss, Field Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Boise, ID 83709; telephone 208–378–5243.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from the proposal to list *Lepidium papilliferum* (slickspot peppergrass) as endangered under the Act (16 U.S.C. 1531 *et seq.*) will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule are hereby solicited. We are providing further information for the public to consider, including a document we prepared entitled ''Draft Best Available Biological Information for Slickspot Peppergrass (*Lepidium papilliferum*)'' (BAI), February 27, 2006, a number of peer reviews of this document, a matrix of the threats data to be used in making our listing determination, and a list of conservation measures for the species currently underway.

Comments particularly are sought concerning:

(1) Whether our proposed application of our Policy for Evaluation of Conservation Efforts (PECE) can be improved.

(2) Whether the threats matrix contains the best available commercial and scientific data and if not what other data we should consider.

(3) How might the Service best address the issues raised in the peer reviews of the Draft BAI.

(4) Any additional comments on the BAI.

(5) Whether the Service has identified all conservation actions underway, if any should be added and whether the actions are accurately characterized.

If you wish to comment, you may submit your comments and materials concerning the proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw1srbocomment@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''RIN 1018–AU99'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly (see **ADDRESSES**). Please note that the Internet address *fw1srbocomment@fws.gov* will be unavailable at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Previous Federal Actions

For a description of Federal actions concerning *Lepidium papilliferum* that occurred prior to January 22, 2004, please refer to our withdrawal of the proposed rule published in the **Federal Register** on January 22, 2004 (69 FR 3094).

On July 15, 2002, we published a proposed rule (67 FR 46441) to list *Lepidium papilliferum* as endangered under the Act. We accepted public comments on the proposal for 60 days, until September 13, 2002. We also held a public hearing on August 29, 2002. On September 25, 2002, and again on July 18, 2003, we reopened the public comment period on the proposed listing. On October 30, 2003, we made the Candidate Conservation Agreement and Best Available Information for Slickspot Peppergrass available for public review and comment (68 FR 61821).

On January 22, 2004, we published a document withdrawing our proposed rule to list *Lepidium papilliferum* as endangered (69 FR 3094). That withdrawal was based on our conclusion that there was ''a lack of strong evidence of a negative population trend,'' and the formalized conservation plans (*e.g.*, the CCA and INRMPs) had ''sufficient certainty that they will be implemented and will be effective such that the risk to the species is reduced to a level below the statutory definition of endangered or threatened.''

On April 5, 2004, the Western Watershed Project filed a complaint challenging our decision to withdraw the proposed rule to list *Lepidium papilliferum* as endangered (*Western Watersheds Project* v. *Jeffery Foss*, *et al.*, Case No. CV 04–168–S–EJL). On August 19, 2005, the U.S. District Court for the District of Idaho reversed the decision to withdraw the proposed rule (which effectively reinstated our July 15, 2002, proposed rule at 67 FR 46441), with directions that the case be remanded to the Secretary of the Department of the Interior for reconsideration of ''whether a proposed rule listing the slickspot

peppergrass as either threatened or endangered should be adopted.''

Following the August 19, 2005, U.S. District Court for the District of Idaho remand order, we notified Federal, State, and local agencies, county governments, elected officials, and other interested parties of the District Court's decision in a letter dated October 13, 2005. We requested new scientific data and information, and comments, about *Lepidium papilliferum*, and requested that any such comments be submitted by November 14, 2005. We also stated that scientific information received from the public would be utilized in a document titled, ''Draft Best Available Biological Information for Slickspot Peppergrass (*Lepidium papilliferum*)'' (BAI). We extended the comment period through December 14, 2005, and we received a total of 13 comment letters in response to our request for additional information. From February 27, 2006, through March 30, 2006, we opened a public comment and peer review period, during which we requested information on the BAI and on conservation efforts for the species. We received an additional 33 comments.

A number of threats and potential threats to *Lepidium papilliferum* were identified as a result of past listing actions and a number of conservation actions to address those threats have been identified. In evaluating the contributions of these conservation actions under the PECE, where the Service is party to agreements regarding conservation actions for *Lepidium papilliferum*, we propose to consider whether the actions contained in those agreements are likely to be effective over time. For those plans that the Service is not a party to, the PECE policy evaluation is proposed to be based on their consistency with management guidance the Service has provided to other agencies and cooperators. We request that commenter's address whether the foregoing will result in an appropriate application of the PECE.

On October, 2006, the Court directed the Service to issue a final listing determination by January 4, 2007. The Service will complete its review of any information and comments submitted during this comment period to comply with that order.

Information Available for Review

Information received, developed, or analyzed since the August 19, 2005, U.S. District Court remand of our proposed listing withdrawal is available for review by accessing the following Web site: *http://www.fws.gov/idahoes/*, or by contacting the Field Supervisor (see **ADDRESSES** above). This information includes the following:

(1) The document ''Draft Best Available Biological Information for Slickspot Peppergrass (*Lepidium papilliferum*)'' (BAI), February 27, 2006.

(2) Peer review comments on the BAI.

(3) A threats matrix of the data used to make the listing determination;

(4) A spreadsheet containing a description of *Lepidium papilliferum* conservation measures in the CCA, including an explanation of how the Policy for Evaluation of Conservation Efforts (PECE) will be applied in making our determinations regarding the benefits of the conservation actions.

Following this public comment period, we will be using any new information, along with existing scientific and commercial information in assessing species status.

Author

The primary authors of this notice are staff of the Snake River Fish and Wildlife Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 2006.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 06–8833 Filed 10–18–06; 4:25 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 71, No. 204

Monday, October 23, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Sites; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Medicine Bow—Routt National Forests, USDA Forest Service.

ACTION: Notice of New Fee Sites.

SUMMARY: The Medicine Bow—Routt National Forests, Laramie Ranger District, will begin charging $5.00/vehicle day use fees (Standard Amenity Recreation Fee) at five newly constructed trailhead/picnic areas along the Medicine Bow Rail-Trail (Pelton Creek, Vienna, Woods Creek, Lincoln Gulch, and Lake Owen), and at three existing developed trailheads (Albany, Ticks, and Mountain Home). Funds generated through these fees will be used for the continued operation and maintenance of these sites including, but not limited to: Restroom cleaning, trash pickup, waste removal, sign maintenance, law enforcement presence, and snow removal.

DATES: The sites will be open for use by July 2007.

ADDRESSES: Forest Supervisor, Medicine Bow—Routt National Forests, 2468 Jackson Street, Laramie, WY 82070.

FOR FURTHER INFORMATION CONTACT: Ray George, Recreation Program Manager, 307–745–2319.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

The Medicine Bow—Routt National Forests currently has several other day use areas where the $5/vehicle day use fees are charged (Standard Amenity Recreation Fee). Many of these sites are often full to capacity on weekends. All requirements for the collection of fees as stipulated in the Federal Recreation Lands Enhancement Act have been, or will be, met for these sites prior to fee implementation.

Dated: October 17, 2006.

Mary H. Peterson,

Forest Supervisor, Medicine Bow—Routt National Forests.

[FR Doc. E6–17681 Filed 10–20–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on November 9, 2006 at The Chateau, 955 Fairway Boulevard, Incline Village, NV 89451. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held November 9, 2006, beginning at 9 a.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at The Chateau, 955 Fairway Boulevard, Incline Village, NV 89451.

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) The Environmental Improvement Program update; (2) the Southern Nevada Public Land Management Act Round 8; and, (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: October 17, 2006.

David Marlow,

Staff Officer for Fire/Fuels/Vegetation/Urban Lots.

[FR Doc. 06–8825 Filed 8–20–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 41–2006)

Foreign–Trade Zone 70 -- Detroit, Michigan, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Greater Detroit Foreign Trade Zone, Inc., grantee of FTZ 70, requesting authority to expand its zone to include a site located in the Townships of Ypsilanti and Van Buren within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 16, 2006.

FTZ 70 was approved on July 21, 1981 (Board Order 176, 46 FR 38941, 7/30/81), reorganized on April 15, 1985 (Board Order 299, 50 FR 16119, 4/24/85), and expanded on November 27, 1989 (Board Order 453, 54 FR 50258, 12/5/89), on April 20, 1990 (Board Order 471, 55 FR 17775, 4/27/90), on February 20, 1996 (Board Order 802, 61 FR 7237, 2/27/96), on August 26, 1996 (Board Order 843, 61 FR 46763, 9/5/96), on April 5, 2001 (Board Order 1162, 66 FR 19423, 4/16/01), and on May 23, 2005 (Board Order 1395, 70 FR 32570, 6/3/05).

The general–purpose zone currently consists of eighteen sites in the greater Detroit area: *Site 1* (5 acres) -- located at 4485 West Jefferson Avenue, Detroit; *Site 2* (45 acres) -- Nicholson Terminal and Dock Company's port terminal and warehouse facility located along the Detroit River on Great Lakes Avenue in Ecorse; *Site 3* (72 acres, 2 parcels) -- located within the Metro Airport Center Industrial Park located west of Wayne Road between Grant Road and the Norfolk Southern Railroad Line and located at 6850 Middlebelt Road,

Romulus; *Site 4* (300,000 sq. ft.) -- located within the Westside Industrial Park, Detroit; *Site 5* (22 acres, 3 parcels) -- located within the Lynch Road Industrial Park Condominium at 6490 Lynch Road, Detroit; at 6307 West Fort Street, Detroit; and, at 214 East Maple Road, Troy; *Site 6* (32 acres, 3 parcels) -- located at two parcels between Clark and Swain Streets near the Detroit River; at 36501 Van Born Road in Romulus; and, at 308 Antoine Street in Wyandotte (expires 7/1/2007); *Site 7* (3.45 acres) -- located at 36501 Van Born Road, Romulus; *Site 8* (380,803 sq. ft.) -- located at 17423 West Jefferson Avenue, Riverview; *Site 9* (46,560 sq. ft.) -- Trans Overseas Corporation's facility, 28000 Goddard Road, Romulus; *Site 10* (308,596 sq. ft.) -- Central Detroit Warehouse, 18765 Seaway Drive, Melvindale; *Site 11* (31,675 sq. ft.) -- located at 14933 Keel Street, Plymouth; *Site 12* (86 acres) -- Detroit Metropolitan Wayne County Airport's fuel system; *Site 13* (47,000 sq. ft.) -- located at 13542 Helen Street, Detroit; *Site 14* (37 acres, 3 parcels) -- located at Ambassador Bridge adjacent to Interstates 75 and 96 spanning the Detroit River; at 3333 West Fort Street, Detroit; and, at 2301 West Lafayette Street, Detroit; *Site 15* (28 acres) -- Buske Lines Logistics complex, 17300 Allen Road, Brownstown Township; *Site 15A* (114,000 sq. ft.) -- located at 12240 Oakland Park Boulevard, Building 6, Highland Park; *Site 16* (108,321 sq. ft.) -- located at 8625 Inkster Road, Taylor; *Site 17* (101,404 sq. ft.) -- located at 26980 Trolley Drive, Taylor; and, *Site 18* (52 acres) -- located at 7111 Crabb Road, Temperance (expires 6/1/2010).

The applicant is now requesting authority to expand the general–purpose zone to include an additional site at the Willow Run Airport (*Proposed Site 19* - 2,340 acres) located at 801 Willow Run Airport, Ypsilanti. The site is owned by Wayne County and includes airport jet fuel storage/distribution facilities. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 22, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 8, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce, Export Assistance Center, 8109 East Jefferson Avenue, Suite 110, Detroit, MI 48213; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 1115, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

Dated: October 16, 2006.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E6–17716 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–863

Honey from the People's Republic of China: Notice of Rescission of Antidumping Duty New Shipper Reviews

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

SUMMARY: On July 31, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** (71 FR 43109) a notice announcing the initiation of new shipper reviews of the antidumping duty order on honey from the People's Republic of China (''PRC''). The period of review (''POR'') is December 1, 2005, to June 30, 2006. This review is now being rescinded for Qingdao Aolan Trade Co., Ltd., and Hangzhou Golden Harvest Health Industry Co., Ltd., because the requesting parties withdrew their requests in a timely manner.

EFFECTIVE DATE: October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4003, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–6375, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** an antidumping duty order covering honey from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On June 21, 2006, Qingdao Aolan Trade Co., Ltd. (''Qingdao Aolan''), and Hangzhou Golden Harvest Health Industry Co., Ltd. (''Golden Harvest''), requested, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(d) of the Department's regulations, that the Department conduct new shipper reviews of the antidumping duty order on honey from the PRC for their respective companies covering the period December 1, 2005, through June 30, 2006.

On July 20, 2006, the Department initiated new shipper reviews of Qingdao Aolan and Golden Harvest. *See Honey from the People's Republic of China: Initiation of New Shipper Anti–Dumping Duty Reviews*, 71 FR 43109 (July 31, 2006). On September 15, 2006, Qingdao Aolan filed a letter withdrawing its request for a new shipper review. On September 27, 2006, Golden Harvest filed a letter withdrawing its request for a new shipper review.

Rescission of Review

19 CFR 351.214(f)(1) states that if a party that requested a new shipper review withdraws the request within 60 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Qingdao Aolan and Golden Harvest withdrew their review requests within the 60-day deadline, in accordance with 19 CFR 351.214(f)(1). Accordingly, we are rescinding these new shipper reviews of the antidumping duty order on honey from the PRC covering the period December 1, 2005, through June 30, 2006, with respect to Qingdao Aolan and Golden Harvest.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues

to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f)(3).

Dated: October 16, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–17714 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–485–806)

Certain Hot–Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania. The period of review is November 1, 2004, through October 31, 2005. We preliminarily determine that sales of subject merchandise by Mittal Steel Galati, S.A. (MS Galati), have not been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess no antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue(s) and (2) a brief summary of the argument(s). We will issue the final results no later than 120 days from the publication of this notice.

EFFECTIVE DATE: October 20, 2006.

FOR FURTHER INFORMATION CONTACT: David Dirstine at (202) 482–4033, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published an antidumping duty order on certain hot–rolled carbon steel flat products from Romania. See *Notice of Amended Final Antidumping Duty Determination and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Romania*, 66 FR 59566 (November 29, 2001).

On November 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania for the period November 1, 2004, through October 31, 2005. See *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 65883 (November 1, 2005). On November 30, 2005, the Department received three timely requests for an administrative review of this order on behalf of MS Galati, Nucor Corporation (a domestic interested party), and United States Steel Corporation (USSC), the petitioner in this proceeding.

On December 22, 2005, the Department initiated an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from Romania for the period November 1, 2004, through October 31, 2005 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005)).

On July 27, 2006, due to the complexity of the case and pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the deadline for the completion of the preliminary results in this administrative review until October 16, 2006. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from Romania*, 71 FR 42630 (July 27, 2006).

Scope of the Order

For purposes of this order, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight length, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order. The merchandise subject to this order is classified in the Harmonized Tariff Schedules of the United States (HTSUS) at the following subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products are covered by this order, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel which may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this proceeding is dispositive. For further information on the scope of the order, see Certain Hot–Rolled Carbon Steel Flat Products from Romania: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 70644 (December 7, 2004).

Date of Sale

Based on our analysis of U.S. sales in the 2003–2004 review, we concluded that all substantive terms of sale, *i.e.*, price, quantity, terms of delivery, and payment, were fixed and not susceptible to change after the date on the customer order acknowledgment issued by MS Galati's U.S. subsidiary, INA. Therefore, we determined that the date of INA's customer–order acknowledgment

represents the appropriate date of sale for reporting U.S. sales. See *Certain Hot–Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review*, 71 FR 30656 (May 30, 2006) and accompanying Issues and Decision Memorandum at Comment 7.

Fair–Value Comparisons

To determine whether MS Galati's sales of the subject merchandise from Romania to the United States were made at prices below normal value, we compared the constructed export price (CEP) to the normal value as described in the ''Constructed Export Price'' and ''Normal Value'' sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted–average normal value of the foreign like product where there were sales made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products within the ''Scope of the Order'' section above which were produced and sold by MS Galati in the home market during the period of review to be foreign like product for the purpose of determining appropriate product comparisons to U.S. sales of subject merchandise. We relied on the following eleven characteristics to match U.S. sales of subject merchandise to comparison sales of the foreign like product: (1) painted; (2) quality;(3) carbon content; (4) yield strength; (5) thickness; (6) width; (7) form; (8) temper rolled; (9) pickled; (10) edge trim; and (11) patterns in relief. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics and reporting instructions we identified in our questionnaire. See Appendix III and IV of the Department's antidumping duty questionnaire to MS Galati dated December 22, 2005.

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) of the Act. For purposes of this administrative review, we have treated sales by MS Galati as CEP transactions because MS Galati's U.S. affiliate, INA, made the first sale to an unaffiliated party in the United States. Therefore, we based CEP on the packed duty–paid prices to unaffiliated purchasers in the United States in accordance with sections 772(b), (c), and (d) of the Act. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included foreign inland freight from the plant to the port of export, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, other U.S. transportation expenses (*i.e.*, U.S. stevedoring, wharfage, and surveying), and U.S. customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses) and indirect selling expenses.

We revised the calculation of U.S. credit expense from the amount MS Galati claimed to reflect the seller's cost of extending credit between the date of shipment from Romania and final payment from the first unaffiliated customer. Credit expense is the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer. Inventory carrying costs are the interest expenses incurred (or interest revenue foregone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. In CEP cases where the merchandise does not enter the inventory of a U.S. affiliate in the United States prior to sale to an unaffiliated U.S. customer, the Department calculates the credit period from the time the merchandise is shipped from the producer's country to the date of payment. See, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 6.

For these CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

Normal Value

A. Home–Market Viability

We compared the aggregate volume of all home–market sales of the foreign like product and the U.S. sales of the subject merchandise to determine whether the volume of the foreign like product sold in Romania was sufficient, pursuant to section 773(a)(1)(c) of the Act, to form a basis for normal value. Because the volume of home–market sales of the foreign like product was greater than five percent of the U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of normal value on the home–market sales of the foreign like product. Thus, we used as normal value the prices at which the foreign like product was first sold for consumption in Romania, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade as the CEP sales, as appropriate. After testing home–market viability, we calculated normal value as discussed in the ''Price–to-Price Comparisons'' section of this notice.

B. Cost–of-Production Analysis

On July 11, 2006, Nucor Corporation submitted an allegation that MS Galati's home–market sales were made at prices below the cost of production and requested that the Department initiate a cost investigation of MS Galati's home–market sales of the foreign like product. Upon review of Nucor's allegation, we found reasonable grounds to believe or suspect that MS Galati made sales at below the cost of production so we initiated a sales–below-cost investigation on August 3, 2006, and instructed MS Galati to provide cost–of-production information concerning its sales.

MS Galati provided cost–of-production information in response to our request. Because home–market sales during the 2003–2004 period were the only candidates for use as normal value due to the date of sale reported for U.S. sales (see discussion under ''Date of Sale''), we have conducted the cost–of-production test using the 2003–2004 home–market sales.

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average cost of production based on the sum of the cost of materials and fabrication for the foreign like product plus amounts for home–market general and administrative (G&A) expenses, interest expenses, and packing expenses. We relied on the cost–of-production data MS Galati submitted in its questionnaire responses.

On a model–specific basis, we compared the cost of production to the home–market prices, less any applicable movement charges and direct and indirect selling expenses.

We disregarded below–cost sales where 20 percent or more of MS Galati's sales of a given product were made at prices below the cost of production and, thus, such sales were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (c) of the Act and where, based on comparisons of the price to the weighted–average cost of production, we determined that the below–cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act.

C. Arm's–Length Test

MS Galati reported that it made sales in the home market to affiliated and unaffiliated customers. The Department did not require MS Galati to report downstream sales by its affiliated party because these sales represented less than five percent of total home–market sales. We excluded sales to affiliated customers in the home market not made in the ordinary course of trade from our analysis pursuant to section 773(a)(1)(B)(i) of the Act. To determine whether sales to affiliated customers were made in the ordinary course of trade, we tested whether sales to each affiliated customer were made at arm's length. As such, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length, consistent with *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

D. Price–to-Price Comparisons

We based normal value on the home–market sales to unaffiliated purchasers and sales to affiliated customers that passed the arm's–length test. We adjusted gross unit price for reported freight revenue. We made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We made adjustments for movement expenses (*i.e.*, inland freight from plant to distribution warehouse and warehousing expenses) in accordance with section 773(a)(6)(B) of the Act. We made circumstance–of-sale adjustments for imputed credit, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. In accordance with section 773(a)(6) of the Act, we deducted home–market packing costs and added U.S. packing costs.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the CEP transaction. See also 19 CFR 351.412. The normal–value level of trade is the level of the starting–price sales in the comparison market or, when normal value is based on constructed value, the level of the sales from which we derive selling, general and administrative expenses and profits. For CEP sales, the U.S. level of trade is the level of the constructed sale from the exporter to the affiliated importer. See 19 CFR 351.412(c)(1).

To determine whether home–market sales are at a different level of trade than CEP sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home–market sales are at a different level of trade than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value is based and home–market sales at the level of trade of the export transaction, we make a level–of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal–value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP offset). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 - 61733 (November 19, 1997).

In this review, MS Galati reported that it sells to unaffiliated distributors and end–users in Romania as well as to affiliated end–users for consumption and affiliated distributors. In the United States, MS Galati had sales to an affiliate, INA, that resold the merchandise to unaffiliated customers.

MS Galati reported one level of trade in the home market with the following three channels of distribution: (1) direct sales to customers; (2) consignment sales; (3) sales through its affiliated warehouse. Home–market sales were made to two classes of customers, end–users and distributors. Along with MS Galati's home–market sales of merchandise stored at its affiliated warehouse, MS Galati also had sales to affiliated end–users for consumption. Based on our review of evidence on the record, we find that home–market sales through the three channels of distribution to both customer categories, whether affiliated or not, were substantially similar with respect to selling functions and stages of marketing. MS Galati performed the same selling functions at the same level for sales to all home–market customers. Accordingly, we preliminarily find that MS Galati had only one level of trade for its home–market sales.

MS Galati reported one CEP level of trade with one channel of distribution in the United States which consists of its U.S. affiliate's direct sales to end–users and distributors of merchandise shipped directly from Romania. As such, we preliminarily determine that MS Galati made CEP sales to the United States through one channel of distribution -- direct sales to end–users and distributors.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. Accordingly, we reviewed the selling functions and services MS Galati reported it performed on CEP sales and we have determined that the selling functions performed on all CEP sales were identical. Therefore, we preliminarily determine that there is one CEP level of trade in the U.S. market.

We then compared the selling functions performed by MS Galati on its CEP sales (after deductions) to the selling functions it provided in the home market. We found that MS Galati performs more selling functions for its home–market sales than those it provides to its U.S. affiliate, INA. MS Galati reported that it provided minimal selling functions and services for the

CEP level of trade and that, therefore, the home–market level of trade is more advanced than the CEP level of trade. Based on our analysis of the channels of distribution and MS Galati's selling functions for sales in the home market and CEP sales in the U.S. market, we preliminarily find that the home–market level of trade is at a more advanced stage of distribution when compared to CEP sales because MS Galati provides many selling functions in the home market at a higher level of service as compared to selling functions it performed for its CEP sales.

We examined whether a level–of-trade adjustment or CEP offset may be appropriate. In this case, MS Galati sold at one level of trade in the home market. Therefore, there is no information available to determine a pattern of consistent price differences between the sales on which we base normal value and the home–market sales at the level of trade of the export transaction, in accordance with our normal methodology as described above. See 19 CFR 351.412(d). We do not have record information which would allow us to examine pricing patterns based on MS Galati's sales of other products, and there are no other respondents or other record information on which such as analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a level–of-trade adjustment but the level of trade in the home market is at a more advanced state of distribution than the level of trade of the CEP transactions, we made a CEP–offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

To calculate the CEP offset, we deducted the home–market indirect selling expenses from normal value for home–market sales that we compared to U.S. CEP sales. As such, we limited the deduction for home–market indirect selling expenses by the amount of the indirect selling expenses we deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the weighted–average dumping margin for MS Galati during the period November 1, 2004, through October 31, 2005, is 0.00 percent.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. If requested, a hearing will be held at the main Department building. We will notify parties of the exact date, time, and place for any such hearing.

Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties may be filed no later than 30 days after publication of this notice. Rebuttal briefs, limited to the issues raised in case briefs, may be submitted no later than five days after the deadline for filing case briefs. Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue and a brief summary of the argument with an electronic version included.

The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in the case briefs, within 120 days from the date of publication of these preliminary results.

Assessment Rate

The Department will determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. We intend to issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific assessment rate of 0.00 percent. In our final results we will direct CBP to liquidate the appropriate entries at this rate. See 19 CFR 351.212(b)(1).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment–Policy Notice). This clarification will apply to entries of subject merchandise during the period of review produced by MS Galati for which MS Galati did not know that the merchandise it sold to an intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 17.84 percent all–others rate if there is no rate for the intermediary involved in the transaction. See the Assessment–Policy Notice for a full discussion of this clarification.

Cash–Deposit Requirements

The following cash–deposit rates will be effective upon publication of the final results of this review for all shipments of certain hot–rolled carbon steel flat products from Romania entered, or withdrawn from warehouse, for consumption on or after publication date, as provided by section 751(a)(2)(C) of the Act: (1) for MS Galati, the cash–deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original antidumping duty investigation but the manufacturer is, the cash–deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous administrative review or in the original less–than-fair–value investigation, the cash–deposit rate will be 17.84 percent, the ''All Others'' rate made effective on June 14, 2005. See *Certain Hot- Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005).

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 the 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 notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 16, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–17717 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–879

Polyvinyl Alcohol from the People's Republic of China; Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On July 7, 2006, the Department of Commerce (Department) published the preliminary results of its 2004–2005 administrative review of the antidumping duty order on polyvinyl alcohol (PVA) from the People's Republic of China (PRC). *See Polyvinyl Alcohol from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 38612 (July 7, 2006) (*Preliminary Results*). We have now completed that review. For these final results, as in the *Preliminary Results*, we determine that sales have not been made below normal value (NV).

EFFECTIVE DATE: October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Jill Pollack, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4593.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2006, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on PVA from the PRC. *See Preliminary Results*. Interested parties were invited to comment on the preliminary results. On August 7, 2006, we received case briefs from Sinopec Sichuan Vinylon Works (SVW), the respondent in this administrative review, and Solutia Inc. (Solutia), a domestic interested party. No party filed a rebuttal brief.

On September 15 and 28, 2006, respectively, SVW and Solutia withdrew their case briefs and requested that the Department issue the final results. SVW also requested that the Department issue the final results on an expedited basis. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (Act).

Period of Review

The period of review (POR) is October 1, 2004, through September 30, 2005.

Scope of Order

The merchandise covered by this order is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this order:

1) PVA in fiber form.
2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.
3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.
4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.
5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end–use certification.
6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.
8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non–vinyl acetic material.
9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.
10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.
11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.
15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise subject to this order is currently classifiable under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Surrogate Country

In the *Preliminary Results*, we stated that we treat the PRC as a non–market economy (NME) country and, therefore, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries. Also, we stated that we selected India as the appropriate surrogate country to use in this review for the following reasons: (1) it is a significant producer of comparable merchandise; and (2) it is at a similar level of economic development, pursuant to 773(c)(4) of the Act. *See Preliminary Results*, 71 FR at 38613. For the final results, we made no changes to our findings with respect to the selection of a surrogate country.

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. In the *Preliminary Results*, we found that SVW demonstrated its eligibility for separate–rate status. For these final results, we continue to find that the evidence placed on the record of this review by SVW demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review and, thus, determine SVW is eligible for separate–rate status.

Weighted–Average Dumping Margin

The weighted–average dumping margin is as follows:

Manufacturer/producer/ exporter	Margin percentage
Sinopec Sichuan Vinylon Works	0.00 percent

Assessment Rates

The Department will issue appraisement instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of publication of these final results of administrative review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates for the merchandise subject to this review. We note that SVW did not report the entered value for its U.S. sales in question. Accordingly, we have calculated importer–specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on the estimated entered value. Where an importer–specific *ad valorem* rate is *de minimis*, we will order CBP to liquidate appropriate entries without regard to antidumping duties.

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 PVA 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) because the cash deposit rate for SVW is *de minimis*, no cash deposit shall be required for SVW; (2) the cash deposit rate for all other PRC exporters will be 97.86 percent, the current PRC–wide rate; and (3) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that 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 final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under 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.

This determination and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: October 17, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–17712 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101706E]

Incidental Takes of Marine Mammals During Specified Activities; Black Abalone Research Surveys at San Nicolas Island, Ventura County, CA

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from Dr. Glenn VanBlaricom (Dr. VanBlaricom) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to the assessment of black abalone populations at San Nicolas Island (SNI), CA. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposed IHA for these activities.

DATES: Comments and information must be received no later than November 22, 2006.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.101706E@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to

incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On August 10, 2006, NMFS received a letter from Dr. VanBlaricom, of the Washington Cooperative Fish and Wildlife Research Unit, requesting renewal of an IHA that was first issued to him on September 23, 2003 (68 FR 57427, October 3, 2003), and was last reissued on November 30, 2005 (70 FR 73732, December 13, 2005). The requested IHA would authorize the take, by harassment, of small numbers of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends in black abalone (Haliotis cracherodii) populations at SNI, Ventura County, California. The proposed research consists of 2 researchers, on foot, counting abalone at nine permanent sites (1 m^2 each) on SNI twice a year, with one brief additional visit to each site for maintenance.

Population trend data for black abalone populations have become important in a conservation context because of: (a) the reintroduction of sea otters to SNI in 1987, raising the possibility of conflict between otter conservation and abalone populations (abalones are often significant prey for sea otters); (b) the appearance of a novel exotic disease, abalone withering syndrome, at SNI in 1992, resulting in dramatically increased rates of abalone mortality at the Island; and, (c) the recent designation of California populations of black abalones as a species of concern in the context of listing pursuant to the Endangered Species Act (ESA). Research is done under the auspices of the Washington Cooperative Fish and Wildlife Research Unit, the University of Washington, and the U.S. Navy (owner of SNI), with additional logistical support from the University of California, Santa Cruz. Since the abalone are not handled or removed in the course of the research, neither a state nor federal permit is needed.

Additional information on the research is contained in the application and proposed IHA **Federal Register** notice (69 FR 70249), which are available upon request (see **ADDRESSES**).

Project Description

Nine permanent abalone research study areas are located in rocky intertidal habitats on SNI in Ventura County, CA. The applicant has made 106 separate field trips to SNI from September 1979 through March 2006, participating in abalone survey work on 564 different days at nine permanent study sites. Under the latest authorization, Dr. VanBlaricom made five different visits and conducted work for 30 total days in the one year period.

Quantitative abalone surveys on SNI began in 1981, at which point permanent research sites were chosen based on the presence of dense patches of abalone in order to monitor changes over time in dense abalone aggregations. Research is conducted by counting black abalone in plots of 1 m^2 (3.3 ft^2) along permanent transect lines in rocky intertidal habitats at each of the nine study sites on the island. Permanent transect lines are demarcated by stainless steel eyebolts embedded in the rock substrata and secured with marine epoxy compound. Lines are placed temporarily between bolts during surveys and are removed once surveys are completed. Survey work is done by two field biologists working on foot (sites are accessed by hiking to water from vehicle parked inland) and monitoring of black abalone populations at SNI can be done only during periods of extreme low tides. The exact date of a visit to any given site is difficult to predict because variation in surf height and sea conditions can influence the safety of field biologists as well as the quality of data collected. In most years survey work is done during the months of January, February, March, July, November, and December because of optimal availability of low tides. All work is done during daylight hours due to of safety considerations.

During the year, each of the nine permanent study sites at SNI will be visited three times. Abalone surveys, which take no more than 4 hours at each site, are conducted during two of the three visits to each of the nine sites. The third, and final, visit is a maintenance visit, which takes less than half of an hour at each site and is used to take measurements and make necessary repairs to plots and is conducted in a month when smaller numbers of pinnipeds are present.

The affected marine mammal populations at SNI, especially California sea lions and northern elephant seals, have grown substantially since the beginning of abalone research in 1979 and have occupied an expanded distribution on the island due to population growth. Sites previously accessible with no risk of marine mammal harassment are now being utilized by marine mammals at levels such that approach without the possibility of harassment is difficult. An IHA is warranted for this study because of the nine study sites used for the abalone surveys, only two sites can be occupied without the possibility of disturbing at least one species of pinniped.

Description of Habitat and Marine Mammals in the Activity Area

San Nicolas is one of the eight Channel Islands, located in the Santa Barbara Channel off Southern California. Nine miles long (14.5 km) and about three and a half miles (5.6 km) across at its widest point, it is the farthest island from the mainland, more than 60 miles (96.6 km) offshore and about 85 miles (136.8 km) southwest of Los Angeles, California. SNI is owned and operated by the U.S. Navy and is off-limits to civilians without specific permission.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds. On SNI, three pinniped species (northern elephant seal, Pacific harbor seal, and California sea lion) can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition, a single adult male Guadalupe fur seal (*Arctocephalus townsendi*) (federally listed as threatened under the Endangered Species Act) was seen at one abalone research site on two occasions during the summer months in the mid–1980's. However, none have been seen since those original sightings.

Further information on the biology and distribution of these species and others in the region can be found in Dr. VanBlaricom's application, which is available upon request (see **ADDRESSES**), and the Marine Mammal Stock Assessment Reports, which are available online at *http://www.nmfs.noaa.gov/*

prot__res/PR2/Stock__Assessment__Program/individual__sars.html.

California Sea Lions

The U.S. stock of California sea lions extends from the U.S./Mexico border north into Canada. Breeding areas of the sea lion are on islands located in southern California, western Baja California, and the Gulf of California and they primarily use the central California area to feed during the non-breeding season. Population estimates for the U.S. stock of California sea lions, which are based on counts conducted in 2001 and extrapolations from the number of pups, range from a minimum of 138,881 to an average of 244,000 animals, with a current growth rate of 5.4 to 6.1 percent per year (Carretta *et al.*, 2005). The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted under the MMPA.

California sea lions haul out at many sites on SNI and are by far the most common pinniped on the island. Over the course of a year, up to 100,000 sea lions may use SNI. Numbers of sea lions at SNI increased by about 21 percent per year between 1983 and 1995 (NMFS, 2003) and sea lions have recently started occupying areas that were not formerly used. Pupping occurs on the beaches of SNI from mid-June to mid-July. Females nurse their pups for about eight days and then begin an alternating pattern of foraging at sea vs. attending and nursing the pup on land, which lasts for about eight months, and sometimes up to a year. California sea lions also haul out at SNI during the molting period in September, and smaller numbers of females and juveniles haul out during most of the year.

Pacific Harbor Seals

Harbor seals are widely distributed in the North Atlantic and North Pacific. In California, approximately 400–500 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996). A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. Based on the most recent harbor seal counts (2004 and 2005) and including a correction factor for the above, the estimated population of harbor seals in California is 34,233 (Caretta *et al.*, 2005), with an estimated minimum population of 31,600 for the California stock of harbor seals. Counts of harbor seals in California showed a rapid increase from 1972 to 1990, but since 1990 there has been no net population growth along the mainland or the Channel Islands. Though no formal determination of Optimal Sustainable Population (OSP) has been made, the decrease in the growth rate may indicate that the population has reached its carrying capacity. The harbor seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Harbor seals haul out at various sandy, cobble, and gravel beaches around SNI and pupping occurs on the beaches from late February to early April, with nursing of pups extending into May. Harbor seals may also haul out during molting period in late Spring, and smaller numbers haul out at other times of year. Harbor seal abundance increased at SNI from the 1960s until 1981, but since the average counts have not changed significantly. From 1982 to 1994, numbers of harbor seals have fluctuated between 139 and 700 harbor seals based on both peak ground counts and annual photographic survey photos. The most recent aerial count on SNI was of 457 harbor seals in 1994.

Northern Elephant Seals

Northern elephant seals breed and give birth in California (U.S.) and Baja California primarily on offshore islands, from December to March (Stewart *et al.*, 1994). The California breeding stock, which includes the animals on SNI, is now demographically separated from the Baja California population. Based on trends in pup counts, northern elephant seal colonies appeared to be increasing in California through 2001. The population size of northern elephant seals in California is estimated to be 101,000 animals, with a minimum population estimate of 60,547 (Carretta *et al.*, 2005). A continuous average growth rate (though it has declined a bit in recent years) of 8.3 percent has seen numbers of this species increase from 100 in 1900 to the current population size (Caretta *et al.*, 2005). The northern elephant seal is not listed under the ESA and the California stock is not considered depleted under the MMPA.

Increasing numbers of elephant seals haul out at various sites around SNI. Based on a pup count in 1995 that found 6,575 pups, scientists estimated that over 23,000 elephant seals may use SNI in a year (NMFS, 2003). From 1988 to 1995 the pup counts on SNI increased at an average rate of 15.4 percent per year, however, the growth rate of the population as a whole seems to have declined in recent years (NMFS, 2003). Pupping occurs on the beaches of SNI from January to early February, with nursing of pups extending into March. Northern elephant seals also haul out during the molting periods in the spring and summer, and smaller numbers haul out at other times of the year.

Potential Effects of Activities on Marine Mammal

Variable numbers of sea lions, harbor seals, and elephant seals typically haul out near seven of the nine study sites used for abalone research, with breeding activity occurring at four of these seven sites. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land at or near study sites.

Incidental harassment may result if hauled animals move away from the abalone researchers. For the purpose of estimating numbers of pinnipeds taken by these activities, NMFS conservatively estimates that pinnipeds that move or change the direction of their movement in response to the presence of researchers are taken by Level B Harassment. Animals that raise their head and look at the researcher are not considered to have been taken. Although marine mammals will not be deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out directly upon the permanent abalone study plots. In almost all cases, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled animals may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of serious injury or death to hauled animals is very low.

The risk of marine mammal injury or mortality associated with abalone research increases somewhat if disturbances occur during breeding season, as it is possible that mothers and dependent pups could become separated. If separated pairs don't reunite fairly quickly, risks of mortality to pups (through starvation) may increase. Also, adult northern elephant seals may trample elephant seal pups if disturbed, which could potentially result in the of injury or death of pups. However, the IHA will include time of year restrictions intended to limit the presence of researchers to months that California sea lion and harbor seal dependent pups are not present at the survey sites. Additionally, though

elephant seal pups are occasionally present at abalone surveys, risk of pup mortalities are very low because elephant seals are far less reactive to researcher presence than the other two species (an estimated 30 total elephant seals have been disturbed in the last three years out of 1594 present around the study site). Last, researchers use great care approaching sites and pups are on the sand while the permanent study sites are on rocks, which leaves the two always separated by at least 50 m (164 ft). Because of the circumstances and the IHA requirements discussed above, NMFS believes it highly unlikely that the proposed activities would result in the injury or mortality of pinnipeds (and none have been recorded in the 27 years that the researcher has been conducting this research).

The results of Dr. VanBlaricom's monitoring under the previous IHA are summarized in Table 1, which shows the numbers of each species present at Dr. VanBlaricom's survey sites as well as the numbers disturbed during his visits in the last year. As part of the required monitoring, Dr. VanBlaricom records the numbers of disturbed animals that flush into the water, the number that move more than 1 m, but do not enter the water, and the number that become alert and move, but not move more than 1 m (see the application for these numbers). Animals that raised their head and looked at the researcher without moving were not considered disturbed (or harrassed pursuant to the MMPA). For the purposes of estimating take in the IHA, NMFS conservatively estimates take as the total of all three categories of disturbed behavior recorded.

As indicated in Table 1, approximately 25 percent of the total animals harassed by this activity responded by flushing into the water (221 sea lions, 46 harbor seals, and 0 elephant seals) and the rest responded to a lesser degree by moving some distance on land when the researchers approached. Though the researchers have not stayed to find how soon pinnipeds return after flushing (leaving as soon as possible minimizes the effects), increasing numbers at some of the sites and pinniped presence at sites where they were not present before suggest that the research is not having any long-term detrimental effects on the population of any of these three species. Older, weaned sea lion pups were seen and disturbed at sites 6, 7, and 8, however, none were flushed into the water or injured in any way.

Year	Month	Date	Site#	California Sea Lions		Pacific Harbor Seals		Northern Elephant Seals	
				Present at site	Disturbed	Present at site	Disturbed	Present at site	Disturbed
2006	January	2	1	54	1	0	0	0	0
2006	January	12	1	50	3	0	0	1	0
2006	February	25	1	1	1	0	0	0	0
2006	February	26	1	32	28	0	0	0	0
2005	December	1	2	0	0	0	0	0	0
2005	December	3	2	0	0	0	0	0	0
2006	January	1	2	0	0	0	0	0	0
2006	January	15	2	0	0	0	0	0	0
2006	January	29	2	0	0	0	0	0	0
2006	February	24	2	0	0	0	0	0	0
2005	December	2	3	0	0	0	0	0	0
2006	January	16	3	0	0	0	0	0	0
2006	January	30	3	0	0	0	0	0	0
2006	January	31	3	0	0	0	0	0	0
2006	February	28	3	0	0	0	0	0	0
2005	December	4	4	0	0	0	0	0	0
2006	January	25	4	0	0	0	0	0	0
2006	January	30	4	0	0	0	0	0	0
2006	March	1	4	0	0	0	0	0	0
2006	January	26	5	27	5	27	25	88	4
2006	January	14	6	86	69	13	13	216	7
2006	January	26	6	97	90	17	12	203	2
2006	January	27	7	610	386	0	0	60	0

Year	Month	Date	Site#	California Sea Lions		Pacific Harbor Seals		Northern Elephant Seals	
				Present at site	Disturbed	Present at site	Disturbed	Present at site	Disturbed
2005	December	30	8	226	195	0	0	3	0
2006	January	13	8	241	227	0	0	5	0
2006	January	28	8	140	40	0	0	14	0
2005	December	29	9	0	0	0	0	14	1
2005	December	31	9	0	0	0	0	19	0
Totals				1564	1045	57	50	623	14
# that flushed into water					221 (21%)		46 (92%)		0
# moved >1m, but not into water					680 (65%)		3 (6%)		11 (79%)
# came alert, but did not move >1 m					144 (14%)		1 (2%)		3 (21%)

Table 1. Results from 2006 monitoring. Number of ''disturbed'' animals indicates total of the three categories of recorded reactions which include: animals that flushed into the water; animals that moved more than 1 m, but did not enter the water; and, animals that moved or changed direction, but did not move more than 1 m.

Mitigation

Several mitigation measures to reduce the potential for harassment from population assessment research surveys will be implemented as part of the SNI abalone research activities. Primarily, mitigation of the risk of disturbance to pinnipeds requires that researchers are judicious in the route of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals harassed. Each visit to a given study site will last for a maximum of 4 hours, after which the site is vacated and can be re-occupied by any hauled marine mammals that may have been disturbed by the presence of abalone researchers.

The potential risk of injury or mortality will be avoided with measures required under the authorization. Disturbances to females with dependent pups (in the cases of California sea lions and Pacific harbor seals) will be mitigated to the greatest extent practicable by avoiding visits to the four black abalone study sites with resident pinnipeds during periods of breeding and lactation from mid-February through the end of October. During this period, abalone research would be confined to the other five sites where pinniped breeding and post-partum nursing does not occur. Limiting visits to the four breeding and lactation sites (5, 6, 7, and 8) to periods when these activities do not occur (November, December, January, and the first half of February) will reduce the possibility of incidental harassment and the potential for serious injury or mortality of dependent California sea lion pups and Pacific harbor seal pups to near zero.

Northern elephant seal pups are present at four sites during winter months. Risks of injury or mortality of elephant seal pups by mother/pup separation or trampling are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Also, elephant seal pupping typically occurs on the sandy beaches at SNI, approximately 50 m (164 ft) or more away from the abalone study sites. Possible take of northern elephant seal pups will be minimized by using a very careful approach to the study sites and avoiding the proximity of hauled seals and any seal pups during collection of abalone population data.

One individual Guadalupe fur seal was seen at study site 8 on two separate occasions during the summer months in the mid–1980's. Since the original sightings, no individuals of this species have been seen during abalone research. However, to ensure that Gaudelupe fur seals are not affected by these activities and that authorization is not needed pursuant to the MMPA or the ESA, researchers will only visit site 8 from November through January and work will be immediately suspended and researchers vacated if an individual is seen. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any disturbance.

Sea otters, which are federally listed as threatened under the ESA and managed by the U.S. Fish and Wildlife Service, are not expected ashore during the time periods when the research activities would be conducted. However, if sea otters are sighted ashore during the abalone research, Dr. VanBlaricom would follow similar procedures in place for fur seals to avoid impacts, suspending research activities in any areas California sea otters are occupying.

Monitoring

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), U.S. Navy. The U.S. Navy owns SNI and closely regulates all civilian access to and activity on the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center. Also, long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Monitoring requirements in relation to Dr. VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Information recorded will include species counts (with numbers of pups), numbers of observed disturbances, and

descriptions of the disturbed behaviors during the abalone surveys. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD and NMFS.

If at any time injury or death of any marine mammal occurs that may be a result of the proposed abalone research, Dr. VanBlaricom will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the year-long field season. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Dr. VanBlaricom has already submitted the final report required by the current IHA and it may be viewed on the NMFS website (see **ADDRESSES**).

Numbers of Marine Mammals Expected to be Harassed

NMFS has determined that small numbers, relative to population estimates, of California sea lions, Pacific harbor seals, and northern elephant seals may be taken by harassment as a result of this activity (1.3, 0.2, and .04 percent of the minimum population, respectively).

The distribution of pinnipeds hauled out on beaches is not even between sites or at different times of the year. The number of marine mammals disturbed will vary by month and location, and, compared to animals hauled out on the beach farther away from survey activity, only those animals hauled out closest to the actual survey transect plots contained within each research site are likely to be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way.

Table 2 depicts the total numbers of animals encountered and disturbed by Level B Harasssment in Dr. VanBlaricom's 2004, 2005, and 2006 abalone survey field seasons. As discussed earlier, NMFS considers an animal to have been harassed if it moved any distance in response to the researcher's presence or if the animal was already moving and changed direction. Animals that raised their head and looked at the researcher without moving were not considered disturbed. Based on past observations and assuming a maximum level of incidental harassment of marine mammals at each site during periods of visitation, NMFS estimates that the maximum total possible numbers of individuals that will be incidentally harassed during the effective dates of the proposed IHA would be 1770 California sea lions, 75 Pacific harbor seals, and 25 northern elephant seals. Three visits to each site are anticipated during the year-long validity of the IHA.

	California sea Lions		Pacific Harbor Seals		Northern Elephant Seals	
	Present around Site	Est. Harassed	Present around Site	Est. Harassed	Present around Site	Est. Harassed
2004	2239	1472	108	99	562	7
2005	1383	983	99	88	409	9
2006	1564	1045	57	50	623	14

Potential Effects of Activities on Marine Mammal Habitat

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around each of the nine study sites less desirable as haulout sites for a total of 8.5 hours per year.

ESA

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described abalone research and the accompanying IHA will have no effect on species or critical habitat protected under the ESA (specifically, the Guadelope fur seal). Therefore, consultation under Section 7 was not required.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) of the Issuance of an IHA to Take Marine Mammals, by Harassment, During Black Abalone Research at SNI, California, which analyzed the issuance of multiple IHAs over several years for these activities, and subsequently issued a Finding of No Significant Impact on November 21, 2005. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Conclusions

Based on Dr. VanBlaricom's application and monitoring reports for previous field seasons, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described abalone research at SNI will result, at most, in a temporary modification in behavior by small numbers of California sea lions, Pacific harbor seals, and northern elephant seals, in the form of head alerts, movement away from the researchers and/or flushing from the beach. In addition, no take by injury or death is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. NMFS has further preliminarily determined that, dependent upon the implementation of the proposed mitigation measures, the anticipated takes will have a negligible impact on the affected species.

Proposed Authorization

NMFS proposes to issue an IHA to Dr. Glenn R. VanBlaricom for the harassment of California sea lions, Pacific harbor seals, and northern elephant seals incidental to black abalone population trend research, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 17, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–17704 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806B]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of closed session Advisory Panel (AP) Selection Committee conference call.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Advisory Panel Selection Committee via Conference Call to review AP Member Violations Material for recommendation to the Council.

DATES: The Conference Call will be held on Tuesday, November 7, 2006, from 11 a.m. EDT to 11:30 a.m. EDT.

ADDRESSES: The meeting will be held via Closed Session conference call.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene its Advisory Panel Selection Committee via Conference Call to review AP Member Violations Material in a closed session conference call on Tuesday, November 7, 2006, at 11 a.m. EDT. The Committee recommendations will be presented to the Council at the November 13 - 17, 2006 Council Meeting in Galveston, TX.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–17685 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806C]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Standing Scientific and Statistical Committee (SSC).

DATES: The meeting will begin at 8 a.m. on Wednesday, November 8, 2006 and conclude by 4 p.m.

ADDRESSES: The meeting will be held at the Quorum Hotel, 700 North Westshore Boulevard, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Council will convene the Standing SSC to address the Marine Recreational Fishing Statistic Survey (MRFSS) with emphasis on its reliability and uses. This review will include recommendations of the National Research Council (NRC) study of the MRFSS, its use in state administered programs, NOAA response to the NRC recommendations, and NOAA planned redesign of some of the survey methodology. The SSC will develop its recommendations to the Council on these issues.

The SSC will address issues and SSC operation procedures related to use of the Southeast Data, Assessment and Review (SEDAR) process. The administrator of the SEDAR program will brief the SSC on the operational procedures of the program, responding to the SSC's questions on the process.

The SSC will review the current SEDAR databases on goliath grouper and the recommendations of the NMFS Southeast Fisheries Science Center personnel on whether the current database is adequate to develop a benchmark assessment of the status of the goliath grouper stock. The SSC will develop their recommendations to the Council.

A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the Standing SSC, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Standing SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–17687 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806E]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Committee in November, 2006, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Wednesday, November 8, 2006, at 10 a.m.

ADDRESSES: The meeting will be held at the Hampton Inn, 2100 Post Road,

Warwick, RI 02886: telephone: (401) 739–8888; fax: (401) 739–1550.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will discuss goals, objectives and purposes for management action. The committee will also review recent Advisory Panel meeting discussions. In addition, the committee will have a presentation of preliminary data for various management options as well as recommend measures to be included in the management action. Other topics may be covered at the committee's discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–17689 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Plan Team will meet in Seattle, WA.

DATES: The meeting will be held on Wednesday, November 8, 2006, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, Traynor Room, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee will review and comment on the draft analysis to revise Overfishing Definitions for Bering Sea Aleutian Island crab.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: October 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–17686 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806H]

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BS/AI) groundfish plan teams will meet in Seattle, WA.

DATES: The meetings will be held on November 13–17, 2006. The meetings will begin at 1 p.m. on Monday, November 13, and continue through Friday November 17.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Observer Training Room (BS/AI Plan Team) and Traynor Room (GOA Plan Team), Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Agenda: Principal business is to prepare and review the Economic Report, the Ecosystem Considerations Chapter, groundfish stock assessments, and recommend final groundfish catch specifications for 2007/08. Agenda is listed on our website at: *http://www.fakr.noaa.gov/npfmc/cmteemtg.htm*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the NPFMC's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: October 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–17688 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101806A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota

Committee (TIQC) will hold a working meeting which is open to the public.

DATES: The TIQC working meeting will begin Monday, November 6, 2006, at 8:30 a.m. and may go into the evening, if necessary, to complete business for the day. On Tuesday, November 7, 2006, the meeting will reconvene from 8:30 a.m. and continue until business for the day is complete. On Wednesday, November 8, 2006, the meeting will reconvene from 8:30 a.m. and continue until 3 p.m.

ADDRESSES: The meeting will be held in Room 1052, Building 4, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115; telephone: (206) 526–4656.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Seger, Staff Officer (Economist); telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The Council is considering an individual quota program to cover limited entry trawl landings in the West Coast groundfish fishery. The purpose of the TIQC working meeting is to review and further develop alternatives under analysis, with particular emphasis on co-op alternatives for whiting sectors and review of Groundfish Management Team comments from the September Council meeting.

Although non-emergency issues not contained in the TIQC meeting agenda may come before the TIQC for discussion, those issues may not be the subject of formal TIQC action during these meetings. TIQC action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TIQC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 18, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–17645 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101106F]

Schedule for Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice.

SUMMARY: NMFS announces the first round of Protected Species Safe Handling, Release, and Identification Workshops. The workshops will be held in November and December 2006 and are mandatory for vessel owners and operators who use bottom longline, pelagic longline, or shark gillnet gear, and have also been issued shark or swordfish limited access permits. Vessel owners and operators whose permits expire in January 2007 must attend a workshop in 2006. Additional workshops will be held throughout 2007; however, vessel owners and operators whose permits expire in the winter or spring of 2007 are welcome to attend the first round of workshops in 2006.

DATES: Six workshops will be held between November 6, 2006, and December 14, 2006. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The workshops will be held in Dedham, MA; Manahawkin, NJ; Manteo, NC; Seminole, FL; Daytona Beach, FL; and Kenner, LA. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

The workshop schedule and a list of frequently asked questions regarding these workshops are posted on the internet at: *http://www.nmfs.noaa.gov/sfa/hms/workshops/*.

FOR FURTHER INFORMATION CONTACT: For further information regarding the workshop requirement, please contact Greg Fairclough by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: Effective January 1, 2007, shark limited access and swordfish limited access permit holders must submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). As such, vessel owners whose permits expire in January 2007 must attend one of the six free workshops offered in 2006. Vessel owners and operators whose permits expire in the winter or spring of 2007 may attend a workshop in 2007 or one of the six workshops offered in 2006 (see schedule below). New shark and swordfish limited access permit applicants must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before such permits will be issued.

Workshop Dates, Times, and Locations

1. November 6, 2006 from 9 a.m. - 5 p.m. Holiday Inn- Terrace Room, 55 Ariadne Rd. (US 1a and I95/128), Dedham, MA 02026.
2. November 8, 2006 from 9 a.m. - 5 p.m. Holiday Inn- Main Ballroom, 151 Route 72 East, Manahawkin, NJ 08050.
3. November 15, 2006 from 9 a.m. - 5 p.m. Outer Banks Welcome Center on Roanoke Island- Curtis H. Creech Memorial Boardroom. One Visitor's Circle Center, Manteo, NC 27954.
4. December 6, 2006 from 9 a.m. - 5 p.m. Seminole Community Library at St. Petersburg College, Seminole Campus, 9200 113th Street N., Seminole, FL 33772.
5. December 8, 2006 from 9 a.m. - 5 p.m. Aquatic Release Conservation, 1870 Mason Ave., Daytona Beach, FL 32117.
6. December 14, 2006 from 9 a.m. - 5 p.m. New Orleans Airport Garden Inn. 4535 Williams Blvd., Kenner, LA 70065.

Registration

To sign up for a scheduled workshop, please contact Aquatic Release Conservation (877) 411–4272, 1870 Mason Ave., Daytona Beach, FL 32117.

In addition to certifying permit holders, all longline and gillnet vessel operators fishing with a limited access swordfish or limited access shark permit are required to attend the Safe Handling, Release, and Identification workshops. Vessels that have been issued a limited access swordfish or limited access shark permit may not fish unless both the vessel owner and operator have valid workshop certificates. Vessel operators must possess on board the vessel valid workshop certificates for both the vessel owner and the operator at all times.

To ensure the workshop certificate is linked to the correct permit, you will need to bring the following items with you to the workshop:

Individual vessel owners must bring: proof of identification, a copy of the appropriate permit(s), and a copy of the vessel registration or documentation.

Representatives of a business owned or co-owned vessel must bring: proof that the individual is an agent of the business, a copy of the applicable permit(s), and proof of identification.

Vessel operators must bring proof of identification.

Participants in the industry-sponsored workshops on safe handling and release of sea turtles that were held in Orlando, FL (April 8, 2005) and New Orleans, LA (June 27, 2005) will be issued a workshop certificate in December 2006 that will be valid for three years. Grandfathered permit holders must include a copy of this certificate when renewing limited access shark and limited access swordfish permits each year. Failure to provide a valid workshop certificate may result in a permit denial.

The Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish. Identification of protected species will also be taught at these workshops in an effort to improve reporting. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal for these workshops is to provide participants the skills needed to reduce the mortality of protected species, which may prevent additional regulations on these fisheries in the future.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 18, 2006.

James P. Burgess,

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

[FR Doc. E6–17697 Filed 10–20–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: *Effective Date:* October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Alabama

Installation Name: BG William P. Screws USARC.

LRA Name: City of Montgomery.

Point of Contact: Ken Groves, Director, Planning & Development Department, City of Montgomery.

Address: P.O. Box 1111, Montgomery, AL 36101–1111.

Phone: (334) 241–2712.

Ohio

Installation Name: Fort Hayes Memorial USARC.

LRA Name: City of Columbus Local Redevelopment Authority.

Point of Contact: Vince Papsidero, AICP, Planning Administrator, City of Columbus.

Address: 109 N. Front Street, Columbus, OH 43215.

Phone: (614) 645–8502.

Pennsylvania

Installation Name: Lycoming Memorial USARC.

LRA Name: Lycoming Memorial Local Redevelopment Authority.

Point of Contact: Bill Burdett, Township Manager, Loyalsock Township Board of Supervisors.

Address: 2501 E. Third St., Williamsport, PA 17701.

Phone: (570) 323–6151.

October 17, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–17691 Filed 10–20–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Defense University Board of Visitors (BOV) Open Meeting

AGENCY: Department of Defense, National Defense University.

ACTION: Notice.

SUMMARY: The President, National Defense University (NDU) has scheduled a meeting of the Board of Visitors. Request subject notice be published in the **Federal Register**. The National Defense University Board of Visitors is a Federal Advisory Board. The Board meets twice a year in proceedings that are open to the public.

DATES: The meeting will be held on November 15–16, 2006 from 11 a.m. to 5 p.m. on the 15th and continuing on the 16th from 8:30 a.m. to 1:30 p.m.

LOCATION: The Board of Visitors meeting will be held at Building 62, Marshall Hall, Room 155, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice of an ''Open Meeting'' is Mr. Roy Austin @ (202) 685–2649, Fax (202) 685–3935 or *AustinR4@ndu.edu*.

SUPPLEMENTARY INFORMATION: The School for National Security Executive Education (SNSEE) progress toward Master of Arts degree in Strategic Security Studies, Center for Technology and National Security Policy (CTNSP) latest research project Fiscal Overview/Budget, Facilities Overview (Tour of Marshall Hall and brief on ongoing repairs), Health of the University (Self Assessment/DIOMI Survey), NDU Information Technology, Transition of National Defense University to National Security University (NSU), as well as other operational issues and areas of interest affecting the day-to-day operations of the National Defense University and its components. The meeting is open to the public; limited space made available for observers will be allocated on a first come, first served basis.

Dated: October 17, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–8824 Filed 10–20–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 22, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 17, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Written Request for Assistance or Application for Client Assistance Program (CAP).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 9.

Abstract: This document is used by States to request funds to establish and carry out Client Assistance Programs (CAP). CAP is mandated by the Rehabilitation Act of 1973, as amended (Act), to assist vocational rehabilitation clients and applicants in their relationships with projects, programs, and services provided under the Act.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3217. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–17647 Filed 10–20–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 22, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 17, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,037,050.

Burden Hours: 1,046,925.

Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan, and a lender or guaranty agency certifies the borrower's eligibility to receive a Consolidation loan.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3171. When you access the information collection, click on ''Download Attachments'' to

view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E6–17648 Filed 10–20–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of an Open Meeting, Conference Call.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES: Tuesday, November 14, 2006.

Time: 10 a.m.–12 p.m.

Conference Call Instructions: Dial in Toll Free Number: 1–800–516–9896. Participant Code: 54237.

Please note that if the participant dials in before the chairperson does, he/she becomes activitied and will be placed on hold with music.

FOR FURTHER INFORMATION CONTACT: Charles M. Greene, Executive Director, White House Initiative on Historically Black Colleges and Universities, 1900 K Street, NW., Washington, DC 20006; telephone: (202) 502–7511, fax: 202–501–7852.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002 and Executive Order 13316 dated September 17, 2003. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in federal programs, including recommendations on how to increase the private sector role in strengthening these institutions, with particular emphasis given to enhancing institutional planning and development; strengthening fiscal stability and financial management; and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

Agenda: The purpose of the meeting is to receive and deliberate on policy issues pertinent to the Board and the nation's HBCUs and to approve the 2004–05 Annual Report that will be presented to the Secretary of Education and the President.

Additional Information: Individuals who will need accommodations for a disability in order to participate on the call (e.g., assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893, no later than Tuesday, November 7, 2006. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability.

An opportunity for public comments is available on Tuesday, November 14, 2006, between 11:45 a.m.–12 p.m. Those members of the public interested in submitting written comments may do so by submitting it to the attention of Charles M. Greene, 1990 K Street, NW., Washington, DC, by Thursday, November 9. 2006.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

James F. Manning,

Acting Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 06–8827 Filed 10–20–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*; interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than November 6, 2006. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: November 16–18, 2006.

Times

November 16:
- *Committee Meetings:*
- *Assessment Development Committee:* Closed Session—2 p.m. to 4 p.m.;
- *Executive Committee:* Open Session—4:30 p.m. to 5 p.m.; Closed Session—5 p.m. to 6 p.m.

November 17:
- *Full Board:* Open Session—8:30 a.m. to 12:15 p.m.; Closed Session—12:15 p.m. to 1:45 p.m.; Open Session—1:45 p.m.–4:30 p.m.
- *Committee Meetings:*
- *Assessment Development Committee:* Open Session—9:45 a.m. to 12:15 p.m.;
- *Committee on Standards, Design and Methodology:* Open Session—9:45 a.m. to 12:15 p.m.;
- *Reporting and Dissemination Committee:* Open Session—9:45 a.m. to 12:15 p.m.;

November 18:

Nominations Committee: Closed Session—8 a.m. to 8:30 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: The Ritz-Carlton Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

The Assessment Development Committee will meet in closed session on November 16 from 2 p.m. to 4 p.m. (two hours) to review secure topics for proposed 2009 National Assessment of Educational Progress (NAEP) science interactive computer tasks at grades 4, 8, and 12. The meeting must be conducted in closed session as disclosure of secure interactive computer tasks on the NAEP Science Assessment would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Executive Committee will meet in open session on November 16 from 4:30 p.m. to 5 p.m. and will meet in closed session from 5 p.m. to 6 p.m. The Committee will receive independent government cost estimates from the National Center for Education Statistics for proposed contracts for item development, sample selection, analysis, and reporting of NAEP testing for 2008–2012, and their implications on future NAEP activities. The discussion of independent government cost estimates prior to the development of the Request for Proposals for NAEP contracts covering assessment years 2008–2012 is necessary for ensuring that NAEP contracts meet congressionally mandated goals and adhere to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public disclosure of this information would likely have an adverse financial effect on the NAEP program and will provide an advantage to potential bidders attending the meeting. The discussion of this information would be likely to significantly impede implementation of a proposed agency action if conducted in open session. Such matters are protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 17, the full Board will meet in open session from 8:30 a.m. to 12:15 p.m. From 8:30 a.m. to 9:30 a.m. the Board will approve the agenda which will be followed by the Oath of Office ceremony for new Board members. The Board will receive the Executive Director's report and hear an update on the work of the National Center for Education Statistics.

From 9:45 a.m. to 12:15 p.m. on November 17, the Board's standing committees—the Assessment Development Committee; the Committee on Standards, Design and Methodology; and the Reporting and Dissemination Committee—will meet in open sessions.

On November 17, the full Board will meet in closed session from 12:15 p.m. to 1:45 p.m. The Board membership will be briefed by the Associate Commissioner of the National Center for Education Statistics on secure national student achievement data related to two upcoming NAEP 12th grade reports. The Governing Board will be provided with embargoed data from the 2005 Mathematics and Reading Assessments in grade 12 and the 2005 High School Transcript Study, which includes findings from the 2005 12th grade Mathematics and Science Assessments. These data constitute the major basis for the initial public release of The Nation's Report Card, and cannot be discussed in an open meeting prior to the official release of these two reports. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of The Nation's Report Card initial release activities, as protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 17 from 2 p.m. to 3 p.m. the Board will receive a report from the Commission on the Future of Higher Education. This session will be followed by an update on the NAEP Writing Framework project from 3 p.m. to 4 p.m. From 4 p.m. to 4:30 p.m., Board members will receive an ethics briefing from the Office of General Counsel, upon which the November 17 session of the Board meeting will conclude.

The Nominations Committee will meet in closed session on November 18 from 8 a.m. to 8:30 a.m. to review and discuss confidential information regarding nominees received for Board vacancies for terms beginning on October 1, 2007. This discussion pertains solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

From 9 a.m. to 12 p.m., the full Board will meet in open session. The full Board will receive a briefing on setting achievement levels from 9 a.m. to 10:15 a.m. Board actions on policies and Committee reports are scheduled to take place between 10:30 a.m. and 12 p.m., upon which the November 18, 2006 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the policies and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: October 18, 2006.

Charles E. Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 06–8821 Filed 10–20–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 8, 2006, 5 p.m.

ADDRESSES: 7710 West Cheyenne Avenue, Conference Room # 130, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kelly Snyder, Deputy Designated Federal Officer, P.O. Box 98518, Las Vegas, Nevada 89193. Phone: (702) 295–2836; E-mail: *snyderk@nv.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Approval of recommendations for changes to four fact sheets used by the Department of Energy and committee updates.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Kelly Snyder at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Kelly Snyder at the address listed above.

Issued at Washington, DC, on October 18, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–17700 Filed 10–20–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Wednesday, November 8, 2006, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The presentation topic will be an Environmental Management Program Update.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on October 18, 2006.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–17702 Filed 10–20–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1331–000; ER06–1331–001]

CalPeak Power LLC; Notice of Issuance of Order

October 16, 2006.

CalPeak Power LLC (CalPeak Power) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. CalPeak Power also requested waivers of various Commission regulations. In particular, CalPeak Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CalPeak Power.

On October 11, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by CalPeak Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, CalPeak Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CalPeak Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of CalPeak Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17629 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL06–104–000, ER06–1472–000, QF83–48–002, QF84–283–002]

Enron Wind Systems, LLC; Notice of Filing

October 16, 2006.

Take notice that on September 7, 2006, Enron Wind Systems, LLC (EWS) filed an application for a notice of self-recertification and request for limited waiver of the FERC qualifying facility ownership requirement or, in the alternative, request for effective date of rate schedule, pursuant to sections 35.15(a) and 292.207 of the Commission's Regulations. On October 12, 2006, EWS filed a filing fee of $19,890.00 pertaining to its request for limited waiver of the Commission's qualifying facility ownership requirement, pursuant to section 292.206 of the Commission's Regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17625 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1093–000]

Flat Rock Windpower II, LLC; Notice of Issuance of Order

October 16, 2006.

Flat Rock Windpower II, LLC (Flat Rock) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Flat Rock also requested waivers of various Commission regulations. In particular, Flat Rock requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Flat Rock.

On July 13, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Flat Rock should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, Flat Rock is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Flat Rock, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Flat Rock's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17626 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–4048–002]

Freysinger, David S.; Notice of Filing

October 16, 2006.

Take notice that on October 6, 2006, David S. Freysinger filed an application for authority to hold interlocking

positions pursuant to section 305(b) of the Federal Power Act and part 45 of the Commission's Regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 27, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17637 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1122–000]

High Trail Wind Farm, LLC; Notice of Issuance of Order

October 16, 2006.

High Trail Wind Farm, LLC (High Trail) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. High Trail also requested waivers of various Commission regulations. In particular, High Trail requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by High Trail.

On July 13, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by High Trail should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, High Trail is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of High Trail, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of High Trail's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17627 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1348–000, ER06–1348–001]

Katmai Energy, LLC; Notice of Issuance of Order

October 16, 2006.

Katmai Energy, LLC (Katmai) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Katmai also requested waivers of various Commission regulations. In particular, Katmai requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Katmai.

On September 29, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Katmai should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Katmai is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Katmai, compatible with the public interest, and is reasonably

necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Katmai's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17631 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–844–000, ER06–844–001]

LSF Limited; Notice of Issuance of Order

October 16, 2006.

LSF Limited filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. LSF Limited also requested waivers of various Commission regulations. In particular, LSF Limited requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by LSF Limited.

On June 27, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by LSF Limited should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, LSF Limited is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of LSF Limited, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of LSF Limited's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17635 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–74–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

October 16, 2006.

Take notice that on September 29, 2006, Maritimes & Northeast Pipeline, L.L.C., (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 14, with an effective date of November 1, 2006.

Maritimes states that the filing is being made in compliance with the Commission's order issued on July 27, 2005 in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 18, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17639 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–878–000, ER06–878–001, ER06–879–000, ER06–879–001]

MMC Chula Vista LLC, MMC Escondido LLC; Notice of Issuance of Order

October 16, 2006.

MMC Chula Vista LLC (Chula Vista) and MMC Escondido LLC (Escondido) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provide for the sale of energy,

capacity and ancillary services at market-based rates. Chula Vista and Escondido also requested waivers of various Commission regulations. In particular, Chula Vista and Escondido requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Chula Vista and Escondido.

On June 13, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Chula Vista and Escondido should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, Chula Vista and Escondido are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Chula Vista and Escondido, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Chula Vista's and Escondido's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17636 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–19–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 16, 2006.

Take notice that on October 12, 2006, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective November 12, 2006:

Third Revised Sheet No. 56
First Revised Sheet No. 57
Original Sheet No. 58
Sheet No. 59
Third Revised Sheet No. 86
Original Sheet No. 87
Sheet Nos. 88 and 89
Fifth Revised Sheet No. 110
First Revised Sheet No. 111
Third Revised Sheet No. 326
First Revised Sheet No. 344
Second Revised Sheet No. 353

Northwest states that the purpose of this filing is to add unilateral evergreen options under Rate Schedules TF–2, SGS–2F and LS–2F.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17623 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–143–000]

Pepperell Realty, LLC; Notice of Issuance of Order

October 16, 2006.

Pepperell Realty, LLC (Pepperell Realty) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Pepperell Realty also requested waivers of various Commission regulations. In particular, Pepperell Realty requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Pepperell Realty.

On December 13, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of

securities or assumptions of liability by Pepperell Realty should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, Pepperell Realty is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Pepperell Realty, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Pepperell Realty's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17632 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1334–000; ER06–1334–001]

Spindle Hill Energy LLC; Notice of Issuance of Order

October 16, 2006.

Spindle Hill Energy LLC (Spindle Hill) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Spindle Hill also requested waivers of various Commission regulations. In particular, Spindle Hill requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Spindle Hill.

On October 13, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Spindle Hill should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 13, 2006.

Absent a request to be heard in opposition by the deadline above, Spindle Hill is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Spindle Hill, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Spindle Hill's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17630 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–7–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment

October 16, 2006.

Take notice that on October 11, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing an application under section 7 of the Natural Gas Act to abandon a portion of the firm transportation service provided to the City of Shelby, North Carolina (Shelby) under Transco's Rate Schedule FT.

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 November 7, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17624 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1220–000]

USEG, LLP; Notice of Issuance of Order

October 16, 2006.

USEG, LLP (USEG) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. USEG also requested waivers of various Commission regulations. In particular, USEG requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by USEG.

On July 28, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by USEG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, USEG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of USEG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of USEG's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17628 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–461–000, ER06–461–001]

Velocity Futures, L.P.; Notice of Issuance of Order

October 16, 2006.

Velocity Futures, L.P. (Velocity) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Velocity also requested waivers of various Commission regulations. In particular, Velocity requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Velocity.

On March 8, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Velocity should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, Velocity is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Velocity, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Velocity's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17633 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–713–000, ER06–713–001]

Weyerhaeuser Company; Notice of Issuance of Order

October 16, 2006.

Weyerhaeuser Company (Weyerhaeuser) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Weyerhaeuser also requested waivers of various Commission regulations. In particular, Weyerhaeuser requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Weyerhaeuser

On May 26, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Weyerhaeuser should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is November 15, 2006.

Absent a request to be heard in opposition by the deadline above, Weyerhaeuser is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Weyerhaeuser, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Weyerhaeuser's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17634 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11068–006 California]

Orange Cove Irrigation District; Notice of Availability of Environmental Assessment

October 16, 2006.

An environmental assessment (EA) is available for public review. The EA was prepared for an application filed by the Orange Cove Irrigation District (licensee) on April 19, 2006, requesting Commission approval of an amendment of license for the Fishwater Release Project to add a powerhouse with a single turbine generator with a capacity of 1.8 megawatts. The new powerhouse would utilize flow releases from the U.S. Bureau of Reclamation's Friant Dam and would only generate power after flows for fish hatchery and existing powerhouse demands are met.

The EA evaluates the environmental impacts that would result from approving the licensee's proposed additional generating capacity. Some ground disturbance would occur but impacts to the terrestrial and aquatic environments are expected to be minor and short term. The EA finds that approval of the amendment application would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Amending License'', issued October 13, 2006, and is available in the Commission's Public Reference Room. A copy of the EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–11068) in the docket field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

Magalie R. Salas,

Secretary.

[FR Doc. E6–17638 Filed 10–20–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8233–1]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of teleconference meetings.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB), as previously announced, will have teleconference meetings on October 18, 2006 at 1 p.m. e.t.; November 15, 2006 at 1 p.m. e.t.; December 20, 2006 at 1 p.m. e.t.; January 17, 2007 at 1 p.m. e.t.; and February 21, 2007 at 1p.m. e.t. to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by ELAB over these coming meetings include: (1) Expanding the number of laboratories seeking National Environmental Laboratory Accreditation Conference (NELAC) accreditation; (2) homeland security issues affecting the laboratory community; (3) ELAB support to the Agency's Forum on Environmental Measurements (FEM); (4) implementing the performance approach; (5) increasing State participation in NELAC; and (6) follow-up on some of ELAB's past recommendations and issues. In addition to these teleconferences, ELAB will be hosting their next face-to-face meeting in late January 2007 at the Westin Tabor Center in Denver, Colorado. Further details of that meeting will be forthcoming.

Written comments on laboratory accreditation issues and/or environmental monitoring issues are encouraged and should be sent to Ms. Lara P. Autry, DFO, U.S. EPA (E243–05), 109 T. W. Alexander Drive, Research Triangle Park, NC 27709, faxed to (919) 541–4261, or e-mailed to *autry.lara@epa.gov.* Members of the public are invited to listen to the teleconference calls, and time permitting, will be allowed to comment

on issues discussed during this and previous ELAB meetings. Those persons interested in attending should call Lara P. Autry at (919) 541–5544 to obtain teleconference information. The number of lines for the teleconferences, however, are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual. For information on access or services for individuals with disabilities, please contact Lara P. Autry at the number above. To request accommodation of a disability, please contact Lara P. Autry, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Kevin Teichman,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. E6–17665 Filed 10–20–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: October 31, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–8855 Filed 10–19–06; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 6, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Pitchford Stock, L.P., and Sheila R. Burcham, as general partner, both of Nashville, Illinois, to retain voting shares of Community Bancshares, Inc., and thereby indirectly retain voting shares of Community Trust Bank, both of Irvington, Illinois.

Board of Governors of the Federal Reserve System, October 17, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–17593 Filed 10–20–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 16, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. FBOP Corporation, Oak Park, Illinois; to acquire 100 percent of the voting shares of Bank USA, National Association, Phoenix, Arizona, through the conversion of its subsidiary, Bank USA, FSB, Phoenix, Arizona, into a national bank under the name of Bank USA, National Association.

2. FBOP Corporation, Oak Park, Illinois; to acquire 100 percent of the voting shares of Pacific National Bank, San Francisco, California, through the conversion of its subsidiary, California Savings Bank, San Francisco, California, into a national bank under the name of Pacific National Bank.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. DeWitt First Bankshares, Inc., DeWitt, Arkansas; to acquire 100 percent of the voting shares of First National Bank of Stuttgart, Stuttgart, Arkansas.

Board of Governors of the Federal Reserve System, October 17, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–17594 Filed 10–20–06; 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 November 6, 2006.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Winter Trust of 12/3/74, Ottawa, Kansas, and its subsidiary, Peoples, Inc., Colorado Springs, Colorado, to engage indirectly in mortgage lending activities, pursuant to section 225.28(b)(1) of Regulation Y, through the acquisition of a 60 percent interest in Oread Mortgage, L.L.C., Lawrence, Kansas, by Peoples Bank, Lawrence, Kansas.

Board of Governors of the Federal Reserve System, October 17, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.E6–17595 Filed 10–20–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The FTC is soliciting public comments on proposed information requests to food and beverage companies and quick service restaurants. These comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, of compulsory process orders to major food and beverage manufacturers and quick service restaurant companies in order to obtain information from those companies concerning, among other things, their marketing activities and expenditures targeted toward children and adolescents.

DATES: Comments on the proposed information requests must be received on or before December 21, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Food Industry Marketing to Children Report: Paperwork Comment; FTC File No. P064504'' 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, with two complete copies, to the following address: Federal Trade Commission/ Office of the Secretary, Room H–135 (Annex R), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.''[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

Comments filed in electronic form should be submitted by using the following Weblink: *https://secure.commentworks.com/foodmarketingpaperworkcomment* (and following the instructions on the Web-based form). To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the Weblink *https://secure.commentworks.com/foodmarketingpaperworkcomment.* If this notice appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The Federal Trade Commission Act, 15 U.S.C. 42–58 (FTC Act), and other laws the Commission administers permit the collection of public comments to consider and use as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be 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: Requests for additional information should be addressed to Mary Johnson, 202–326–3115, or Rielle Montague, 202–326–2645, Attorneys, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission. The FTC staff contacts can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue, NW., NJ–3212, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 22, 2005, the President signed a bill appropriating funds for the Commission for FY 2006. Public Law 109–108. The Conference Report (H.R. Rep. No. 109–272 (2005)) for this law incorporates by reference language from the Senate Report (S. Rep. No. 109–88 (2005)), instructing the FTC to prepare a report on food industry marketing activities and expenditures targeted to children and adolescents.[2] To prepare the report, the Commission needs relevant information, including empirical data, on the nature and extent of marketing activities and expenditures targeted to children and adolescents.

On March 1, 2006, the FTC published a notice in the **Federal Register** requesting relevant information. 71 FR 10535. In response, the Commission received comments from five food industry associations, two public health advocacy organizations, a marketing trade organization, and one individual.[3] In general, the comments suggested resources from which relevant information may be available[4] and points to consider in developing the report. However, the comments presented minimal information, especially empirical data, on the nature and extent of marketing activities and expenditures targeted to children and adolescents. The Commission thus

[1] Any request for confidential treatment, including the factual and legal basis for the request, must accompany the comment 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).

[2] The Senate Report requests that the FTC's report: Include an analysis of commercial advertising time on television, radio, and in print media; in-store marketing; direct payments for preferential shelf placement; events; promotions on packaging; all Internet activities; and product placements in television shows, movies, and video games.

[3] The comments are available at *http://www.ftc.gov/os/comments/foodmarketingstudy/index.htm.*

[4] Many of the suggested resources charge substantial amounts for information. Public Law 109–108 did not contain any specific funding to acquire information for this study.

requires additional data and information in order to complete the report.

The FTC has the authority to compel production of this data and information from food and beverage companies and quick service restaurants under Section 6(b) of the FTC Act, 15 U.S.C. 46(b). The Commission intends to send its information requests to the ultimate parents of these types of companies to assure that no relevant data from affiliated or subsidiary companies goes unreported. Because the number of separately incorporated companies affected by the Commission's requests will exceed ten entities, the Commission intends to seek OMB clearance under the Paperwork Reduction Act (PRA) before sending any information requests.

Under the PRA, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. (44 U.S.C. 3502(3), 5 CFR 1320.3(c)). As required by the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB grant the clearance for the proposed information collection requirements.

The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before December 21, 2006.

A. Information Requests to Food and Beverage Industry Members

1. Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to approximately fifty (50) ultimate parent companies of food and beverage and quick service restaurant companies in the United States (''industry members''). The companies that are likely to receive these information requests are those selling the categories of food and beverage products that appear to be advertised to children most frequently. Specifically, these categories of products are likely to include quick service restaurant items, breakfast cereals, snack foods, candy and gum, carbonated and noncarbonated beverages, frozen and chilled desserts, prepared meals, and dairy products, including milk and yogurt. In addition, the FTC proposes to collect information from major marketers of fruits and vegetables to ensure that data are gathered regarding efforts to promote consumption of these foods among children and adolescents.

The information requests will seek data regarding, among other things: (1) The types of foods marketed to children and adolescents; (2) the types of measured [5] and unmeasured [6] media techniques used to market products to children and adolescents; (3) the amount spent to communicate marketing messages in measured and unmeasured media to children and adolescents; and (4) the amount of commercial advertising time in measured media directed to children and adolescents that results from this spending.

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership, or corporation subject to the FTC Act may be subject to criminal prosecution. 15 U.S.C. 50; *see also* 18 U.S.C. 1505.

Section 6(f) of the FTC Act, 15 U.S.C. 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)). Moreover, under Section 21(c) of the FTC Act, 15 U.S.C. 57b–2(c), a submitter who designates a submission as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute 6(f) material. Although materials covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (*e.g.*, official requests by Congress, requests from other agencies for law enforcement purposes, and administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford protections to the submitter, such as advance notice to seek a protective order in litigation. *See* 15 U.S.C. 57b–2; 16 CFR 4.9–4.11.

Finally, the information presented in the report will not reveal company-specific data. *See* 15 U.S.C. 57b–2(d)(1)(B). Rather, the Commission anticipates providing information on an anonymous or aggregated basis, in a manner sufficient to protect individual companies' confidential information, to provide a factual summary of food industry marketing activities and expenditures targeted to children and adolescents.

2. Estimated Hours Burden

The FTC staff's estimate of the hours burden is based on the time required to respond to each information request. The Commission intends to issue the information requests to approximately 50 parent companies of food and beverage and quick service restaurant advertisers. Because these companies vary in size, in the number of products that they market to children and adolescents, and in the extent and variety of their marketing and advertising, the FTC staff has provided a range of the estimated hours burden.

Based upon its knowledge of the industries, the staff estimates, on average, that the time required to gather, organize, format, and produce such responses ranges between 80–120 hours per information request for companies that market a single category of product to children and adolescents. Staff estimates that companies that market multiple categories of products to children and adolescents would spend between 120–300 hours to respond to an information request. The total estimated burden per company is based on the following:

Identify, obtain, and organize sales information, prepare response: 15–35 hours.

[5] ''Measured media'' includes methods such as television, print (magazine and newspaper), radio, outdoor advertising, and some forms of Internet advertising.

[6] ''Unmeasured media'' includes methods such as in-store marketing (including shelf placement), events, package promotions, and product placement in entertainment media (including television shows, movies, video games, and music recordings).

Identify, obtain, and organize information on advertising and marketing expenditures, prepare response: 15–75 hours.

Identify, obtain, and organize media placement information, prepare response: 40–160 hours.

Identify, obtain, and organize information regarding marketing policies, prepare response: 10–30 hours.

Total 80–300 hours.

Assuming that approximately 35 information requests are sent to parent companies that market a single category of product to children and adolescents, staff estimates a total burden for these companies of 3,500 hours (35 companies × 100 average burden hours per company). Assuming that approximately 15 information requests are sent to parent companies that market multiple categories of products to children and adolescents, staff estimates a total of approximately 3,150 hours (15 companies × 210 average burden hours per company). Thus, the staff's estimate of the total burden is approximately 6,650 hours. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

3. Estimated Cost Burden

It is difficult to calculate with precision the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The FTC staff has assumed that professional personnel and outside legal counsel will handle most of the tasks involved in gathering and producing responsive information, and has applied an average hourly wage of $250/hour for their labor. Thus, the staff estimates that the total labor costs for the information requests will be $1,662,500 (($250 × 3,500 hours for companies that market a single category) + ($250 × 3,150 hours for companies that market multiple categories)).

FTC staff estimates that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

John D. Graubert,

Acting General Counsel.

[FR Doc. E6–17666 Filed 10–20–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Liaison and Scientific Review Office; Meeting of the NTP Board of Scientific Counselors

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (NTP BSC). The NTP BSC is composed of scientists from the public and private sectors and provides primary scientific oversight to the Director for the NTP and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The NTP BSC meeting will be held on December 1, 2006. In order to facilitate planning for this meeting, persons wishing to make an oral presentation are asked to notify the Executive Secretary for the NTP BSC by November 17, 2006 (see **FOR FURTHER INFORMATION CONTACT** below). Written comments should also be received by November 17, 2006, to enable review by the NTP BSC and NIEHS/NTP staff prior to the meeting. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to niehsoeeo@niehs.nih.gov. Requests should be made at least 7 days in advance of the event.

ADDRESSES: The NTP BSC meeting will be held in the Rodbell Auditorium, Rall Building at the National Institute of Environmental Health Sciences, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Public comments and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the NTP Board (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–4253, fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

Preliminary agenda topics are as follows:

- NTP Retreat.
- Update of NTP Activities.
- Reports on Workshops related to the NTP Roadmap.
- NTP BSC's Technical Report Review Subcommittee Report.
- Concept Reviews for the NTP/NIEHS Host Susceptibility Program and the NTP/NIEHS MRI Imaging Contract.
- NTP/NIEHS Exposure Biology Program.
- Nominations to the Center for Evaluation of Risks to Human Reproduction.

A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov* select Advisory Board and Committees) or may be requested in hardcopy from the Executive Secretary for the NTP BSC (see **FOR FURTHER INFORMATION CONTACT** above). Following the meeting, summary minutes will be prepared and made available on the NTP Web site.

Attendance and Registration

The meeting is scheduled for December 1, 2006, from 8:30 a.m. to adjournment and is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP Web site by November 22, 2006, to facilitate access to the NIEHS campus. Please note that a photo ID is required to access the NIEHS campus. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/external/video.htm.*

Request for Comments

Time is allotted during the meeting for the public to present comment to the NTP BSC and NTP staff on the agenda topics. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting. Persons registering to make oral comments are asked, if possible, to send a copy of their statement to the Executive Secretary for

the NTP BSC (see **FOR FURTHER INFORMATION CONTACT** above) by November 17, 2006, to enable review by the NTP BSC and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the NTP BSC and NIEHS/NTP staff and to supplement the record.

Written comments received in response to this notice will be posted on the NTP Web site. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Background Information on the NTP Board of Scientific Counselors

The NTP BSC is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall program and its centers. Specifically, the NTP BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. NTP BSC meetings are held annually or biannually.

Dated: October 13, 2006.

Samuel A. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–17711 Filed 10–20–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

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: Healthcare Infection Control Practices Advisory Committee (HICPAC).

Times And Dates: 8:30 a.m.–5 p.m., November 13, 2006; 8:30 a.m.–4 p.m., November 14, 2006.

Place: CDC Roybal Campus, Bldg 19, Auditorium B3, 1600 Clifton Road, Atlanta, GA 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include: Issues related to public reporting of healthcare-associated infection rates; Infection control for multi-drug resistant organisms; and, topics related to future guidelines.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Harriette Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, l600 Clifton Road, NE., M/S A–07, Atlanta, Georgia 30333, telephone 404/639–4035.

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 the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 16, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–17660 Filed 10–20–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis

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 council meeting:

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., December 5, 2006; 8:30 a.m.–12 p.m., December 6, 2006.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis (TB). Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating TB.

Matters to be Discussed: Agenda items include issues pertaining to Emerging Global issues in TB Surveillance and Control; XDR-TB: Implications for TB control in the U.S.; TB among Foreign-born and other related tuberculosis issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Loretta Coleman-Johnson, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., M/S E–10, Atlanta, Georgia 30333, Telephone 404/639–8120.

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: October 16, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–17652 Filed 10–20–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA)

publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White CARE Act Title I Minority AIDS Initiative (MAI) Report: NEW (Title I MAI Report)

The HRSA HIV/AIDS Bureau (HAB) administers the Title I CARE Act Program (codified under Title XXVI of the Public Health Service Act). The Title I Minority AIDS Initiative (MAI) supplement is a component of the CARE Act Title I Program to ''address substantial need for care and support services for minority populations in eligible metropolitan areas (EMA).'' The overall goal of the MAI is to improve HIV/AIDS-related health outcomes for communities of color by allowing communities to: (1) Expand local service capacity primarily through community-based organizations serving racial and ethnic minorities; (2) improve service delivery; and (3) support the development of new and innovative programs designed to reduce HIV/AIDS-related health disparities.

The Title I MAI Report is designed to collect performance data from Title I MAI grantees, and has the following two components: (1) The Title I MAI Plan (Plan) and (2) the Title I MAI Year-End Annual Report (Report). The Plan and Report components will be linked to minimize the reporting burden, and designed to include check box responses, fields for reporting budget, expenditure and client data, and open-ended text boxes for describing client or service-level outcomes. Together, they will collect information from grantees on MAI-funded services, the number and demographics of clients served, and client-level outcomes. This information is needed to monitor and assess: (1) Increases and changes in the type and amount of HIV/AIDS health care and related services being provided to each disproportionately impacted community of color; (2) increases in the number of persons receiving HIV/AIDS services within each racial and ethnic community; and (3) the impact of Title I MAI-funded services in terms of client-level and service-level health outcomes. This information also will be used to plan new technical assistance and capacity development activities, and inform the HRSA HIV/AIDS Bureau (HAB) policy and program management functions.

The Title I MAI Report form and instructions will be available for all grantees to download from the HRSA/HAB Web site. All grantees will submit completed data forms through a link on the HRSA/HAB Web site. Grantees may submit a hard copy form to the HRSA Call Center. The Title I MAI Report will be designed to include check box responses, numeric responses, and open-ended questions. All Title I grantees receiving MAI funds from HAB will be required to submit their service providers' data in an aggregate form by service category utilizing one Title I MAI Report.

The estimated response burden for grantees is as follows:

Form	Estimated number of respondents	Responses per respondent	Hours per response	Total burden hours
Title I MAI Report	51	2	6	612

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 16, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–17667 Filed 10–20–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA Number 93.224]

Amendment to a Notice of Availability of Funds for the Service Area Competition Funding for the Consolidated Health Center Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Amendment to a notice of availability of funds.

SUMMARY: Funding opportunities for the Service Area Competition (SAC) funding for the Consolidated Health Center Program were published on grants.gov on August 10, 2006 (HRSA Announcement Numbers 07–008, 07–111, and 07–112). Appendix D of the SAC program guidance (HRSA–07–008) is amended to remove the opportunity in Pierre, South Dakota, with a project period end date of February 28, 2007. Prior to the end of the project period and subsequent projected competition for that service area, the grant was relinquished to another neighboring organization. This is now part of the service area for another grantee in Pierre, South Dakota. The competitive application for that opportunity will now be due December 15, 2006, under HRSA 07–112.

FOR FURTHER INFORMATION CONTACT: Judy Rodgers, Bureau of Primary Health Care, Health Resources and Services Administration; *jrodgers@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The fiscal year 2007 application instructions and application guidance for Service Area Competition Funding for the Health Center Program is available on the HRSA Web site: *http://www.bphc.hrsa.gov/pinspals/*, *http://www.hrsa.gov/grants* or on Grants.gov.

Dated: October 15, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–17698 Filed 10–20–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Pre-Testing of NCI Communication Messages

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 14, 2006, page 46486 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Pretesting of NCI Communication Messages. *Type of Information Collection Request:* EXTENSION (OMB# 0925–0046, expires 10/31/06). *Need and Use of Information Collection:* In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g,* cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), it is beneficial for NCI to pretest their communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by NCI have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, NCI is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs, and behaviors—and use this information in the development of effective communication tools and strategies; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively. *Frequency of Response:* On occasion. *Affected Public:* Individuals or households; businesses or other for profit; not-for-profit institutions; Federal Government; State, local, or tribal government. *Type of Respondents:* Adult cancer patients; members of the public; health care professionals; organizational representatives. The annual reporting burden is as follows: *Estimated Number of Respondents:* 13,780; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .1458; and *Estimated Total Annual Burden Hours Requested:* 2,010. The annualized cost to respondents is estimated at: $34,155. There are no capital costs, operating costs, and/or maintenance costs to report.

ESTIMATE HOURS OF BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Adults 18+	13,780	1	.1458	2009.12
Total	13,780			2009.12

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nina Goodman, Senior Analyst, Operations Research Office, OESI, NCI, NIH, 6116 Executive Blvd., Suite 400, Rockville, MD 20892, call non-toll-free number 301–435–7789 or e-mail your request, including your address to: *goodmann@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 16, 2006.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E6–17708 Filed 10–20–06; 8:45 am]

BILLING CODE 4101–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Translational Research Working Group Public Comment Period

AGENCY: National Cancer Institute (NCI), National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Translational Research Working Group (TRWG), a broad panel including advocates, researchers from academia, industry representatives, and government officials, was established in early 2005 to evaluate the status of the

National Cancer Institute's (NCI) intramural and extramural investment in translational research in order to develop recommendations on ways to coordinate and optimally integrate activities. The TRWG is also charged with developing implementation strategies that will enable the scientific community and NCI leadership to appropriately prioritize its translational research opportunities. Recommendations will be made to the National Cancer Advisory Board in early 2007. To assist in its future planning efforts, the TRWG is asking interested parties for feedback on the seventeen draft initiatives they are proposing. The TRWG compiled these draft initiatives from the comments received during the previous public comment period in early 2006. These draft initiatives address the obstacles to a successful translational research enterprise identified by the TRWG. By listening to interested parties and stakeholders from the wider community, the TRWG hopes to enhance this exciting and important activity—charting the future course of translational progress against cancer.

DATES: Parties interested in submitting comments on the draft initiatives should submit them by November 22, 2006.

ADDRESSES: Comments may be submitted electronically to the TRWG Web site: *http://www.cancer.gov/trwg/*.

SUPPLEMENTARY INFORMATION:

Background

The National Cancer Institute is committed to speeding the development of new diagnostic tests, cancer treatments, and other interventions that benefit people with cancer and people at risk for cancer. Such development relies on strong translational research collaborations between basic and clinical scientists to generate novel approaches. Currently, NCI supports a variety of projects that build this bridge between basic science and patient care.

Over the past year, the Translational Research Working Group (TRWG) reviewed NCI's current intramural and extramural translational research portfolio (within the scope of the TRWG mission), facilitated broad community input, invited public comment, and recommended ways to improve and integrate efforts. The ultimate goal is to accelerate progress toward improving the health of the nation and cancer patient outcomes.

Request for Comments

To better address the obstacles a successful translational research enterprise may face and to ensure the different viewpoints in the cancer research community are represented, the TRWG seeks input on the following challenges and the steps to facing them:

- Insufficient coordination and integration across NCI results in a fragmented translational research effort that risks duplication and may miss important opportunities.
- Absence of clearly designated funding and adequate incentives for researchers threatens the perceived importance of translational research within the NCI enterprise.
- Absence of a structured, consistent review and prioritization process tailored to the characteristics and goals of translational research makes it difficult to direct resources to critical needs and opportunities.
- Translational research core services are often duplicative and inconsistently standardized, with capacity poorly matched to need.
- Multidisciplinary nature of translational research and the need to integrate sequential steps in complex development pathways warrants dedicated project management resources.
- Inadequate collaboration with industry delays appropriate developmental hand-offs.
- Extended negotiation on intellectual property issues delays or prevent potentially productive collaborations.
- Inadequate collaboration with foundations/advocacy groups risks missing important opportunities for integration of translational research efforts and patient outreach.
- Insufficient collaboration and communication between basic and clinical scientists and the paucity of effective training opportunities limits the supply of experienced translational researchers.

FOR FURTHER INFORMATION CONTACT: Ernest Hawk, M.D., M.P.H., Director, Office of Centers, Training and Resources, National Cancer Institute, National Institutes of Health. Or visit the TRWG Web site at *http://www.cancer.gov/trwg.*

Dated: October 17, 2006.

Ernest Hawk,

Director, Office of Centers, Training and Resources, National Cancer Institute, National Institutes of Health.

[FR Doc. E6–17699 Filed 10–20–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Bureau of Customs and Border Protection Trade Symposium 2006: ''The World of Trade—5 Years After 9/11''

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of trade symposium.

SUMMARY: This document announces that the Bureau of Customs and Border Protection (CBP) will convene a major trade symposium that will feature panel discussions involving department personnel, members of the trade community and other government agencies on the agency's role on international trade security initiatives and programs. Members of the international trade and transportation communities and other interested parties are encouraged to attend and to register early.

DATES: Wednesday, December 13, 2006 (opening reception—6 to 8 p.m.); Thursday, December 14, 2006 (panel discussions, luncheon and open forum with senior management—8:30 a.m. to 6 p.m.); Friday, December 15, 2006 (half-day session with panel discussions—8 a.m. to 1 p.m.) will be held.

ADDRESSES: The Trade Symposium will be held at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. Upon entry into the building, a photo identification must be presented to the security guards.

FOR FURTHER INFORMATION CONTACT: The Office of Trade Relations at (202) 344–1440 or at *traderelations@dhs.gov.* ACS Client Representatives; CBP Account Managers; Regulatory Audit Trade Liaisons; or to obtain the latest information on the Symposium and to register on-line, visit the CBP Web site at *http://www.cbp.gov.* Requests for special needs should also be sent to the Office of Trade Relations at *traderelations@dhs.gov.*

SUPPLEMENTARY INFORMATION: The keynote speaker will be announced at a later date. The cost is $250.00 per individual and includes all symposium activities. Interested parties are requested to register early, as space is limited. Registration will open to the public on or about November 1, 2006. All registrations must be made on-line through the CBP Web site (*http://www.cbp.gov*) and be confirmed with payment by credit card only. The JW

Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington DC, has reserved a block of rooms for Wednesday through Friday, December 13–15, 2006 at a rate of U.S. $239.00 per night. Reservations may be made directly with the hotel at (202) 393–2000 or 1–800–228–9290, or select the following link *http://marriott.com/property/propertypage/wasjw?groupCode=uscusca&app=resvlink* and reference the ''CBP Trade Symposium.''

Dated: October 17, 2006.

Russell Ugone,

Acting Director, Office of Trade Relations.

[FR Doc. E6–17622 Filed 10–20–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Data Relating to Beneficiary of Private Bill, Form G–79A.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 22, 2006.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate 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;

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Data Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–79A. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, you may contact Ricardo Lemus, Acting Chief, Records Management Branch, Office of Asset Management, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Washington, DC 20536; 202–616–2717.

Dated: October 10, 2006.

Ricardo Lemus,

Acting Branch Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E6–17669 Filed 10–20–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Report of Complaint; Form I–847; OMB Control No. 1653–0001.

The Department of Homeland Security (DHS), Bureau of Immigration and Customs Enforcements (ICE) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The ICE has determined that it cannot comply with the normal clearance procedures under this part because normal clearance procedures are likely to prevent or disrupt the collection of information.

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725–17th Street, NW., Suite 10235, Washington, DC 20503.

During the first 60 days of this period a regular review of this information collection is also being undertaken. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Complaint.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–847. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to establish a record of complaint and to initiate an investigation of misconduct by an officer of the DHS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 63 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Ricardo Lemus 202–616–2717, Acting Branch Chief, Records Management Branch, U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Ricardo Lemus.

Dated: October 18, 2006.

Ricardo Lemus,

Acting Branch Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E6–17671 Filed 10–20–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Previously Approved Information Collection, Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Guarantee of Payment; Form I–510; OMB Control No. 1653–0024.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement has submitted the following information collection request for review and clearance 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 December 22, 2006.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Guarantee of Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–510. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. Form I–510 is executed upon each arrival of an alien crewman within the purview of Section 253 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Ricardo Lemus, 202–616–2717, Acting Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, U. S. Department of Homeland Security, Room 1122, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Ricardo Lemus.

If additional information is required contact: Mr. Ricardo Lemus, Acting Chief, United States Department of Homeland Security, Records Management Branch, 425 I Street, NW., Washington DC 20536.

Dated: October 18, 2006.

Ricardo Lemus,

Acting Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E6–17675 Filed 10–20–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection, Comment Request

ACTION: Request OMB Emergency Approval and 60-Day Notice; Immigration Bond; Form I–352, OMB Control No. 1653–0022.

The Department of Homeland Security, Bureau of Immigration and Customs Enforcement has submitted the following information collection request for review and clearance 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 December 22, 2006.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–352. Bureau of Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on this form is used by the ICE to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The form serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 30,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Ricardo Lemus 202–616–2266, Acting Branch Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, 425 I Street, NW., Room 1122, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ricardo Lemus.

If additional information is required contact: Mr. Ricardo Lemus, Acting Chief, Bureau of Immigration and Customs Enforcement, United States Department of Homeland Security, 425 I Street, Washington, DC 20536.

Dated: October 18, 2006.

Ricardo Lemus,

Acting Chief, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E6–17676 Filed 10–20–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Registration for Classification as Refugee; Form I–590, OMB Control Number 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 4, 2006 at 71 FR 44305, allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 22, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via email at *kastrich@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0068. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–590. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at approximately 35 minutes (.583) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue,

Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: October 18, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–17663 Filed 10–20–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Nonimmigrant Petition Based on Blanket L Petition, Form I–129S, OMB Control Number 1615–0010.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 6, 2006 at 71 FR 44306, allowing for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 22, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0010. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved information collection.

(2) *Title of the Form/Collection:* Nonimmigrant Petition Based on Blanket L Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129S, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection will be used by an employer to classify employees as L–1 nonimmigrant intracompany transferees under a blanket L petition approval. The USCIS will use the data on this form to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250,000 responses at 35 minutes (.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 145,750 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: October 18, 2006.

Stephen Tarragon,

Deputy Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E6–17664 Filed 10–20–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–77]

Notice of Submission of Proposed Information Collection to OMB; Single Family Application for Insurance Benefits

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.

This information collection is submitted to HUD by mortgagees and is used by HUD to process and pay claims on defaulted FHA insured home mortgage loans.

DATES: *Comments Due Date:* November 22, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0429) 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, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *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://hlannwp031.hud.gov/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: Single Family Application for Insurance Benefits.

OMB Approval Number: 2502–0429.

Form Numbers: HUD–27011, Parts A, B, C, D &E and HUD 50002.

Description Of The Need For The Information And Its Proposed Use: This information collection is submitted to HUD by mortgagees and is used by HUD to process and pay claims on defaulted FHA insured home mortgage loans.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	Hours per response	=	Burden hours
Reporting Burden	275	516,150	0.74		382,991

Total Estimated Burden Hours: 382,991.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Date: October 18, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–17706 Filed 10–20–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: This notice informs the public of the Secretary's approval of the Tribal-State Compact between the State of Oklahoma and Kiowa Tribe of Oklahoma.

DATES: *Effective Date:* October 23, 2006.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State Compact for the purpose of engaging in Class III gaming activities on Indian lands. This Compact authorizes the Kiowa Tribe of Oklahoma to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games. A copy of the compact can be obtained by contacting the Office of Indian Gaming.

Dated: October 6, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–17703 Filed 10–20–06; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–01–PB–24 1A; OMB Control Number 1004–0074]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) will submit the proposed collection of information listed below to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On April 21, 2005, BLM published a notice in the **Federal Register** (70 FR 20764) requesting comments on the collection. The comment period closed on June 20, 2005. BLM received no comments. You may obtain copies of the proposed collection of information and related explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirements should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0074), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov*. Please provide a copy of your comments to the U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Attention: Bureau Information Collection Clearance Officer (WO–630), Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility, and clarity of the information collected; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Oil and Gas and Geothermal Resources Leasing (43 CFR parts 3100 and 3200).

OMB Control Number: 1004–0074.

Abstract: BLM uses the information to process bids and approve geothermal exploration operations.

Form Numbers: 3000–2 and 3200–9.

Frequency: On occasion.

Description of Respondents: Individuals, small businesses, large corporations.

Estimated Completion Time: 10 minutes for 3000–2 and 2 hours for 3200–9.

Annual Responses: 2,128 (2,116 for form 3000–2 and 12 for form 3200–9).

Filing Fee Per Response: 0.

Annual Burden Hours: 377.

Bureau Clearance Officer: Ted Hudson, (202) 452–5033.

Dated: October 18, 2006.

Ted R. Hudson,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 06–8826 Filed 10–20–06; 8:45 am]

BILLING CODE 4310–84–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–328 (Second Review)]

Cut-to-Length Carbon Steel Plate From the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Termination of review.

SUMMARY: On October 4, 2006, the Department of Commerce (''Commerce'') published notice in the **Federal Register** of its determination that revocation of the countervailing duty (''CVD'') order on cut-to-length (''CTL'') carbon steel plate from the United Kingdom would not be likely to lead to continuation or recurrence of a countervailable subsidy. Commerce further stated that it was revoking the CVD order on CTL carbon steel plate from the United Kingdom (71 FR 58587). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the five-year review of the countervailing duty order concerning CTL carbon steel plate from the United Kingdom (investigation No. 701–TA–328 (Second Review)) is terminated.

DATES: *Effective Date:* October 4, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Szustakowski (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. 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 (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Authority: This five-year review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: October 16, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–17621 Filed 10–20–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–570]

In the Matter of Certain Flash Memory Chips, Flash Memory Systems, and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Motion of Acclaim Innovations, LLC To Intervene as Co-Complainant

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) of the presiding administrative law judge (''ALJ'') granting motion of Acclaim Innovations, LLC (''Acclaim'') to intervene as co-complainant in the above-captioned investigation under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., telephone 202–708–2310, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 16, 2006, based on a complaint filed on April 11, 2006, by Lexar Media, Inc. (''Lexar'') of Fremont, California. 71 FR 28387. The complaint 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 flash memory chips, flash memory systems, and products containing same by reason of infringement of claims 1 and 2 of U.S. Patent No. 6,801,979; claims 1–7 of U.S. Patent No. 6,397,314; and claims 1–13, 15, and 16 of U.S. Patent No. 6,978,342. The complaint named three respondents: Toshiba Corporation of Japan; Toshiba America, Inc. of New York, New York; and Toshiba America Electronic Components, Inc. of Irvine, California (collectively the ''respondents''). The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On July 31, 2006, Acclaim moved to intervene as co-complainant on the basis of assignment of the three identified patents-at-issue from Lexar to Acclaim on June 20, 2006. No party opposed having Acclaim intervene as co-complainant.

The ALJ issued the subject ID on August 15, 2006, granting the motion to intervene. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.19 and 210.42(h)(3) of the Commission's Rules of Practice and Procedure.

Issued: August 31, 2006, (F.R.: October 17, 2006).

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–17721 Filed 10–20–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–055]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: October 31, 2006 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436

TELEPHONE: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–865–867 (Review) (Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before November 14, 2006.).
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 18, 2006.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–8843 Filed 10–19–06; 12:05 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1459]

Meeting of the Department of Justice's (DOJ's) Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement for a meeting of DOJ's Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *http://www.it.ojp.gov/global*.

DATES: The meeting will take place on Thursday, November 2, 2006, from 8:30 a.m. to 4 p.m. ET.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 900 10th Street NW., Washington, DC 20001, *Phone:* (202) 739–2001.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; *Phone:* (202) 616–0532 [**Note:** This is not a toll-free number]; *E-mail: James.P.McCreary@usdoj.gov*.

SUPPLEMENTARY INFORMATION:

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global Information Sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

Meeting Registration and Accommodation

This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. E6–17683 Filed 10–20–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 16, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, telephone: 202–395–7316 / Fax: 202–395–6974 (these are not toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Uniform Billing Form (UB–92).

OMB Number: 1215–0176.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Private Sector: Business and other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 7,593.

Estimated Number of Annual Responses: 30,372.

Estimated Average Response Time: 7 minutes.

Estimated Total Annual Burden Hours: 3,544.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP pay for medical treatment of beneficiaries; this medical treatment can include inpatient/outpatient hospital services, as well as services provided by nursing homes, skilled nursing facilities, and home health aides in the home. In order to determine whether billed amounts are appropriate, OWCP needs to identify the patient, the specific services that were rendered and their relationship to the work-related injury or illness. The regulations implementing these statutes require the use of Form OWCP–92 or UB–92 for the submission of medical bills from institutional providers (20 CFR 10.801, 30.701, 725.405, 725.406, 725.701 and 725.704).

The Uniform Bill, known as the paper UB–92, has been approved by the American Hospital Association, the Centers for Medicare and Medicaid Services, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), by various other government health care programs, and by the private sector, to request payment to institutional providers of medical services. The paper UB–92 has been designed by the National Uniform Billing Committee and is neither a government-printed form nor distributed by OWCP; OWCP has, however, developed detailed instructions to ensure that it obtains the information it needs to consider requests for payment from institutional providers using this form. Form OWCP–92 or the paper UB–92 is an ideal billing instrument for the provider community that services FECA, BLBA and EEOICPA beneficiaries because of its familiarity, its common use, and its acceptance by both government and private health service payers.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–17670 Filed 10–20–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 17, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, telephone: 202–395–7316 / Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB 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 submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Main Fan Operation and Inspection.

OMB Number: 1219–0030.

Type of Response: Recordkeeping.

Affected Public: Private Sector: Business or other for-profit.

Number of Respondents: 8.

Estimated Number of Annual Responses: 5,280.

Average Response Time: 30 minutes.

Estimated Annual Burden Hours: 2,640.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $1,120.

Description: Title 30, Code of Federal Regulations, § 57.22204, which is applicable only to specific metal and nonmetal underground mines that are categorized as gassy, requires main fans to have pressure recording systems. Main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. Certifications and pressure recordings are to be kept for one year and made available to authorized representatives of the Secretary. Potentially gassy (explosive) conditions underground are largely controlled by the main fans. When accumulations of explosive gases such as methane are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results are usually disastrous and multiple fatalities may be expected to occur. The main fan requirements of this standard are significantly more stringent than those imposed on nongassy mines. Information collected through the pressure recordings is used by the mine operator and MSHA to ensure that unsafe conditions are identified early and corrected.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Escape and Evacuation Plan (Pertains to Surface Coal Mines & Surface Work Areas of Underground Coal Mines).

OMB Number: 1219–0051.

Type of Response: Recordkeeping.

Affected Public: Private Sector: Business or other for-profit.

Number of Respondents: 348.

Estimated Number of Annual Responses: 348.

Average Response Time: approximately 5 hours for new plans and 2.5 hours for revised plans.

Estimated Annual Burden Hours: 1,680.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: Title 30, Code of Federal Regulations, § 77.1101(a) requires operators of surface coal mines, including surface facilities, and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire.

Section 77.1101(b) requires that all employees be instructed in current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire. The training and record keeping requirements associated with this standard are addressed under OMB No. 1219–0009 (Training Plan Regulations).

Section 77.1101(c) requires that escape and evacuation plans include the designation and proper maintenance of adequate means for exiting areas where persons are required to work or travel including buildings, equipment, and in areas where persons normally congregate during the work shift.

The escape and evacuation plan is prepared by the mine operator and is used by mines, MSHA, and persons involved in rescue and recovery. The plan is used to instruct employees in the proper methods of exiting structures in the event of a fire. MSHA inspection personnel use the plan to determine compliance with the standard requiring a means of escape and evacuation be established and the requirement that employees be instructed in the procedures to follow should a fire occur.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Records of Preshift and Onshift Inspections of Slope and Shaft Areas. (Pertains to slope and shaft sinking operations at coal mines).

OMB Number: 1219–0082.

Type of Response: Recordkeeping.

Affected Public: Private Sector: Business or other for-profit.

Number of Respondents: 35.

Estimated Number of Annual Responses: 11,858.

Average Response Time: Approximately 1.25 hours.

Estimated Annual Burden Hours: 14,823.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: Title 30, Code of Federal Regulations, 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards.

The standard also requires that a record be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

The records are used by slope and shaft supervisors and employees, State mine inspectors, and Federal mine inspectors. The records show that the examinations and tests were conducted and give insight into the hazardous conditions that have been encountered and those that may be encountered. The records of inspections greatly assist those who use them in making decisions that will ultimately affect the safety and health of slope and shaft sinking employees.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E6–17672 Filed 10–20–06; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

136th Full Council Meeting; Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 136th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on November 8, 2006.

The meeting will run from 10 a.m. to approximately 4 p.m., with a break for lunch. The morning session will take place in Room S4215 A–B, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The afternoon session will take place in Room S–2508 at the same address, beginning at 1:30 p.m. The purpose of the open meeting is for the chairpersons of the three Working Groups to submit reports on their study topics for the full Advisory Council's review and acceptance, and for the Council to present a summary of the reports to the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to any topic under consideration by the Advisory Council may do so by submitting 20 copies to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before October 31, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 31 at the address indicated in this notice.

Signed at Washington, DC, this 16th day of October, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E6–17705 Filed 10–20–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Working Group on Plan Asset Rules, Exemptions and Cross Trading, Working Group on a Procedurally Prudent Investment Process, and Working Group on Health Information Technology; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on November 7, 2006 of the Working Groups assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issues of (1) plan asset rules, exemptions and cross trading, (2) a procedurally prudent investment process, and (3) health information technology.

The sessions will take place in Room S4215 A–B, U.S. Department of Labor,

200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting is for the Working Groups to conclude their reports/recommendations for the Secretary of Labor. The meeting will start at 12:30 p.m. with the Working Group on Plan Asset Rules, Exemptions and Cross Trading, followed by the Working Group on a Procedurally Prudent Investment Process, followed by the Working Group on Health Information Technology.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 25 copies on or before October 31, 2006 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted electronically to *good.larry@dol.gov.* Statements received on or before October 31, 2006 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address any of the Working Groups should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Larry Good by October 31 at the address indicated.

Signed at Washington, DC this 16th day of October, 2006.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. E6–17725 Filed 10–20–06; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of its Committees will meet on October 27 and 28, 2006 in the order set forth in the following schedule, with each subsequent meeting commencing shortly after adjournment of the prior meeting. The agenda for the October 28, 2006 meeting of the Annual Performance Reviews Committee will be announced in a separate public notice.

MEETING SCHEDULE:

Friday, October 27, 2006, 2 p.m.

1. Provision for the Delivery of Legal Services Committee (Provisions Committee);
2. Operations & Regulations Committee.

Saturday, October 28, 2006, 8:30 a.m.

1. Annual Performance Reviews Committee (Performance Reviews Committee);
2. Finance Committee;
3. Board of Directors.

LOCATION: The Charleston Marriott Town Center, 200 Lee Street East, Charleston, West Virginia.

STATUS OF MEETINGS: Open, except as noted below.

• *Status:* October 28, 2006 Board of Directors Meeting—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Board will consider and may act on the General Counsel's report on litigation to which the Corporation is or may become a party, consider and may act on a report from outside counsel on litigation involving LSC in the states of New York and Oregon, receive a briefing from the Inspector General (IG),[1] receive a briefing from management on issues resulting from the Office of Inspector General's investigation of California Rural Legal Assistance, and may consider and may act on the report of the Annual Performance Reviews Committee on its plans for conducting the performance review of the LSC President and Inspector General. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and LSC's implementing regulation 45 CFR 1622.5(h). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED: Friday, October 27, 2006.

Provision for the Delivery of Legal Services Committee; Agenda

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of July 28, 2006.
3. Presentation by Legal Aid of West Virginia (LAWV) on model domestic violence partnership project.

Presenters: Adrienne Worthy, LAWV Executive Director. Elizabeth Wehner, LAWV and Partnership Attorney. Angie Rosser, West Virginia Coalition Against Domestic Violence staff and LAWV coordinator.

This presentation will showcase LAWV's highly successful statewide partnership, a national model for collaboration. The presenters will particularly focus on how joint strategic planning and combined resources have led to better and increased services for victims of domestic violence in a predominately rural service area and ways in which they have involved the private bar in this partnership.

4. Staff presentation on highlights of the 2006 private attorney involvement panel presentations and preliminary thoughts for consideration.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

Operations & Regulations Committee

October 27, 2006

Agenda

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's July 28, 2006 meeting.
3. Consider and act on Draft Final Rule revising 45 CFR part 1624, Prohibition Against Discrimination on the Basis of Handicap.
   a. Staff report.
   b. Public comment.
4. Consider and act on Draft Final Rule to revising 45 CFR part 1621, Client Grievance Procedure.
   a. Staff report.
   b. Public comment.
5. Consider and act on Freedom of Information Act (FOIA) Improvement Plan and Resolution #2006–014.
6. Staff report on history of regulatory activity since 1996.
7. Solicitation of ideas for regulatory agenda in 2007.
8. Staff report on dormant class action cases.
9. Other public comment.
10. Consider and act on other business.
11. Consider and act on adjournment of meeting.

Saturday, October 28, 2006

Performance Reviews Committee

Agenda

(The agenda for this meeting will be published separately in the **Federal Register**.)

Finance Committee

Agenda

1. Approval of agenda.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 &1622.3.

2. Approval of the minutes of the Committee's meetings of July 29, 2006 and September 18, 2006.
3. Presentation on LSC's Financial Reports for the Year Ending September 30, 2006.
- Presentation by David Richardson, Treasurer/Comptroller.
- Comments by Charles Jeffress, Chief Administrative Officer.

4. Consider and act on Resolution #2006–013, Resolution for Special Circumstances Operating Authority for FY 2007—Charles Jeffress.
5. Staff report on LSC's Directors and Officers Insurance—David Richardson.
6. Staff report on projected increase in LSC health insurance premiums—David Richardson.
7. Consider and act on adoption of revised budget procedures—Charles Jeffress.
8. Consider and act on other business.
9. Public comment.
10. Consider and act on adjournment of meeting.

Board of Directors

October 28, 2006

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of July 29, 2006.
3. Approval of minutes of the Board's meeting of September 18, 2006.
4. Approval of minutes of the Board's telephonic meeting of September 22, 2006.
5. Approval of minutes of the Executive Session of the Board's meeting of July 29, 2006.
6. Approval of minutes of the Executive Session of the Board's meeting of September 18, 2006.
7. Approval of minutes of the Executive Session of the Board's meeting of September 22, 2006.
8. Chairman's Report.
9. Members' Reports.
10. President's Report.
11. Inspector General's Report.
12. Consider and act on the report of the Committee on Provision for the Delivery of Legal Services.
13. Consider and act on the report of the Finance Committee.
14. Consider and act on the report of the Operations & Regulations Committee.
15. Staff report on footnote to the Inspector General's Semiannual Report to Congress for the period of October 1, 2005 through March 31, 2006.
16. Staff report on LSC Management's response to the Office of Inspector General's September 2006 report on certain fiscal practices at LSC.
17. Discussion of outside counsel's report on under what circumstances the Government in the Sunshine Act permits a governing body to discuss, consider, deliberate and plan in closed session.
18. Consider and act on Director Fuentes's recommendation that the Board increase the frequency of its meetings and briefings from management and the Office of Inspector General.
19. Consider and act on other business.
20. Public comment.
21. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

Closed Session

22. Consider and act on the report of the Performance Reviews Committee.
23. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
24. Consider and act on outside counsel's report on litigation involving LSC in the states of New York and Oregon.
25. IG briefing.
26. Management briefing on issues stemming from the OIG's investigation of California Rural Legal Assistance, Inc.
27. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: October 19, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–8853 Filed 10–19–06; 2:18 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Annual Performance Reviews Committee of the Legal Services Corporation Board of Directors will meet on October 28, 2006. The meeting will begin at 8:30 a.m., and continue until conclusion of the Committee's agenda.

LOCATION: The Charleston Marriott Town Center, 200 Lee Street East, Charleston, West Virginia.

STATUS OF MEETING: Open.

Performance Reviews Committee

October 28, 2006

Agenda

Open Session

1. Approval of agenda.
2. Approval of minutes of the Committee's Closed Session meetings of February 4 and 5, 2005.
3. Approval of minutes of the Committee's Closed Session meeting of April 29, 2005.
4. Approval of minutes of the Committee's Closed Session meeting of July 28, 2005.
5. Approval of minutes of the Committee's Closed Session meeting of October 28, 2005.
6. Approval of minutes of the Committee's Closed Session meeting of January 27, 2006.
7. Consider and act on whether to undertake an annual performance review of the LSC Inspector General for 2006.
8. Planning for Performance Review of the President.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: October 19, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–8857 Filed 10–19–06; 3:11 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA)

publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 22, 2006 (Note that the new time period for requesting copies has changed from 45 to 30 days after publication). Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note that the new time period for requesting copies has changed from 45 to 30 days after publication)

1. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–06–2, 5 items, 3 temporary items). Inputs, outputs, and master files associated with electronic survey databases maintained by the National Marine Fisheries Service to track species behavior, incidents of disease and mortality, and species abundance data. Proposed for permanent retention are historically significant electronic databases and documentation relating to large-scale, long-term species research.

2. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–05–1, 9 items, 2 temporary items). Audiovisual records maintained by the Office of External Affairs including exhibits, flyers, and handbills. Proposed for permanent retention are recordkeeping copies of mission related recordings, videos, photographs, graphic arts, publications, and related documentation.

3. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–05–2, 6 items, 5 temporary items). Records relating to rulemaking including rulemaking records of a routine nature and not requiring the Secretary's signature, internal or pre-decisional documents, public comments, and copies of substantive rulemaking records. Proposed for permanent retention are the recordkeeping copies of substantive rulemaking records consisting of cases that establish legal precedent or rules that require the Secretary's signature. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Health and Human Services, Food and Drug Administration (N1–88–06–2, 19 items, 15 temporary items). Inputs, outputs, master files, and documentation associated with electronic information systems used by the Center for Drug Evaluation and Research to review pediatric drugs, track meetings, formal disputes and resolutions, and environmental assessments, register distributors, and track certain ingredients used in the drug manufacturing process. Proposed for permanent retention are master files and documentation associated with electronic information systems used to register ingredients and substances used in drug manufacturing, and to register all drug applications received by the Center. For all items on this schedule except the master files, the agency is authorized to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Homeland Security, U.S. Coast Guard (N1–26–06–7, 6 items, 4 temporary items). Records include inputs to an electronic case management system and routine search and rescue case files lacking historical significance. Proposed for permanent retention are recordkeeping copies of historically significant case files, including attachments and enclosures.

6. Department of Homeland Security, U.S. Secret Service (N1–87–06–1, 4 items, 4 temporary items). Land mobile radio voice transmission recordings lacking historical significance, relating to presidential and vice-presidential trips. Recordkeeping copies of significant recordings are covered by a previously approved permanent disposition authority.

7. Department of the Interior, Office of the Secretary (N1–48–06–8, 92 items, 87 temporary items). Records consist of cyber security program and planning files including policies, directives, standards, technical bulletins, guidance, meeting minutes, project plans, enterprise security architecture files, privacy impact assessments, performance reports, and inputs, outputs, master files, and documentation associated with electronic information systems used for the administration of certification and accreditation files and to track incidents and trends. Proposed for permanent retention are recordkeeping copies of the cyber security program court files relating to Indian Fiduciary Trust records.

8. Department of Justice, Bureau of Prisons (N1–129–06–7, 1 item, 1 temporary item). This schedule reduces the retention period for recordkeeping copies of periodic inmate counts at correctional institutions, which were previously approved for disposal.

9. Department of Justice, Federal Bureau of Investigation (N1–65–06–13, 3 items, 1 temporary item). Working papers relating to administrative and operational policies and procedures. Proposed for permanent retention are the recordkeeping copies of policies and procedures. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

10. Department of Justice, Federal Bureau of Investigation (N1–65–06–14, 1 item, 1 temporary item). This schedule requests authority to destroy case number 175–130, item 1A, which pertains exclusively to the investigation of the captioned individual and meets the criteria in previous schedule N1–65–88–3 for permanent retention based on volume. This request responds to a Federal Pre-Trial Diversion Program court order to delete the records of the captioned individual.

11. Department of the Navy, Agency-wide (N1–NU–06–5, 2 items, 2 temporary items). Records relating to the processing of non-U.S. citizens for access to U.S. restricted defense information. Records include requests, approvals, disapprovals, rescissions, polygraph reports, correspondence, and related information. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

12. Department of the Navy, Chief of Naval Operations (N1–NU–06–4, 2 items, 2 temporary items). Forms, correspondence, memorandums, and other records relating to the administration of security reviews of documents prior to publication. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

13. Department of the Navy, Naval Criminal Investigative Service (N1–NU–06–6, 4 items, 4 temporary items). Records relating to the administration of ongoing investigations including tracking forms, plans, and review documents. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

14. Department of the Treasury, Office of Thrift Supervision (N1–483–06–3, 2 items, 2 temporary items). Consumer complaint files and agency-issued charter certificates for the approval of new Federally-chartered savings associations, corporate title changes, office relocations, and charter amendments. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

15. General Services Administration, Federal Acquisition Service (N1–137–06–1, 3 items, 3 temporary items). Inputs, master files, and outputs associated with an electronic information system designed to provide a secure, comprehensive identification system for Federal employees.

16. Government Accountability Office, Agency-wide (N1–411–06–1, 8 items, 7 temporary items). Records consist of administrative support files relating to budget, property management, procurement, security, and travel, investigative files that lack historical significance, facility and equipment safety records, personnel security files, and Personnel Appeals Board case files. Proposed for permanent retention are recordkeeping copies of historically significant records relating to the agency's budget submission and testimony, building management, press releases, publications, and special investigations reflecting significant Comptroller General, public, and/or congressional scrutiny. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

17. Government Accountability Office, Agency-wide (N1–411–06–2, 4 items, 3 temporary items). Records relate to agency audits of federal programs and performance. Included are such records as audit findings and action reports, records documenting interaction with Congress, and scheduled agency appearances at Congressional hearings. Proposed for permanent retention are recordkeeping copies of historically significant audit and engagement records involving issues of far-reaching national or international importance, matters that have a significant impact on agency operations, matters of extensive national media attention, or actions that result in the approval of new Congressional legislation. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

18. Government Accountability Office, Agency-wide (N1–411–06–3, 6 items, 5 temporary items). Records relate to agency policies and policy development, agency organization, and decisions of senior agency executives. Included are such records as legal decisions and opinions, fraud, regulatory, and related oversight records, Comptroller General meeting records, and bid protests. Proposed for permanent retention are recordkeeping copies of claims, senior executives' subject and correspondence files, agency history files, annual reports, publications, legislative histories, and records relating to the Impoundment Control Act. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

19. National Archives and Records Administration, Office of the Federal Register (N1–64–06–3, 10 items, 9 temporary items). Inputs, outputs, documentation, and system backups associated with the electronic editing and publication of **Federal Register** submissions by Federal agencies. Proposed for permanent retention are recordkeeping copies of submissions signed by the President.

20. National Archives and Records Administration, Information Security Oversight Office (N1–64–06–4, 15 items, 7 temporary items). Records relating to program direction and operations, and administrative responsibilities. Proposed for permanent retention are recordkeeping copies of the director's office files, policy development records, requests for waivers or exemptions, reclassification actions, agency copies of Interagency Security Classification Appeals Panel records, and official reports relating to the classification management programs of Executive agencies.

21. Railroad Retirement Board, Office of the General Counsel (N1–184–06–2, 24 items, 19 temporary items). Correspondence, working files, subject files, reference files, and reports relating to legal and legislative services for the agency, including an electronic database and related records used to handle appeals and hearings regarding disagreements with claims decisions of the board. Proposed for permanent are recordkeeping copies of policy and legal files of the General Counsel, and index files to Digests of Legal Opinions.

22. Social Security Administration, Office of International Programs (N1–47–06–01, 13 items, 13 temporary items). Inputs, outputs, and claim files associated with a Web site used to adjudicate veterans' benefit claims for Filipinos who served in the U.S. armed forces during World War II.

23. Tennessee Valley Authority, Power System Operations (N1–142–06–2, 1 item, 1 temporary item). Case files relating to the review and approval process for power transmission lines and substation construction projects. Included are such records as environmental assessments, public involvement plans, public comment letters, **Federal Register** notices, signed Findings of No Significant Impact, and engineering design records.

Dated: October 17, 2006.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E6–17620 Filed 10–20–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Media Arts (application review): November 16–17, 2006 in Room 716. This meeting, from 9 a.m. to 6 p.m. on November 16th and from 9 a.m. to 5:30 p.m. on November 17th, will be closed.

Learning in the Arts (application review): November 27–29, 2006 in Room 714. A portion of this meeting, from 2:30 p.m. to 3:15 p.m. on November 29th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on November 27th and 28th, and from 9 a.m. to 2:30 p.m. and from 3:15 p.m. to 6 p.m. on November 29th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 16, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–17616 Filed 10–20–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting #60

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on November 9, 2006, from 2:30 p.m. to 5 p.m. (ending time is tentative). The meeting will be held in the Mt. Vernon, Salon A at the Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

The Committee meeting will begin with a welcome, introductions, and announcements. Updates on Committee programs and activities will follow, including a report on youth arts and humanities projects, specifically the *Coming Up Taller* program. Reports are anticipated from the Chairmen of the National Endowment for the Humanities (NEH) and the National Endowment for the Arts (NEA) and the Director of the Institute for Museum and Library Services. Frank Hodsoll, program consultant and former Chairman of the NEA, will make a presentation on project development activity that followed the PCAH's Symposium on Film, Television, Digital Media, and Popular Culture at its most recent Los Angeles meeting. Karen Elias, Acting General Counsel, NEA, will present the annual ethics briefing for members. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the ''Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities.''

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Jenny Schmidt of the President's Committee seven (7) days in advance of the meeting at (202) 682–5560 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Schmidt.

If you need special accommodations due to a disability, please contact Ms. Schmidt through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5560, at least seven (7) days prior to the meeting.

Dated: October 12, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–17617 Filed 10–20–06; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Solicitation for Members of the National Science Board

AGENCY: National Science Board Office, National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Board (Board) and the National Science Foundation (NSF) Director are soliciting nominations for evaluation and submission to the President. The Board was established by Congress in 1950 to provide oversight for, and establishes the policies of, NSF. The Board also serves as an independent body of advisors to both the President and Congress on broad national policy issues related to science and engineering research and education. The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for 6-year terms, in addition to the NSF Director who serves as an *ex officio* Member.

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: ''The persons nominated for appointment as members of the Board (1) shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation.''

DATES: Nominations must be received by December 15, 2006.

ADDRESSES: Letters of nomination accompanied by biographical information and a curriculum vita (without publications) may be forwarded to the Chairman, National Science Board, National Science Foundation, 4201 Wilson Boulevard, Room 1220, Arlington, VA 22230.

FURTHER INFORMATION CONTACT: Michael P. Crosby, Executive Officer and Board Office Director, (703) 292–7000, *mcrosby@nsf.gov* or Mrs. Susan E. Fannoney, Senior Associate for Operations and Honorary Awards, Board Office (703–292–8096), *sfannone@nsf.gov*.

SUPPLEMENTARY INFORMATION:

Nominations should include: (1) The nominee's full name, title, institutional affiliation, and contact information; (2) the nominee's area(s) of expertise; and (3) a short description of their qualifications.

Russell Moy,

Attorney-Advisor.

[FR Doc. E6–17604 Filed 10–20–06; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[EA–06–224]

In the Matter of USEC Inc. (American Centrifuge Plant) and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Requirements for the Protection of and Access to Safeguards Information (Effective Immediately)

I

USEC Inc. (USEC or the Applicant) applied for a license, to be issued in accordance with the Atomic Energy Act (AEA) of 1954, by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing it to construct and operate a uranium enrichment facility, known as the American Centrifuge Plant, in Piketon, Ohio. NRC plans to provide USEC, for its information, copies of Orders issued to Category III facilities on interim measures to enhance physical security at those facilities. Those Orders will contain Safeguards Information.[1] In addition, in the future, the Commission may issue the Applicant additional Orders that require compliance with specific additional security measures to enhance security at the facility. These Orders are also expected to contain Safeguards Information, which cannot be released to the public and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in Attachments A, B, and C of this Order, so that the Applicant can receive these documents. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,[2] whether or not a Applicant of the Commission, who produces, receives, or acquires Safeguards Information.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information. The NRC's implementation of this requirement cannot await the completion of the Safeguards Information rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to Safeguards Information were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (*See* 10 CFR 73.59, 71 FR 33,989 (June 13, 2006)), it is unlikely that many Applicant employees are excepted from the fingerprinting requirement by the ''fingerprinting relief'' rule. Individuals relieved from the fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors, who conduct security inspections on behalf of the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements, as set forth by this Order, for access to Safeguards Information so that affected Applicant can obtain and grant access to Safeguards Information. This Order also imposes requirements for access to Safeguards Information by any person, from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures (ASM) or Compensatory Measures (CM) for certain radioactive materials. The requirements imposed by these Orders, and certain measures

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

[2] Person means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

licensees have developed to comply with the Orders, were designated by the NRC as Safeguards Information. For some materials licensees, the storage and handling requirements for the Safeguards Information have been modified from the existing 10 CFR Part 73 Safeguards Information requirements for reactors and fuel cycle facilities that require a higher level of protection; such Safeguards Information is designated as Safeguards Information—Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is Safeguards Information, and licensees, applicants, and other persons who seek or obtain access to such Safeguards Information are subject to this Order.

II

The Commission has broad statutory authority to protect Safeguards Information and prohibit its unauthorized disclosure. Section 147 of the AEA, as amended, grants the Commission explicit authority to ''* * * issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information. * * *'' Furthermore, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to Safeguards Information. In addition, no person may have access to Safeguards Information unless the person has an established need-to-know and satisfies the trustworthy and reliability requirements of those Orders.

Licensees, applicants, and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information, to avoid unauthorized disclosure, in accordance with the specific requirements for the protection of Safeguards Information contained in Attachments A, B, and C. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachments A, B, and C, applicable to the handling and unauthorized disclosure of Safeguards Information, as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, and are considered to be trustworthy and reliable, and who satisfy the fingerprinting and criminal history records check required by the EPAct and this Order. A ''need-to-know'' means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or Applicant duties of employment. The Applicant and all other persons who obtain Safeguards Information must ensure that they develop, maintain, and implement strict policies and procedures for the proper handling of Safeguards Information, to prevent unauthorized disclosure, in accordance with the requirements in Attachments A, B, and C. The Applicant must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the Applicant's policies and procedures on Safeguards Information or develop, maintain, and implement their own acceptable policies and procedures. The Applicant remains responsible for the conduct of its contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachments A, B, and C must address, at a minimum, the following: (1) The general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; (2) protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; (3) correspondence containing Safeguards Information; (4) access to Safeguards Information; (5) preparation, marking, reproduction, and destruction of documents; (6) external transmission of documents; (7) use of automatic data processing systems; and (8) removal of the Safeguards Information category.

To provide assurance that the Applicant is implementing appropriate measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, the Applicant shall implement the requirements for access to Safeguards Information in this Order, including the requirements in Attachments A, B, and C of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, 10 CFR Part 40, and 10 CFR Part 70, *It is hereby ordered*, Effective Immediately, that the applicant and all other persons who produce, receive, or acquire the additional security measures identified above (whether draft or final), or who seek or obtain access to Safeguards Information, shall comply with the requirements set forth in this order, including the requirements in Attachments A, B, and C.

A. 1. No person may have access to Safeguards Information unless that person has a need-to-know the Safeguards Information, has been fingerprinted or who has a favorably decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to Safeguards Information. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 (71 FR 33,989 (June 13, 2006)) or who has a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active Federal security clearance, provided in each case that the appropriate documentation is made available to the Applicant's NRC-approved reviewing official.

2. No person may have access to any Safeguards Information if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to Safeguards Information.

B. No person may provide Safeguards Information to any other person except in accordance with condition III.A above. Prior to providing Safeguards Information to any person, a copy of this Order shall be provided to that person.

C. The Applicant shall comply with the following requirements:

1. The Applicant shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment C to this Order.

2. The Applicant shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who needs access to Safeguards Information and who the Applicant nominates as the ''reviewing official'' for determining access to Safeguards Information by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to Safeguards Information and, therefore, will be permitted to serve as

the Applicant's reviewing official.[3] The Applicant may, at the same time or later, submit the fingerprints of other individuals to whom the Applicant seeks to grant access to Safeguards Information. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment C of this Order.

3. The Applicant shall, in writing, within twenty (20) days of the date of this Order, notify the Commission, (1) If it is unable to comply with any of the requirements described in the Order, including Attachments A, B, and C, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Applicant's justification for seeking relief from or variation of any specific requirement.

Applicant responses to C.1., C.2., and C.3. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Applicant responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.'' The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, on demonstration of good cause by the Applicant.

IV

In accordance with 10 CFR 2.202, the Applicant must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Applicant or other person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address; and to the Applicant, if the answer or hearing request is by a person other than the Applicant. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission, to 301–415–1101, or by e-mail, to *hearingdocket@nrc.gov*; and also to the Office of the General Counsel, either by means of facsimile transmission, to 301–415–3725, or by e-mail, to *OGCMailCenter@nrc.gov*. If a person other than the Applicant requests a hearing, that person shall set forth with particularity the manner in which their interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Applicant or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Applicant may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order, without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 4th day of October 2006.

For The Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment A—Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI–M)

General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are safeguards information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the safeguards information for reactors and fuel cycle facilities that require a higher level of protection, the term ''Safeguards Information—Modified Handling'' (SGI–M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI–M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, applicants, licensees, and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not an applicant or licensee of the NRC, who produces, receives, or acquires SGI–M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees fall under this requirement if they possess SGI–M. An applicant or licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection. (See more under Conditions for Access) State or local police units who have access to SGI–M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, i.e., need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again, it would be prudent for applicants and licensees who have arrangements with local police to advise them of the existence of SGI–M requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, ''whether or not a licensee of the

[3] The NRC's determination of this individual's access to Safeguards Information in accordance with the process described in Enclosure 3 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act.'' Furthermore, willful violation of any regulation or order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. See sections 147b. and 223 of the Act.

Conditions for Access

Access to SGI–M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI–M by applicant or licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the applicant or licensee, as well as a determination concerning the trustworthiness of individuals having access to the information. Employees of an organization affiliated with the applicant's or licensee's company, *e.g.*, a parent company, may be considered as employees of the applicant or licensee for access purposes.

Need-To-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI–M that a proposed recipient's access to SGI–M is necessary in the performance of official, contractual, or applicant or licensee duties of employment. The recipient must be made aware that the information is SGI–M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI–M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

1. An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;

2. A member of a duly authorized committee of the Congress;

3. The Governor of a State or his designated representative;

4. A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

5. A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies;

6. A person to whom disclosure is ordered pursuant to Section 2.744(e) of Part 2 of part 10 of the Code of Federal Regulations; or

7. State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

In a generic sense, the individuals described above in (A) through (G) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (A) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to the individuals in group (A). If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI–M, they are not authorized to receive SGI–M.

Information Considered for Safeguards Information Designation

Information deemed SGI–M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction.

SGI–M identifies safeguards information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI–M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI–M shall be under the control of an authorized individual. This requirement is satisfied if the SGI–M is attended by an authorized individual even though the information is in fact not constantly being used. SGI–M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible;

Administrative offices (*e.g.*, central records or purchasing) if visitors are escorted and information is not clearly visible.

Protection While in Storage

While unattended, SGI–M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI–M shall be limited to a minimum number of personnel for operating purposes who have a ''need-to-know'' and are otherwise authorized access to SGI–M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI–M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words ''Safeguards Information—Modified Handling.'' The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI–M.

SGI–M may be transported by any commercial delivery company that provides nationwide overnight service with computer tracking features, U.S. first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

Within a facility, SGI–M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI–M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific

information may be designated as ''SGI–M,'' originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI–M shall be marked ''Safeguards Information—Modified Handling'' in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) The name, title, and organization of the individual authorized to make a SGI–M determination, and who has determined that the document contains SGI–M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI–M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting ''Safeguards Information—Modified Handling.''

In additional to the ''Safeguards Information—Modified Handling'' markings at the top and bottom of page, transmittal letters or memoranda which do not in themselves contain SGI–M shall be marked to indicate that attachments or enclosures contain SGI–M but that the transmittal does not (*e.g.*, ''When separated from SGI–M enclosure(s), this document is decontrolled'').

In addition to the information required on the face of the document, each item of correspondence that contains SGI–M shall, by marking or other means, clearly indicate which portions (*e.g.*, paragraphs, pages, or appendices) contain SGI–M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI–M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the possession of contractors and agents of applicants or licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by State and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Removal from SGI–M Category

Documents containing SGI–M shall be removed from the SGI–M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI–M. Applicants and licensees have the authority to make determinations that specific documents which they created no longer contain SGI–M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI–M in some other form or be combined with other unprotected information to disclose SGI–M.

The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document shall indicate the name and organization of the individual removing the document from the SGI–M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI–M

SGI–M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining any information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI–M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI–M may be processed or produced on an ADP system provided that the system is assigned to the applicant's, licensee's, or contractor's facility and requires the use of an entry code/password for access to stored information. Applicants or licensees must process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of information. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information off-site. (**Note:** if SGI–M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI–M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI–M by unauthorized individuals, particularly from remote terminals. Specific files containing SGI–M will be password protected to preclude access by an unauthorized individual. SGI–M files may be transmitted over a network if the file is encrypted. In such cases, the applicant or licensee will select a commercially available encryption system that National Institute of Standards and Technology (NIST) has validated as conforming to Federal Information Processing Standards (FIPS). SGI–M files shall be properly labeled as ''Safeguards Information—Modified Handling'' and saved to removable media and stored in a locked file drawer or cabinet. The NIST maintains a listing of all validated encryption systems at *http://csrc.nist.gov/cryptval/140–1/1401val.htm.*

Telecommunications

SGI–M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI–M at meetings or in the presence of others to ensure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI–M shall be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI–M must be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed are considered completely destroyed.

Attachment B—Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information

Applicants or licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to safeguards information are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material.

The trustworthiness, reliability, and verification of an individual's true identity shall be determined based on a background investigation. The background investigation shall address at least the past three (3) years, and, as a minimum, include a Federal Bureau of Investigation fingerprinting and criminal history check, verification of employment history, education, employment eligibility, credit check, and personal references. If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The applicant's or licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

Attachment C—Requirements for Fingerprinting and Criminal History Checks of Individuals When Applicant's or Licensee's Reviewing Official is Determining Access to Safeguards Information

General Requirements

Applicants and licensees shall comply with the requirements of this attachment.

1. a. Each applicant or licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The Applicant or Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

b. The Applicant or Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

c. Fingerprints need not be taken if an employed individual (*e.g.*, an applicant or licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the criminal history check must be provided. The Applicant or Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the Applicant's or Licensee's activities.

d. All fingerprints obtained by the Applicant or Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

e. The Applicant or Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements, in making a determination whether to grant access to Safeguards Information to individuals who have a need-to-know the SGI.

f. The Applicant or Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to Safeguards Information.

g. The Applicant or Licensee shall document the basis for its determination whether to grant access to SGI.

2. The Applicant or Licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to Safeguards Information based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the Applicant's or Licensee's reviewing official.

Prohibitions

The Applicant or Licensee shall not base a final determination to deny an individual access to Safeguards Information solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

The Applicant or Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Applicant or Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, the Applicant or Licensee shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to Safeguards Information, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The Applicant or Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the Applicant for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Applicants or licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making

electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of the Applicant or Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Applicant or Licensee fingerprint submissions. The Commission will directly notify applicants or licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Applicant or Licensee all data received from the FBI as a result of the Applicant's or Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right To Correct and Complete Information

Prior to any final adverse determination, the Applicant or Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Applicant or Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Applicant or Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Applicant or Licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the Applicant or Licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each Applicant or Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Applicant or Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Applicant or Licensee if the Applicant or Licensee holding the criminal history check record receives the individuals' written request to re-disseminate the information contained in his/her file, and the gaining Applicant or Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Applicant or Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Applicant or Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E6–17726 Filed 10–20–06; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Filing and Information Services, Washington, DC 20549.

Extension: Rule 35d–1, SEC File No. 270–491, OMB Control No. 3235–0548.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 35d–1 (17 CFR 270.35d–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) generally requires that investment companies with certain names invest at least 80% of their assets according to what their names suggest. The rule provides that an affected investment company must either adopt this 80% requirement as a fundamental policy or adopt a policy to provide notice to shareholders at least 60 days prior to any change in its 80% investment policy. This preparation and delivery of the notice to existing shareholders is a collection of information within the meaning of the Act.

The Commission estimates that there are 7,200 open-end and closed-end management investment companies and series that have descriptive names that are governed by the rule. The Commission estimates that of these 7,200 investment companies, approximately 24 provide prior notice to their shareholders of a change in their investment policies per year. The Commission estimates that the annual burden associated with the notice requirement of the rule is 20 hours per affected investment company or series. The total burden hours for Rule 35d–1 is 480 per year in the aggregate (24 responses × 20 hours per response). Estimates of average burden hours are made solely for the purposes of the Act, and are not derived from a comprehensive or even a representative

survey or study of the costs of Commission rules and forms.

The collection of information under Rule 35d–1 is mandatory. The information provided under Rule 35d–1 is not kept confidential. The Commission 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.

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, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 16, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–17618 Filed 10–20–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27518; 812–13043]

Pioneer America Income Trust, et al., Notice of Application

October 16, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of the Applications: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies both within and outside the same group of investment companies.

Applicants: Pioneer America Income Trust, Pioneer Balanced Fund, Pioneer Bond Fund, Pioneer Emerging Growth Fund, Pioneer Emerging Markets Fund, Pioneer Equity Income Fund, Pioneer Equity Opportunity Fund, Pioneer Europe Select Equity Fund, Pioneer Fund, Pioneer Fundamental Growth Fund, Pioneer Global High Yield Fund, Pioneer Growth Shares, Pioneer High Yield Fund, Pioneer Ibbotson Asset Allocation Series, Pioneer Independence Fund, Pioneer International Equity Fund, Pioneer International Value Fund, Pioneer Mid Cap Growth Fund, Pioneer Mid Cap Value Fund, Pioneer Money Market Trust, Pioneer Real Estate Shares, Pioneer Research Fund, Pioneer Select Equity Fund, Pioneer Select Value Fund, Pioneer Series Trust I, Pioneer Series Trust II, Pioneer Series Trust III, Pioneer Series Trust IV, Pioneer Series Trust V, Pioneer Short Term Income Fund, Pioneer Small Cap Value Fund, Pioneer Strategic Income Fund, Pioneer Tax Free Income Fund, Pioneer Value Fund, Pioneer Variable Contracts Trust (each a ''Fund'') and Pioneer Investment Management, Inc. (''PIM'').

Filing Dates: The application was filed on November 12, 2003, and amended on September 22, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 9, 2006, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 60 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817 and Mary Kay Frech, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulations, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street NE., Washington, DC 20549–0102, (202) 551–5850.

Applicants' Representations

1. Each of the Funds is an open-end management investment company registered under the Act. Certain of the Funds are comprised of separate series (each series, also a ''Fund''). Pioneer Variable Contracts Trust serves as a funding vehicle for separate accounts registered under the Act (''Registered Separate Accounts'') and separate accounts exempt from registration under the Act (''Unregistered Separate Accounts,'' together with the Registered Separate Accounts, the ''Separate Accounts'') of unaffiliated insurance companies. PIM is an investment adviser registered under the Investment Advisers Act of 1940.[1]

2. Applicants request relief to permit certain Funds (the ''Funds of Funds'') to acquire shares of registered open-end management investment companies that are part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (''Same Group Funds'') and shares of registered open-end management investment companies that are not part of the same group of investment companies as the Funds (''Other Group Funds,'' together with Same Group Funds, the ''Underlying Funds'') in excess of the limits set forth in section 12(d)(1)(A) of the Act, and Same Group Funds and Other Group Funds, their principal underwriter, and any broker or dealer to sell their shares to the Fund of Funds in excess of the limits set forth in section 12(d)(1)(B) of the Act.[2]

[1] Applicants also request relief for any other registered open-end management investment company, or series thereof, that currently or in the future is part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Funds (included in the term ''Funds'') and is advised by PIM or an entity controlling, controlled by or under common control with PIM (together with PIM, the ''Manager''). All entities that currently intend to rely on the requested order are named as applicants. Any other entities that rely on the order in the future will comply with the terms and conditions of the application.

[2] The initial Funds of Funds are Pioneer Ibbotson Conservative Allocation Fund, Pioneer Ibbotson Moderate Allocation Fund, Pioneer Ibbotson Growth Allocation Fund and Pioneer Ibbotson Aggressive Allocation Fund, each a series of Pioneer Ibbotson Asset Allocation Series, and Pioneer Ibbotson Moderate Allocation VCT Portfolio, Pioneer Ibbotson Growth Allocation VCT Portfolio, and Pioneer Ibbotson Aggressive Allocation VCT Portfolio, each a series of Pioneer Variable Contracts Trust.

Applicants also seek relief to permit Same Group Funds and Other Group Funds that are affiliated persons of a Fund of Funds to sell shares to, and redeem shares from, the Fund of Funds. Each Fund of Funds may also make direct investments, including stocks, bonds and other securities, which are consistent with its investment objective.

3. Applicants state that each Fund of Funds will provide an efficient and simple method of allowing investors to create either a comprehensive asset allocation program or achieve diversification in the market with just one investment. Applicants assert that the Fund of Funds structure is helpful for investors who are able to identify their investment goals but are not comfortable deciding how to invest their assets to achieve those goals.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) prohibits a registered investment company from acquiring shares of any other investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company or, together with the securities of other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) prohibits a registered open-end investment company, its principal underwriter and any broker or dealer from selling shares of the company to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's outstanding voting stock or more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security or transaction from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit a Fund of Funds to acquire shares of Same Group Funds and Other Group Funds, and Same Group Funds and Other Group Funds and their principal underwriter and any broker or dealer to sell shares to a Fund of Funds, beyond the limits set forth in sections 12(d)(1)(A) and (B) of the Act.

3. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over any Other Group Fund. To limit the influence that a Fund of Funds may have over an Other Group Fund, applicants propose a condition prohibiting (a)(i) the Manager, (ii) any person controlling, controlled by or under common control with the Manager, and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act advised by the Manager or any person controlling, controlled by or under common control with the Manager (collectively, the ''Group''), and (b)(i) any investment adviser within the meaning of section 2(a)(20)(B) of the Act (''Subadviser'') of a Fund of Funds, (ii) any person controlling, controlled by or under common control with the Subadviser, and (iii) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised by the Subadviser or any person controlling, controlled by or under common control with the Subadviser (collectively, the ''Subadviser Group'') from controlling (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act.

5. Applicants also propose conditions 2–7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of an Other Group Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis. Condition 2 precludes a Fund of Funds and its Manager, any Subadviser, promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, a ''Fund of Funds Affiliate'') from causing any existing or potential investment by the Fund of Funds in an Other Group Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Other Group Fund or its investment adviser(s), promoter, principal underwriter and any person controlling, controlled by or under common control with any of these entities (each, an ''Other Group Fund Affiliate''). Condition 5 precludes a Fund of Funds and Fund of Funds Affiliates (except to the extent they are acting in their capacity as an investment adviser to an Other Group Fund) from causing an Other Group Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an officer, director, member of an advisory board, Manager, Subadviser or employee of a Fund of Funds, or a person of which any such officer, director, member of an advisory board, Manager, Subadviser or employee is an affiliated person (each, an ''Underwriting Affiliate,'' except any person whose relationship to the Other Group Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is an ''Affiliated Underwriting.''

6. In addition, as an assurance that an Other Group Fund understands the implications of an investment by a Fund of Funds operating in reliance on the requested exemptive relief from sections 12(d)(1)(A) and (B), prior to any investment by a Fund of Funds in the Other Group Fund in excess of the limit set forth in section 12(d)(1)(A)(i), condition 8 requires the Fund of Funds and the Other Group Fund to execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that the Other Group Fund has the right to reject an investment from a Fund of Funds.

7. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. With respect to investment advisory fees, applicants state that, prior to reliance on the order and subsequently in connection with the approval of any investment advisory contract under section 15 of the Act, the board of directors or trustees of a Fund of Funds (''Board''), including a majority of the directors or trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), will find that the advisory fees charged to the Fund of Funds under its investment advisory contract(s) are based on services provided that are in addition to, rather than duplicative of, services provided under the investment advisory contract(s) of any Same Group Fund and Other Group Fund. Applicants further state that the Manager to a Fund of Funds will waive fees otherwise payable to the Manager by a Fund of Funds in an amount at least equal to any compensation (including fees received

pursuant to a plan adopted by the Other Group Fund under rule 12b-1 under the Act (''12b–1 Fees'')) received from the Other Group Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person, in connection with the investment by the Fund of Funds in the Other Group Fund. Applicants also state that any Subadviser to a Fund of Funds will waive fees otherwise payable to the Subadviser by the Fund of Funds in an amount at least equal to any compensation received from the Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person, in connection with the investment by the Fund of Funds in the Other Group Fund made at the direction of the Subadviser. Applicants agree that the benefit of any such waiver by a Subadviser will be passed through to the Fund of Funds.

8. Applicants represent that the aggregate sales charges and/or service fees (as defined in the NASD Conduct Rules) charged with respect to any Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830 (''Rule 2830''). Applicants also represent that with respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Moreover, the prospectus and sales literature for a Fund of Funds will contain clear, concise, ''plain English'' disclosure tailored to the particular document designed to inform investors of the unique characteristics of the Fund of Funds' structure, including but not limited to, its expense structure and the additional expenses of investing in Same Group Funds and Other Group Funds. Each Fund of Funds will comply with the disclosure requirements concerning aggregate costs of investing in the Underlying Funds set forth in Investment Company Act Release No. 27399 by the compliance date set forth therein.

9. Applicants contend that the proposed arrangement will not create an overly complex fund structure. Applicants note that the Underlying Funds will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A), except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1)); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) engage in interfund borrowing and lending transactions.

B. Section 17(a) of the Act

1. Section 17(a) generally prohibits purchases and sales of securities, on a principal basis, between a registered investment company and any affiliated person or promoter of, or principal underwriter for, the company, and affiliated persons of such persons. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among other things, any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the other's outstanding voting securities; any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; any person directly or indirectly controlling, controlled by or under common control with the other person; and any investment adviser to an investment company.

2. Section 17(b) authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction, including the consideration to be paid and received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) permits the Commission to exempt any person or transaction, or any class or classes of persons or transactions from any provisions of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that a Fund of Funds and the Same Group Funds may be deemed to be under common control since both are advised by the Manager. Applicants also state that an Underlying Fund might be deemed to be an affiliated person of a Fund of Funds if the Fund of Funds acquires 5% or more of the Underlying Fund's outstanding voting securities. Accordingly, section 17(a) could prevent a Same Group Fund or an Other Group Fund from selling shares to, and redeeming shares from, a Fund of Funds.

4. Applicants seek an exemption under sections 6(c) and 17(b) to allow the proposed transactions. Applicants state that the transactions satisfy the standards for relief under sections 6(c) and 17(b). Specifically, applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants represent that the proposed transactions will be consistent with the policies of each Fund of Funds and Underlying Fund, and with the general purposes of the Act. In addition, applicants note that the consideration paid in sales and redemptions permitted under the requested order of shares of the Underlying Funds will be based on the net asset values of the Underlying Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The members of the Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Other Group Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Other Group Fund, the Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of an Other Group Fund, the Group and the Subadviser Group (except for any member of the Group or the Subadviser Group that is a Separate Account) will vote its shares of the Other Group Fund in the same proportion as the vote of all other holders of the Other Group Fund's shares. A Registered Separate Account will seek voting instructions from its contract holders and will vote its shares of an Other Group Fund in accordance with the instructions received and will vote those shares for which no instructions were received in the same proportion as the shares for which instructions were received. An Unregistered Separate Account will either (a) vote its shares of the Other Group Fund in the same proportion as the vote of all other holders of the Other Group Fund's shares; or (b) seek voting instructions from its contract holders and vote its shares in accordance with the instructions received and vote those

shares for which no instructions were received in the same proportion as the shares for which instructions were received. This condition shall not apply to the Subadviser Group with respect to an Other Group Fund for which the Subadviser, or a person controlling, controlled by, or under common control with the Subadviser, acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in an Other Group Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Other Group Fund or an Other Group Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that the Manager and any Subadviser to the Fund of Funds are conducting the investment program of the Fund of Funds, including the initial selection of Other Group Funds and any subsequent changes, without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Other Group Fund or an Other Group Fund Affiliate in connection with any services or transactions including any revenue sharing or similar payments by an Other Group Fund Affiliate to a Fund of Funds Affiliate.

4. Once an investment by a Fund of Funds in the securities of an Other Group Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors or trustees of the Other Group Fund, including a majority of the Independent Trustees, will determine that any consideration paid by the Other Group Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Other Group Fund; (b) is within the range of consideration that the Other Group Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Other Group Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Other Group Fund) will cause an Other Group Fund to purchase a security in an Affiliated Underwriting.

6. The board of directors or trustees of an Other Group Fund, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Other Group Fund in Affiliated Underwritings, once an investment by a Fund of Funds in shares of the Other Group Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by a Fund of Funds in shares of the Other Group Fund. The board should consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Other Group Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Other Group Fund in Affiliated Underwritings and the amount purchased directly from an Other Group Fund have changed significantly from prior years. The board shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Other Group Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Other Group Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Before investing in an Other Group Fund in excess of the limit in section 12(d)(1)(A)(i), each Fund of Funds and the Other Group Fund will execute an agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). At the time of its investment in shares of an Other Group Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Other Group Fund of the investment. At such time, the Fund of Funds will also transmit to the Other Group Fund a list of the names of each Fund of Funds Affiliate and Underwritings Affiliate. The Fund of Funds will notify the Other Group Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The Other Group Fund and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, will find that the advisory fees charged under such advisory contract(s) are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Manager will waive fees otherwise payable to the Manager by the Fund of Funds, in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Other Group Fund under rule 12b–1 under the Act) received from an Other Group Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by the Other Group Fund, in connection with the investment by the Fund of Funds in the Other Group Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received from an Other Group Fund by the Subadviser, or an affiliated person of the Subadviser, other than any advisory fees paid to the Subadviser or its affiliated person by the Other Group Fund, in

connection with the investment by the Fund of Funds in the Other Group Fund made at the direction of the Subadviser. In the event that the Subadviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and services fees, as defined in Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, but not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

12. No Underlying Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act except to the extent the Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting the Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing or lending transactions.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–17619 Filed 10–20–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 23, 2006:

A Closed Meeting will be held on Thursday, October 26, 2006 at 10 a.m.

Commissioners, Counsels to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (7), (8), (9)(ii), and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Thursday, October 26, 2006 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Other matters relating to enforcement proceeding;
Collection matter;
Regulatory matter regarding a financial institution; and
Adjudicatory matters.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 19, 2006.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–8861 Filed 10–19–06; 3:59 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54612, File No. SR–MSRB–2006–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change to MSRB Rule G–14 RTRS Procedures Relating to ''List Offering Price'' and ''Takedown'' Transactions

October 17, 2006.

On August 15, 2006, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''SEC'' or ''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 Rule G–14 RTRS Procedures under Rule G–14, Reports of Sales or Purchases, to expand the usage of ''list offering price'' transactions to include certain inter-dealer ''takedown'' transactions and to require the reporting of these transactions as ''list offering price'' transactions on the first day of trading of a new issue. The MSRB proposed an effective date for the proposed rule change of January 8, 2007. The proposed rule change was published for comment in the **Federal Register** on September 14, 2006.[3] The Commission received no comment letters regarding the proposal.

The proposed rule change retains the end of the day exception from the normal fifteen minute reporting deadline for the expanded category of ''List Offering Price/Takedown'' transactions. The MSRB believes that the proposed rule change recognizes the similarities between List Offering Price and Takedown transactions and the dissimilarities between these transactions and secondary market transactions in a new issue, and further believes that transparency reports on the first day of trading for a new issue would be more useful if List Offering Price and Takedown transactions were identified with a special condition indicator.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[4] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act[5] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[6] In particular, the Commission finds that the proposed rule change will allow the municipal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54416 (September 8, 2006), 71 FR 54323 (September 14, 2006).

[4] 4 In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *Id.*

securities industry to produce more accurate trade reporting and transparency and will enhance surveillance data used by enforcement agencies. The proposal will be effective on January 8, 2007, as requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–MSRB–2006–07) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–17668 Filed 10–20–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54610; File No. SR–NYSE–2006–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Pilot To Put Into Operation Certain Rule Changes Pending Before the Securities and Exchange Commission to Coincide With the Exchange's Implementation of Phase 3 of the NYSE HYBRID MARKET℠

October 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change 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

NYSE proposes to make a technical amendment to Rule 104.10(6)(P3) which was part of the pilot (''Pilot'')[5] to put into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of Phase 3 of the NYSE HYBRID MARKET℠ (''Hybrid Market'').[6] The Exchange further proposes to add a security to those operating under the Pilot that are identified in Exhibit 3 of the Pilot filing. The text of the proposed rule change is available on the Exchange's Web site (*www.nyse.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 self-regulatory organization 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

On October 5, 2006, the Exchange proposed a Pilot to, among other things, make operative certain proposed modifications to Exchange Rules that are the subject of pending rule filings[7] before the Commission to coincide with the Exchange's implementation of Phase 3 of the Hybrid Market. The Pilot commenced following Commission approval, on October 5, 2006 and is scheduled to terminate at the close of business on October 31, 2006.

Through this filing the Exchange seeks to make a technical amendment to Rule 104.10(6)(P3). Specifically, pursuant to the Pilot, in order to eliminate possible confusion as to which Exchange Rules or sections apply to the securities operating pursuant to the Pilot (''Pilot securities''),[8] the Exchange identified the rules operational during the Pilot with a ''P3.'' A typographical error identified subparagraph (iv) under Exchange Rule 104.10(6)(P3) with a ''P4.'' As a result, that subparagraph currently appears as follows:

(iv)(P4) Re-entry Obligations for Conditional Transactions:

The Exchange seeks to delete the number ''4'' after the letter ''P'' and replace it with the number ''3'' in order accurately reflect that subparagraph's inclusion in the Pilot.

The Exchange further seeks to add a security to the Pilot securities. The Exchange identified the specific securities included in the Pilot securities in the form of an Exhibit 3 to the Pilot filing. Included in the Pilot securities was Agilent Technologies, Inc. which is traded on the Exchange under the stock symbol ''A.'' On or about October 16, 2006, Agilent will distribute the results of a spin-off. Anyone who purchases the stock after the distribution date would not be entitled to the distribution. Accordingly, on Monday, October 16, 2006, Agilent stock in an ''ex-distibution'' form will begin trading on the Exchange under the stock symbol ''A.WD.'' A.WD will trade at the same post and panel as Agilent. Given the relationship between Agilent and A.WD stock, the Exchange requests to have A.WD included in the Pilot securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is also designed to support the principles of

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006).

[6] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

[7] *See* Securities Exchange Act Release Nos. 54504 (September 26, 2006), 71 FR 57011 (September 28, 2006) (proposing to amend the specialist stabilization requirements set forth in Exchange Rule 104.10) (''Stabilization Filing''); 54520 (September 27, 2006), 71 FR 57590 (September 29, 2006) (proposing to amend several Exchange Rules to clarify certain definitions and systemic processes) (''Omnibus Filing''); and SR–NYSE–2006–73 (filed on September 13, 2006) (proposing to amend Exchange Rule 127 which governs the execution of a block cross transaction at a price outside the prevailing NYSE quotation) (''Block Cross Filing'').

[8] Phase 3 Pilot Securities are also posted on the Exchange's Web site.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Section 11A(a)(1) of the Act[11] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.[12]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the correction of the rule reference as a Pilot rule should provide clarity as to which rules are applicable to the Pilot securities. Further, the Commission believes that adding A.WD as a Pilot security is appropriate so that it and its related security, A, are traded in a similar manner on the Exchange. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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–NYSE–2006–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–84. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–84 and should be submitted on or before November 13, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–17673 Filed 10–20–06; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78k–1(a)(1).

[12] The Commission notes that it has received comments on the Omnibus Filing and the Stabilization Filing.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54611; File No. SR–NYSE–2006–86]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 13 (''Definitions of Orders '') To Clarify That an Immediate or Cancel Order Must Be Designated ''Regulation NMS-compliant Immediate or Cancel'' in Order To Be so Executed, and To Modify the Definition of an ''At the Opening'' or ''At the Opening Only'' Order To Ensure That It Complies With the Securities and Exchange Commission's Regulation NMS

October 16, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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

NYSE proposes to amend Exchange Rule 13 (''Definitions of Orders '') to clarify that an Immediate or Cancel order must be designated ''Regulation NMS-compliant Immediate or Cancel'' in order to be so executed, and to modify the definition of an ''At the Opening'' or ''At the Opening Only'' order to ensure that it complies with the Commission's Regulation NMS (''Reg. NMS'').[5] The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain rules governing the NYSE HYBRID MARKET℠ (''Hybrid Market'') in order to clarify the definition of a Regulation NMS-compliant Immediate or Cancel order.

In the Hybrid Market, the Exchange created two types of Immediate or Cancel (''IOC'') orders which are defined in Exchange Rule 13. The first type is an IOC order that complies with Reg. NMS.[6] A Reg. NMS IOC order will not be routed during an Exchange sweep, if any, to satisfy better priced protected bids or offers[7] displayed by other market centers; rather, a Reg. NMS IOC order will be cancelled and the Exchange sweep will end.

The second type of IOC order is a ''NYSE IOC'' order. Unlike a Reg. NMS IOC order, a NYSE IOC order permits portions to be routed during a sweep, if any, to other markets to satisfy better priced protected bids or offers and cancels only when once it is no longer able to receive an execution.

In this filing, the Exchange proposes to amend the definition of a Reg. NMS IOC order to clarify that all Reg. NMS IOC orders submitted to the Exchange for execution must be appropriately designated. Therefore, if an IOC order is submitted to the Exchange without the appropriate designation for a Reg. NMS IOC order, said order will be handled as a NYSE IOC order.

In addition, in order to comply with Reg. NMS,[8] the Exchange proposes to amend the definition of an ''At the Opening'' or ''At the Opening Only'' order to provide that all or part of such order may be executed as part of the opening transaction on another market center if compliance with Reg. NMS requires that the order, or part thereof, be routed to another market center. If the possibility of a NYSE-only opening execution is sought, an ''At the Opening'' or ''At the Opening Only'' order must be designated as a ''Reg. NMS-compliant immediate or cancel'' order in the manner directed by the Exchange. As noted above, such orders will not be routed to other markets. Therefore, if such orders are unable to trade on the Exchange, they will be cancelled immediately and automatically. Accordingly, if the Exchange opens on a quote, such orders will be immediately and automatically cancelled.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is also designed to support the principles of Section 11A(a)(1) of the Act[11] in that it seeks to assure economically efficient execution of securities transactions, the practicability of brokers executing investors' orders in the best market, and an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to meet the Reg. NMS compliance dates.[15]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). *See also* 17 CFR 242.600(b)(3).

[6] *See id.*

[7] A protected bid and offer is one that meets the definition set forth in Section 242.600(b)(57) of Regulation NMS.

[8] *See* note 5, *supra.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NYSE–2006–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–86 and should be submitted on or before November 13, 2006.

[16] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–17674 Filed 10–20–06; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10640 and # 10641]

Indiana Disaster # IN–00008

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1662–DR), dated 10/06/2006.

Incident: Severe storms and flooding.

Incident Period: 09/12/2006 through 09/14/2006.

DATES: *Effective Date:* 10/10/2006.

Physical Loan Application Deadline Date: 12/05/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 07/06/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/10/2006, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Lake, Vanderburgh.

Contiguous Counties (Economic Injury Loans Only):

Indiana: Gibson, Jasper, Newton, Porter, Posey, Warrick.

Illinois: Cook, Kankakee, Will.

Kentucky: Henderson.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	7.934
Businesses and non-profit organizations without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	5.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 106406 and for economic injury is 106410.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–17654 Filed 10–20–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10642 and # 10643]

Indiana Disaster # IN–00009

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 10/16/2006.

Incident: Severe Storms and Flooding.

Incident Period: 09/22/2006 through 09/23/2006.

DATES: *Effective Date:* 10/16/2006.

Physical Loan Application Deadline Date: December 15, 2006.

Economic Injury (EIDL) Loan Application Deadline Date: July 16, 2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clark; Floyd.

Contiguous Counties: Indiana; Harrison; Jefferson; Scott Washington;

Kentucky; Jefferson; Oldham; Trimble.

The Interest Rates Are:

	Percent
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	7.934
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	5.000
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 106426 and for economic injury is 106430.

The States which received an EIDL Declaration # are: Indiana; Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

October 16, 2006.

Steven C. Preston,

Administrator.

[FR Doc. E6–17659 Filed 10–20–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5568]

Advisory Committee on Democracy Promotion (ACDP) Meeting Notice; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 section 10(a)(2), the Department of State announces the inaugural meeting of the Advisory Committee on Democracy Promotion (ACDP) to take place on November 6, 2006, at the Department of State, Washington, DC. The meeting will be open to the public from 10 a.m.—10:45 a.m., during which time Secretary Rice will speak with the group and discuss a range of democracy promotion issues. Pursuant to section 10 (d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 section 10 (d) and 5 U.S.C. 552b(c)(6), it has been determined that the rest of the Committee meeting will be closed to the public because the Committee will be discussing sensitive information about the personal situation of human rights dissidents, disclosure of which would likely jeopardize the safety and welfare of these individuals and constitute a clearly unwarranted invasion of their personal privacy. The purpose of the ACDP is to advise the Secretary of State and the Administrator of the U.S. Agency for International Development on the consideration of issues related to democracy promotion in the formulation and implementation of U.S. foreign policy and foreign assistance. The agenda for this meeting includes sensitive discussions related to the Committee's studies on current U.S. policy and issues regarding democracy advancement and promotion at both the bilateral and multilateral level, including the conditions facing individual human rights dissidents.

For more information, contact Nicole Bibbins Sedaca, Senior Director of Strategic Planning and External Affairs, Bureau of Democracy, Human Rights, and Labor, Department of State, Washington, DC 20520, telephone: (202) 647–3904.

Dated: October 12, 2006.

Jonathan Farrar,

Acting Assistant Secretary of the Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. E6–17695 Filed 10–20–06; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 5561]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 14, 2006 at the U.S. Department of State, Washington, DC. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c][4], it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of proprietary commercial and financial information that is considered privileged and confidential. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 12, 2006.

Joe D. Morton,

Director of the Diplomatic Security Service, Department of State.

[FR Doc. E6–17694 Filed 10–20–06; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 5569]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Tuesday November 21, 2006 in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593–0001. The purpose of this meeting will be to finalize preparations for the 82nd Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for November 29—December 8, 2006 at the Polat Renaissance Istanbul Hotel in Istanbul, Turkey. At this meeting, papers received and the draft U.S. positions for the Maritime Safety Committee will be discussed. Among other things, the items of particular interest are:

—Adoption of amendments to: SOLAS, the High Speed Craft Code, the International Convention on Load Lines, the International Code for Fire Safety Systems, the LSA Code, the IBC Code, and the IGC Code.

—Measures to enhance maritime security

—Goal-based new ship construction standards

—Implementation of the revised STCW Convention

—Reports of seven subcommittees—Stability, load lines and fishing vessel safety, Dangerous goods, solid cargoes and containers, Radiocommunications and search and rescue, Ship design and equipment, Flag State implementation, Bulk liquids and gases, and Safety of navigation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Jeffrey Lantz, Commandant (G–PS), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 372–1351.

Dated: October 12, 2006.

Margaret Hayes,

Director, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–17692 Filed 10–20–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5555]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting from 10 a.m. until 11 a.m. on Thursday, November 2, 2006 in Room 4420 at the U. S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593–0001. The purpose of the meeting is to finalize preparations for the International Maritime Organization's (IMO) 97th session of Council, which is scheduled for November 6–10, 2006 at Central Hall Westminster in London, UK. Discussion will focus on papers received and draft U.S. positions.

Items of particular interest include:

—Reports of Committees;

—Resource Management;

—Strategy and planning;

—Implementation of Article 17 of the IMO Convention;

—Protection of vital shipping lanes and;

—Status of the Convention and membership of the Organization.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Jeremy Cairl, International Affairs, U.S. Coast Guard Headquarters, Commandant (G–CI), Room 4420, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 372–4475.

Dated: October 17, 2006.

Margaret Hayes,

Director, Shipping Coordinating Committee, Department of State.

[FR Doc. E6–17693 Filed 10–20–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–3637, FMCSA–99–6156, FMCSA–00–7006, FMCSA–00–7165, FMCSA–00–8203, FMCSA–02–12294, FMCSA–04–17984, FMCSA–04–18885]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 16 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective November 9, 2006. Comments must be received on or before November 22, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–98–3637, FMCSA–99–6156, FMCSA–00–7006, FMCSA–00–7165, FMCSA–00–8203, FMCSA–02–12294, FMCSA–04–17984, FMCSA–04–18885, using any of the following methods.

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This Notice addresses 16 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 16 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Robert B. Brewer, Jr.	Danny E. Hillier	Jesse M. Sikes.
Benny J. Burke	Gary L. Killian	Kenneth E. Suter, Jr.
Gary R. Evans	John C. McLaughlin	Noel S. Wangerin.
Ronald A. Gentry	Manuel H. Sanchez	Hubert Whittenburg.
Harlan L. Gunter	Garry R. Setters.	
Steven H. Heidorn	Jimmy E. Settle.	

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 16 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519; 65 FR 66293; 67 FR 67234; 69 FR 62741; 64 FR 54948; 65 FR 159; 65 FR 20245; 65 FR 57230; 67 FR 57266; 65 FR 33406; 65 FR 57234; 67 FR 46016; 67 FR 57267; 69 FR 51346; 69 FR 33997; 69 FR 61292; 69 FR 53493; 69 FR 62742). Each of these 16 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 22, 2006.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 16 individuals from the vision requirement in 49 CFR 391.41(b)(10). That final decision to grant the exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its Notices of applications. Those Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on October 17, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–17678 Filed 10–20–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–00–8398, FMCSA–04–18885]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 27, 2006. Comments must be received on or before November 22, 2006.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) Docket Numbers FMCSA–00–8398, FMCSA–04–18885, using any of the following methods.

- *Web Site: http://dmses.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building,

Room PL–401, Washington, DC 20590–0001.

• *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.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket numbers for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or 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. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@dot.gov* FMCSA, Department of Transportation, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Exemption Decision

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This Notice addresses 23 individuals who have requested renewal of their exemptions in a timely manner. FMCSA has evaluated these 23 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Paul G. Albrecht	Zane G. Harvey, Jr	Michael J. Paul.
David W. Brown	Jimmy D. Johnson, II	Russell A. Payne.
David J. Caldwell	Jeffrey M. Keyser	Rodney M. Pegg.
Walden V. Clarke	Donnie A. Kildow	Raymond E. Peterson.
Donald O. Clopton	Carl M. McIntire	Zbigniew P. Pietranik.
Awilda S. Colon	Daniel A. McNabb	John C. Rodriguez.
Richard B. Eckert	David G. Meyers	Charles E. Wood.
Charles B. Edwards	Thomas L. Oglesby.	

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year, (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 23 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 78256; 66 FR 16311; 69 FR 53493; 69 FR 62742). Each of these 23 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 22, 2006.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing

its decision to exempt these 23 individuals from the vision requirement in 49 CFR 391.41(b)(10). That final decision to grant the exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its Notices of applications. Those Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on October 17, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–17679 Filed 10–20–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub–No. 10)]

Railroad Revenue Adequacy—2005 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On October 23, 2006, the Board served a decision announcing the 2005 revenue adequacy determinations for the Nation's Class I railroads. The decision found one carrier, Norfolk Southern Railway Company, to be revenue adequate for the year 2005.

DATES: *Effective Date:* This decision is effective October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 565–1527. (Federal Information Relay Service (FIRS) for the hearing impaired: 1 (800) 877–8339).

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad will be considered to have been revenue adequate under 49 U.S.C. 10704(a) for the year 2005 if it achieved a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 2005. The 2005 cost of capital was determined to be 12.2% in *Railroad Cost of Capital—2005*, STB Ex Parte No. 558 (Sub–No. 9) (STB served Sept. 20, 2006). Applying this revenue adequacy standard to each Class I railroad, one carrier was found to be revenue adequate for 2005.

The Board's decision is posted on the Board's Web site, *http://www.stb.dot.gov*. In addition, copies of the decision may be purchased from ASAP Document Solutions by calling 202–306–4004 (assistance for the hearing impaired is available through FIRS at 1–800–877–8339), or by e-mail at *asapdc@verizon.net*.

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action are merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided October 17, 2006.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commisioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–17684 Filed 10–20–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34906]

City of Tacoma, Department of Public Utilities, Belt Line Division—Operation Exemption-Union Pacific Railroad Company

The City of Tacoma, Department of Public Utilities, Belt Line Division, d/b/a Tacoma Rail, Tacoma Municipal Belt Line or TMBL (TMBL), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate, pursuant to a nonexclusive trackage rights agreement with Union Pacific Railroad Company, approximately 602 feet of rail line between the former Dempsey Mill Spur and the Port of Tacoma's Belt Line Lead, in Pierce County, WA.

Because TMBL's projected annual revenues will exceed $5 million, TMBL certified to the Board on July 24, 2006, that it had complied with the requirements of 49 CFR 1150.42(e) providing for notice to employees and their labor unions on the affected line. TMBL also certified that its projected revenues as a result of this transaction would not result in the creation of a Class II or Class I rail carrier.

The transaction was scheduled to be consummated on or after the October 17, 2006 effective date of the exemption.[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34906, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of any pleading filed with the Board must be sent to TMBL's representatives: Paula Henry, 2601 SR 509 North Frontage Rd., Tacoma, WA 98421, and William C. Fosbre, 3628 South 35th Street, Tacoma, WA 98409–3115.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 16, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–17696 Filed 10–20–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 16, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed

[1] By amendment filed on October 11, 2006, TMBL noted that the correct effective date for the exemption was October 17, 2006.

and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 22, 2006 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0074.

Type of Review: Extension.

Title: Electronic Funds Transfer (EFT) Market Research Study.

Description: FMS/Treasury, Federal Reserve Bank of St. Louis, and its contractor request renewal of a generic clearance for the study of Federal benefit recipients to identify barriers to significant increases in use of EFT for benefit payments.

Respondents: Individuals or households.

Estimated Total Burden Hours: 2,500 hours.

Clearance Officer: Wesley Powe (202) 874–8936, Financial Management Service, Room 135, 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert B. Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–17677 Filed 10–20–06; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8275 and 8275–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8275, Disclosure Statement, and Form 8275–R, Regulation Disclosure Statement.

DATES: Written comments should be received on or before December 22, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Disclosure Statement (Form 8275) and Regulation Disclosure Statement (Form 8275–R).

OMB Number: 1545–0889.

Form Number: Forms 8275 and 8275–R.

Abstract: Internal Revenue Code section 6662 imposes accuracy-related penalties on taxpayers for substantial understatement of tax liability or negligence or disregard of rules and regulations. Code section 6694 imposes similar penalties on return preparers. Regulations sections 1.662–4(e) and (f) provide for reduction of these penalties if adequate disclosure of the tax treatment is made on Form 8275 or, if the position is contrary to regulation on Form 8275–R.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, not-for-profit institutions, and farms.

Estimated Number of Responses: 666,666.

Estimated Time Per Response: 5 hours, 34 minutes.

Estimated Total Annual Burden Hours: 3,716,664.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 16, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–17641 Filed 10–20–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, November 30, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, November 30, 2006 from 10 a.m. Pacific Time to 11:30 a.m. Pacific Time via a telephone conference call. The public is invited to make oral

comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: October 16, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17642 Filed 10–20–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, November 15, at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, November 15, at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: October 16, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–17643 Filed 10–20–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 204

Monday, October 23, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Fort Bliss, Texas and New Mexico, Mission Master Plan Supplemental Programmatic Environmental Impact Statement

Correction

In notice document 06–8667 beginning on page 60698 in the issue of Monday, October 16, 2006, make the following correction:

On page 60699, in the first column, under the heading **DATES**, ''Forest Bliss'' should read ''Fort Bliss''.

[FR Doc. C6–8667 Filed 10–20–06; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54138; File No. SR-Phix-2006-35]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a System Change to the Options Floor Broker Management System

Correction

In notice document E6–11390 beginning on page 41064 in the issue of Wednesday, July 19, 2006, make the following correction:

On page 41066 insert footnote 16 at the bottom of the page to read as follows:

''[16] 17 CFR 200.30-3(a)(12)''

[FR Doc. Z6–11390 Filed 10–20–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
October 23, 2006

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 648

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Framework Adjustment 42; Monkfish Fishery, Framework Adjustment 3; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060606150–6240–02; I.D. 053106A]

RIN 0648–AT24

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Framework Adjustment 42; Monkfish Fishery, Framework Adjustment 3

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

ACTION: Final rule.

SUMMARY: This final rule implements Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and FW 3 to the Monkfish FMP (Joint Framework). FW 42, developed by the New England Fishery Management Council (Council), is a biennial adjustment to the NE Multispecies FMP that sets forth a rebuilding program for Georges Bank (GB) yellowtail flounder and modifies NE multispecies fishery management measures to reduce fishing mortality rates (F) on six other groundfish stocks in order to maintain compliance with the rebuilding programs of the FMP. FW 42 also modifies and continues specific measures to mitigate the economic and social impacts of Amendment 13 to the FMP and to allow harvest levels to approach optimum yield (OY).

DATES: The emergency rule published on April 13, 2006 (71 FR 19348), that was extended by a temporary rule published on October 6, 2006 (71 FR 59020), which is scheduled to expire on April 4, 2007, is instead superseded by this final rule and expires at 12:01 a.m. on November 22, 2006. The amendments in this final rule become effective at 12:02 a.m. on November 22, 2006.

ADDRESSES: Copies of FW 42 and FW 3, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery, B-Mill 2, Newburyport, MA 01950.

The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. A copy of the EA/RIR/FRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html.*

Comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted in writing to NMFS (see **ADDRESSES**), or to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov,* or by fax at (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13, implemented on April 27, 2004 (69 FR 22906), brought the FMP into conformance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including measures to end overfishing and rebuild all overfished groundfish stocks. In addition, Amendment 13 established a biennial FMP adjustment process that requires the Council to review the fishery periodically using the most current scientific information available, recommend target total allowable catches (Target TACs), and recommend to the Regional Administrator any changes to management measures necessary to achieve the goals and objectives of the FMP.

A proposed rule was published on July 26, 2006 (71 FR 42522), that included a detailed description of the biennial adjustment process, the August 2005 regional peer-review of stock assessment updates (GARM II; Northeast Fisheries Science Center Reference Document 05–13) completed for the 19 stocks managed under the FMP, proposed management measures, and timing issues related to the Joint Frameworks. Below is a brief summary of information published in the proposed rule.

The Council's Plan Development Team (PDT) performed an evaluation of the fishery based upon the results of GARM II and other available information. The primary goal of the PDT review was to determine the stocks for which an adjustment in management measures is required in order to ensure that the current F levels are consistent with the F's required under the rebuilding plans for overfished stocks managed under the FMP. Based on the information from GARM II and catch data, the PDT estimated F's for those stocks in need of reductions for calendar year (CY) 2005 (F_{2005}), a time period during which the fishery operated under only one suite of regulations (Amendment 13). Specifically, the PDT utilized available information for a portion of CY 2005, projected landings for the remainder of the year (based on current and historic information), and then estimated the F for the entire CY (F_{2005}).

To determine which of the 19 groundfish stocks were being fished at F's that were not in compliance with the Amendment 13 rebuilding target F's, the PDT compared the required F for 2006 to estimated F_{2005} for each stock. The PDT determined that, with one exception (GB yellowtail flounder), if F_{2005} exceeded the Amendment 13 target F for 2006, adjustment of management measures was necessary. These comparisons indicated that F_{2005} for some groundfish stocks was less than that estimated for 2004 (F_{2004}), but still higher than the 2006 target F (F_{2006}) specified in the rebuilding program established under Amendment 13. The groundfish stocks in need of additional F reductions to achieve the Amendment 13 F targets for fishing year (FY) 2006 are: Gulf of Maine (GOM) cod; Cape Cod (CC)/GOM yellowtail flounder; Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder; SNE/MA winter flounder; GB winter flounder; and white hake (see Table 1 below).

TABLE 1.—F REDUCTIONS NECESSARY TO ACHIEVE FY 2006 AMENDMENT 13 F TARGETS

Stock	F_{2004}	Estimated F_{2005}	Amendment 13 F_{2006}	F reduction necessary (%)
GOM Cod	0.58	0.37	0.23	32

TABLE 1.—F REDUCTIONS NECESSARY TO ACHIEVE FY 2006 AMENDMENT 13 F TARGETS—Continued

Stock	F_{2004}	Estimated F_{2005}	Amendment 13 F_{2006}	F reduction necessary (%)
CC/GOM Yellowtail Flounder	0.75	0.48	0.26	46
SNE/MA Yellowtail Flounder	0.99	0.58	0.26	55
SNE/MA Winter Flounder	0.38	0.35	0.32	9
GB Winter Flounder	1.86	NA	1.0*	46
White Hake	1.18	NA	1.03	13

*Amendment 13 did not establish a 2006 F target for GB winter flounder. Rather, Amendment 13 established the value of Fmsy as 0.32. However, because model estimates of relative F rate are more precise than estimates of actual F rates, GARM II presented the estimate of F rate for 2004 in relative terms. The threshold value for the relative F rate (F_{2004}/Fmsy) for GB winter flounder is 1.0.

NA: An estimate of F_{2005} for the stocks of GB winter flounder and white hake could not be developed because the assessments are index based. The necessary F reductions are based upon F_{2004}.

In addition to responding to the most recent information regarding F, the proposed measures were intended to continue and modify the management regime implemented by Amendment 13 and subsequent framework adjustments (FW 40–A, FW 40–B, and FW 41), and to replace measures implemented under Secretarial emergency authority at the beginning of FY 2006 (May 1, 2006, through April 30, 2007). The Council originally developed FW 42 with the intention of implementing the management measures on May 1, 2006 (the start of FY 2006), as specified by Amendment 13, and as required by the regulations. However, due to a delay in completion of FW 42 and the need to reduce F on specific groundfish stocks by the start of FY 2006, NMFS implemented emergency management measures (71 FR 19348; April 13, 2006) that went into effect on May 1, 2006, until such time that approved FW 42 measures could be implemented. This rule supercedes the emergency rule, and the regulatory text in this final rule is written to amend the regulations in 50 CFR part 648 as they appeared prior to implementation of the emergency rule.

Disapproved FW 42 Measure

FW 42 proposed that the Regional Administrator be given authority to adjust trip limits upward to facilitate harvest of the Target TACs, if it were projected that less than 90 percent of the Target TAC would be caught during the FY. Trip limit changes would have been allowed at any time during the FY, or before the start of the FY, if information was sufficient to make the necessary projections. This measure was disapproved, as explained below, because it is inconsistent with National Standard 2 and section 303(a)(8) of the Magnuson-Stevens Act.

This proposed measure would have expanded the Regional Administrator's authority to increase trip limits for six stocks (the regulations already provide authority for the Regional Administrator to modify the haddock trip limit): GOM cod, GB cod, white hake, GB winter flounder, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder. Administratively, this measure is problematic in that data on the catch amount and location of affected stocks are not available on a real-time basis and, depending upon the size of the TAC and the rate of harvest, there would likely not be enough information to make an accurate projection. To monitor these stocks, NMFS would need to rely on Vessel Trip Report (VTR) data and dealer landings data to make projections and, although such data provide some useful information, sufficient information on both catch amount and catch location would not be available on a real-time basis. Furthermore, the composition of Target TACs for three of the affected stocks (GOM cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder) also include discard data and/or recreational data, which also would not be available on a real-time basis. Because of the lack of sufficient real-time data for a number of stocks to accurately monitor catch of particular species within the fishery, the data available to implement this measure would not constitute the best available scientific information, as required by National Standard 2. In addition, section 303(a)(8) of the Magnuson-Stevens Act requires that an FMP specify the nature and extent of scientific data needed for the effective implementation of the FMP. Because of the limitations of existing data sources, without additional real-time reporting requirements to provide reliable and timely catch and discard data from both the commercial and recreational sectors, NMFS does not have sufficient real-time data to implement this provision. Therefore, this measure is not consistent with National Standard 2 or the required provisions of the Magnuson-Stevens Act and NMFS has disapproved it.

Approved Joint Framework Measures

NMFS has approved the remainder of the measures proposed in the Joint Frameworks. A description of these approved measures follows.

1. Recreational Restrictions

Under this final rule, private recreational vessels and vessels fishing under the charter/party regulations of the NE Multispecies FMP are prohibited from possessing or retaining any cod from the GOM Regulated Mesh Area (RMA) from November 1–March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM is increased from 22 inches (56 cm) to 24 inches (61 cm). Private recreational and charter/party vessels may transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests. These measures are designed to achieve a reduction in F for GOM cod caught by the recreational sector that is similar to the F reduction required of the commercial sector. The gear and cod stowage requirements are necessary to enforce these measures.

2. GB Yellowtail Flounder Rebuilding Plan

This final rule approves the FW 42 rebuilding plan for GB yellowtail flounder, whereby GB yellowtail flounder will be rebuilt from its current stock size to the biomass that can produce maximum sustainable yield (MSY) (B_{msy}) using an adaptive strategy that rebuilds the stock by 2014 with approximately a 75-percent probability of success. Under the adaptive strategy, the maximum F on the stock through 2008 will be set at F_{msy} (0.25), and subsequent changes to F required to complete rebuilding by 2014 ($F_{rebuild}$) will be developed in the 2009 biennial adjustment required by the FMP. This rebuilding strategy and 2014 timeline was selected by the Council to be

consistent with the rebuilding timelines for most of the stocks in the FMP, and to take into account uncertainty regarding the assessment of the stock. This rebuilding strategy is consistent with the management strategy agreed to under the U.S. cooperative management agreement with Canada.

3. Target TACs

Target TACs are approved through this rule pursuant to § 648.90(a)(2), which requires the Council to develop new Target TACs, based upon the most recent scientific information, as part of the biennial adjustment process. Thus, this final rule approves the Target TACs for all groundfish stocks for FY 2006, 2007, and 2008. The following Target TACs in Table 2 were developed by the Council's PDT and were calculated from projections of future catches, using recent assessment data and the Amendment 13 target F's. It is important to note that during the public comment period for this action, it was determined that an incorrect F rate was used in the calculation of Target TACs for American plaice for FY 2006–2008. This error resulted in over-estimating the Target TAC that would achieve the rebuilding F targets for these years, but does not require a change in management measures needed to achieve the rebuilding objectives of this action. The Target TACs for American plaice in Table 2 reflect the corrected Target TACs.

TABLE 2.—APPROVED TARGET TACS FOR 2006 THROUGH 2008

[Mt, live weight]

Species	Stock	2006	2007	2008	Composition
Cod	GB	7,458	9,822	11,855	E*
	GOM	5,146	10,020	10,491	C*
Haddock	GB	49,829	103,329	121,681	E
	GOM	1,279	1,254	1,229	A
Yellowtail flounder	GB	2,070	see footnote		D*
	SNE/MA	146	213	312	B*
	CC/GOM	650	1,078	1,406	B*
American plaice		2,781	3,243	4,135	B*
Witch flounder		5,511	5,075	4,331	A*
Winter flounder	GB	1,424	1,604	1,782	A*
	GOM	.....	see footnote		C
	SNE/MA	2,481	3,016	3,577	C*
Redfish		1,946	2,075	2,167	A
White hake		2,056	1,676	1,367	E*
Pollock		12,005	12,005	12,005	E
Windowpane flounder	North	389	389	389	A
	South	173	166	159	A
Ocean pout		38	38	38	A
Atlantic halibut		NA	NA	NA	NA

A = Commercial Landings.
B = Commercial Landings and Discards.
C = Commercial Landings, Discards, and Recreational Harvest.
D = Commercial Landings and Discards (U.S. portion of U.S./Canada TAC).
E = Commercial Landings (U.S. and Canada).
*For Stocks of Concern: Incidental TAC is a subset of Target TAC.
GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.
Note, proposed TACs for GB cod and GB haddock include Canadian landings.
GB yellowtail flounder TACs are hard TACs, which are determined annually and cannot be specified in advance.
2006 GB yellowtail flounder TAC was implemented on April 28, 2006 (71 FR 25095).

4. Incidental Catch TACs

The values of Incidental Catch TACs for FY 2006 through 2008 are implemented through this final rule pursuant to the regulations at § 648.85(b)(5), which require the Council to develop new Incidental Catch TACs based upon the most recent scientific information, as part of the biennial FMP adjustment process. Although Incidental Catch TACs for 2006 were specified in FW 41, this action modifies definitions of the Incidental Catch TACs with respect to the Target TACs, modifies the allocation of Incidental Catch TACs among Special Management Programs, and specifies values of all Incidental Catch TACs, based upon the most recent scientific information (GARM II). As noted above, an error was discovered in the calculation of Target TACs for American plaice that resulted in over-estimating the Target TACs, and, therefore, the Incidental Catch TACs for this species. The corrected Incidental Catch TACs for American plaice are listed in Table 3 below.

In addition to the actions described above that relate to the Incidental Catch TACs for the eight stocks of concern noted above, this final rule defines GB yellowtail flounder and GB winter flounder as additional stocks of concern, defines the size of the Incidental Catch TACs (with respect to the Target TACs) that are likely to be caught in the Special Management Programs, specifies Incidental Catch TAC values for FYs 2006 through 2008, and allocates the Incidental Catch TACs among Special Management Programs.

This final rule clarifies the relationship between Target TACs and Incidental Catch TACs; that is, Incidental Catch TACs are considered as a subset of the pertinent Target TACs (rather than as amounts in excess of the Target TACs). This clarification is intended to increase the utility of Target TACs as a tool used to evaluate the effectiveness of the management measure.

TABLE 3.—DEFINITION OF INCIDENTAL CATCH TACS (PERCENT) AND SPECIFICATION OF TARGET TACS FOR FY 2006 THROUGH 2008 (MT)

Stock of concern	Percentage of total target TAC	2006	2007	2008
GB cod	Two	122.6	(*)	(*)
GOM cod	One	49.9	99.0	103.9
GB yellowtail flounder	Two	41.4	(*)	(*)
CC/GOM yellowtail flounder	One	6.5	10.8	14.1
SNE/MA yellowtail flounder	One	1.5	2.1	3.1
American plaice	Five	139	162.1	206.7
Witch flounder	Five	275.6	253.8	216.6
SNE/MA winter flounder	One	24.8	30.2	35.6
GB winter flounder	Two	28.5	32.1	35.6
White hake	Two	41.1	33.5	27.3

*Note: GB cod and GB yellowtail flounder TACs are determined annually and cannot be estimated in advance.

TABLE 4.—ALLOCATION OF INCIDENTAL CATCH TACS AMONG CATEGORY B DAYS-AT-SEA (DAS) PROGRAMS

[Shown as a percentage of the Incidental Catch TAC]

Stock of concern	Regular B DAS program	Closed area I hook gear haddock SAP	Eastern U.S./ Canada haddock SAP
GOM cod	100	NA	NA
GB cod	50	16	34
CC/GOM yellowtail flounder	100	NA	NA
American plaice	100	NA	NA
White hake	100	NA	NA
SNE/MA yellowtail flounder	100	NA	NA
SNE/MA winter flounder	100	NA	NA
Witch flounder	100	NA	NA
GB yellowtail flounder	50	NA	50
GB winter flounder	50	NA	50

5. Default DAS Allocations

Amendment 13 established two ''default'' measures that would automatically reduce F on multiple groundfish species, for American plaice and SNE/MA yellowtail flounder, beginning in FY 2006, unless certain criteria are met. Because these criteria have not been met, the Amendment 13 default DAS measure (a change in the Category A and B DAS ratio from 60:40 to 55:45) for FY 2006–2008 remains unchanged. This default measure represents an 8.3-percent reduction in the number of allocated Category A DAS. This final rule also modifies the default differential DAS counting measure in the SNE RMA, as described in Section 8 of this preamble.

6. Vessel Monitoring System (VMS) Requirement

All limited access NE multispecies DAS vessels using a groundfish DAS must be equipped with an approved VMS that meets the requirements of § 648.9. As of the effective date of this rule, it is illegal for a limited access NE multispecies DAS vessel to begin a fishing trip under a groundfish DAS without an approved VMS. A vessel owner with a limited access NE multispecies DAS permit who does not intend to and does not fish any groundfish DAS during the FY is allowed to renew the vessel's limited access permit without having an approved VMS, but may not fish any of the vessel's groundfish DAS for that FY. A vessel owner that is not already equipped with an approved VMS must provide pertinent information (e.g., type of VMS unit, installation date, dealer, etc.) to NMFS prior to beginning a NE multispecies fishing trip after the effective date of this final rule. NMFS is sending letters to all limited access NE multispecies DAS permit holders in order to provide detailed information on the procedures pertaining to VMS purchase, installation, and use. If a vessel is subject to multiple, conflicting VMS regulations of different programs, the most restrictive requirement applies. For example, a vessel fishing in both the Eastern U.S./Canada Area and in one of the Differential DAS Areas (described in Sections 7 and 8 of this preamble) on the same trip is subject to the VMS restrictions that pertain to both programs (e.g., the requirement to declare into the Differential DAS Areas prior to leaving port or prior to leaving the Eastern U.S./Canada Area and the reporting requirements for the Eastern U.S./Canada Area specified at § 648.85(a)(3)(v)).

Despite a mandatory VMS requirement, NE multispecies DAS vessels are still required to declare periods out of the fishery (spawning block out and Day Gillnet vessel blocks out) through the Interactive Voice Response (IVR) call-in system. The Regional Administrator may authorize limited access NE multispecies vessels to utilize the IVR system in lieu of the VMS system for the administration of DAS requirements should a vessel's VMS become inoperable. In addition, if a vessel's VMS is not operational, the Regional Administrator may require vessels to obtain a Letter of Authorization (LOA) as an alternate method of enforcing a possession limit.

7. Differential DAS Counting in GOM

Under this final rule, all NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing within the GOM Differential DAS Area during any portion of its trip, with the exception noted below for a Day gillnet vessel, will be charged at a rate of 2:1, regardless of area fished. The GOM

Differential DAS Area (defined at § 648.82(e)(2)(i)(A) of the regulatory text portion of this document), includes most of the area west of 69°30′ W. long. and between 41°30′ and 43°30′ N. lat. (between approximately Monomoy Island, MA, and Portland, ME). Day gillnet vessels will be charged DAS at a rate of 2:1 for the actual hours used for any trip of less than 3 hr in duration, and for any trip of greater than 7.5 hr. For Day gillnet trips between 3 and 7.5 hr duration, vessels will be charged a full 15 hr. To illustrate how DAS are charged in the GOM Differential DAS Area for different categories of vessels, the following examples are provided. A trawl vessel that has declared into the GOM Differential DAS Area on a trip that lasts 10 actual hr would be charged 20 hr (10 hr × 2) of DAS use, regardless of where the vessel fished. Conversely, a Day gillnet vessel that has declared into the GOM Differential DAS Area on a trip that lasts 5 actual hr would be charged for 15 hr of DAS use regardless of where the vessel fished (between 3 and 7.5 hr = 15 hr); a Day gillnet vessel fishing in the GOM Differential DAS Area on a trip that lasts 8 actual hr would be charged for 16 hr of DAS use regardless of where the vessel fished (8 hr × 2). On any trip in which a vessel declares, prior to leaving the dock, that it will be fishing in the GOM Differential DAS Area under a Category A DAS, the vessel will be charged at the differential DAS rate for the entire fishing trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel may not fish under a Category A DAS in the GOM Differential DAS Area, unless it has declared into this area prior to the start of the trip, or unless exempted, as described below. A vessel that does not declare its intent to fish in the GOM Differential DAS Area may still transit or be in the area, provided its fishing gear is properly stowed according to the regulations and, if the vessel is in the area for reasons other than transiting (e.g., to evade bad weather), the vessel immediately notifies NMFS that it is within the GOM Differential DAS Area, but not fishing through its VMS. This provision has been modified from the proposed rule, which allowed non-fishing and non-transiting vessels to be in the area ''due to bad weather, or other circumstances beyond its control,'' based on Council comment and to ensure effective enforcement of this provision.

No changes to the Monkfish FMP regulations are implemented to accommodate the NE multispecies Differential DAS rules, but the following is an explanation of how the proposed groundfish regulations would work with the current Monkfish FMP regulations. A vessel issued a limited access monkfish Category C or D permit that has declared into the GOM Differential DAS Area under a monkfish DAS (thereby using both a monkfish and NE multispecies DAS) will have its NE multispecies DAS charged at a rate of 2:1, but its monkfish DAS will continue to be charged at a rate of 1:1. The regulations will continue to allow a monkfish Category C and D vessel to fish under a monkfish-only DAS, when groundfish DAS are no longer available, to ensure that it can fish its full allocation of monkfish DAS. Monkfish Category C and D vessels that accrued monkfish-only DAS under the recent emergency regulations as a result of the use of NE multispecies DAS at the differential rate of 1.4 to 1 will be able to continue to use such monkfish only DAS under this final rule, during the remainder of this FY. Under this final rule, vessels fishing under a monkfish-only DAS will continue to be required to fish under the provisions of the monkfish Category A or B permit. Such a vessel is limited to monkfish-only DAS equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS). A monkfish vessel will continue to be allocated ''monkfish only'' DAS based upon its current allocations of monkfish and NE multispecies DAS. This allocation is not expanded to account for the effects on monkfish DAS due to the differential DAS measures implemented by this final rule. For example, if a Category C monkfish vessel allocated 40 monkfish DAS has a current NE multispecies DAS allocation of 15 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25 DAS (40 monkfish DAS − 15 NE multispecies DAS). However, for a vessel fishing under differential DAS, the overall amount of monkfish DAS that could be used is effectively reduced because the NE multispecies DAS are used at the differential rate. Using the example above, if the vessel fished all 15 NE multispecies DAS at the differential DAS rate, the vessel would use up its allocation of NE multispecies DAS after 7.5 days of actual time fished (7.5 days × 2.0 = 15 DAS). Therefore, even though the vessel only fished 7.5 actual NE multispecies DAS, it would be able to fish only up to 25 of its monkfish DAS as ''monkfish-only'' DAS.

For a vessel that has declared into the GOM Differential DAS Area, trip limits apply based on the actual days spent fishing, and not on the basis of the differential DAS that were charged for the trip. The cod possession limit rule that requires vessels to ''run the clock'' to fully account for each daily limit of cod caught does not apply to trips charged at the differential DAS rate (for both GOM and GB cod). For example, if the trip of a vessel declared into the GOM Differential DAS Area lasts for 25 hr actual time, the vessel would be allowed to catch twice the daily limit of GOM cod (800 lb (362.9 kg) per DAS), and would be charged 50 hr of DAS. Because differential DAS apply only to Category A DAS, a vessel that begins and ends its trip in the GOM Differential DAS Area under the Regular B DAS Program is not subject to the differential DAS counting and is subject to the DAS counting rules of the Regular B DAS Program.

A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip (as described in section 15 of this preamble) may also fish in the GOM Differential DAS Area on the same trip, provided the vessel declares its intent to fish in the GOM Differential DAS Area via VMS prior to leaving the Eastern U.S./Canada Area. A vessel that has declared into both the GOM Differential DAS Area and the Eastern U.S./Canada Area on the same trip will be subject to the most restrictive DAS counting, trip limits, and reporting requirements applicable to the two areas for the entire trip.

The GOM Differential DAS restrictions are designed to reduce F on GOM/CC yellowtail flounder, GOM cod, and white hake.

8. Differential DAS Counting in SNE

All NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing within the SNE Differential DAS Area during any portion of its trip, with the exception noted below, will be charged at a rate of 2:1 when fishing in a specific portion of the SNE RMA. A vessel may not fish, except as noted below, under a Category A DAS in the SNE Differential DAS Area, unless it has declared into the area prior to the start of the trip. The SNE Differential DAS Area (defined at § 648.82(e)(2)(i)(B) in the regulatory text portion of this document) is an irregular-shaped offshore area extending from 73°40′ W. long., east to 69°30′ W. long. (from south of western Long Island to north of the Nantucket Lightship Closed Area). On

any trip in which a vessel declares, prior to leaving the dock, via its VMS unit, that it will be harvesting fish in the SNE Differential DAS Area under a Category A DAS, the vessel will be charged at the differential DAS rate for that portion of the trip spent in the SNE Differential Area (as determined from VMS positional data). The time spent outside this area will be charged at the rate of 1:1. For example, if a trawl vessel declares into the SNE Differential DAS Area through its VMS unit on a trip that lasts 12 actual hr with only 4 hr actually spent in the SNE Differential DAS Area, the total DAS deducted for that trip would equal 16 hr (8 hr of actual time outside the SNE Differential DAS Area plus 8 hr (4 hr × 2) of differential DAS time). A Day gillnet vessel that declares into the SNE Differential DAS Area through VMS will be charged according to the following formula for the actual time spent in the SNE Differential DAS Area: For hours accrued in the area less than 3 hr or greater than 7.5 hr, vessels will be charged at a rate of 2:1; for hours accrued in the area between 3 and 7.5 hr, vessels will be charged a full 15 hr. The DAS accrued outside of the SNE Differential DAS Area will accrue on a 1:1 basis. For example, if a Day gillnet vessel declared into the SNE Differential DAS Area on a trip that lasts 12 actual hours with only 5 hr actually spent in the SNE Differential DAS Area, the total DAS deducted for that trip would be 22 hr (7 hr of actual time outside of the SNE Differential DAS Area, plus 15 hr according to the above formula). For trips where a Day gillnet vessel declares into the SNE Differential DAS Area, the application of the DAS accrual formula described above does not supersede the DAS accrual formula that applies to all NE multispecies Day gillnet vessels. In other words, the net DAS charge for a Day gillnet vessel for a trip declared into the SNE Differential DAS Area may not be less than the DAS that would accrue on the same length trip by a Day gillnet vessel not declared into the SNE Differential DAS Area.

If the Regional Administrator requires the use of the IVR or other non-VMS reporting system, a vessel fishing for any portion of its trip in the SNE Differential DAS Area will be charged at the rate of 2:1 for the entire trip, in a manner similar to that described for differential DAS counting in the GOM Differential DAS Area (see section 7 of this preamble). Because it is not possible to determine the amount of time a vessel fishes inside the SNE Differential DAS Area using IVR or IVR technology, the vessel must be charged at the differential rate for the entire trip. Further, if a vessel fishes in both the GOM and SNE Differential DAS Area on the same trip, the vessel will be charged at the rate of 2:1 for the entire trip.

Similar to fishing in the GOM Differential DAS Area, a vessel issued a limited access monkfish Category C or D permit that has declared into the SNE Differential DAS Area under a monkfish DAS (and therefore is accruing both monkfish and NE multispecies DAS) will have its NE multispecies DAS charged at a rate of 2:1, as described above, and its monkfish DAS charged at a rate of 1:1.

A vessel that does not declare its intent to fish in the SNE Differential DAS Area under a Category A DAS, may still transit or be in the area, provided its fishing gear is properly stowed, according to the applicable regulations, and if the vessel is not in the area for transiting purposes, it immediately notifies NMFS through its VMS that it is in the SNE Differential DAS Area, but not fishing. This provision has been modified from the proposed rule, which allowed non-fishing and non-transiting vessels to be in the area ''due to bad weather, or other circumstances beyond its control,'' based on Council comment and to ensure effective enforcement of this measure.

Similar to how trip limits are counted when fishing in the GOM Differential DAS Area, for trips declared into the SNE Differential DAS Area, all trip limits apply based on the actual days spent fishing, and not on the basis of the number of DAS charged. A vessel that begins and ends a fishing trip under the Regular B DAS Program is not be subject to differential DAS counting, regardless of where it fishes.

A vessel that fishes inside and outside of the U.S./Canada Management Area on the same trip (as described in section 15 of this preamble) may also fish in the SNE Differential DAS Area on the same trip, provided the vessel declares its intent to fish in the SNE Differential DAS Area via VMS prior to leaving the Eastern U.S./Canada Area. A vessel that has declared into both the SNE Differential DAS Area and the Eastern U.S./Canada Area on the same trip will be subject to the more restrictive DAS counting, trip limits, and reporting requirements applicable to the two areas for the entire trip.

The SNE Differential DAS restrictions are designed to reduce F on SNE/MA yellowtail flounder, SNE winter flounder, and white hake.

9. Commercial Trip Limits

This final rule does not change the Amendment 13 GOM cod trip limit (800 lb (362.9 kg) per DAS, up to 4,000 lb (1,818.2 kg) per trip). This final rule implements new trip limits for white hake and GB winter flounder, modifies the existing trip limits for the three yellowtail flounder stocks (CC/GOM, GB, and SNE/MA), and modifies the haddock trip limit and the GOM cod trip limit exemption and cod overage regulations.

A NE multispecies DAS vessel fishing under Category A DAS, or any other vessel subject to the NE multispecies possession and trip limit regulations, may land up 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536.2 kg) per trip, unless otherwise restricted. A NE multispecies DAS vessel fishing under a Category A DAS that has declared into the U.S./Canada Management Area, or any other vessel subject to the NE multispecies possession and trip limit regulations, may land up to 5,000 lb (2,268.1 kg) of GB winter flounder and 10,000 lb (4,536.2 kg) of GB yellowtail flounder per trip, unless otherwise restricted. The U.S./Canada Management Area is defined as the same geographic area as the GB winter flounder and the GB yellowtail flounder stock areas.

NE multispecies DAS vessels fishing under Category A DAS, or any other vessel subject to the NE multispecies possession and trip limit regulations, may land up to 250 lb (113.6 kg) per DAS, or any part of a DAS, up to 1,000 lb (453.6 kg) per trip of CC/GOM or SNE/MA yellowtail flounder for the entire FY. Because the trip limits for CC/GOM and SNE/MA yellowtail flounder are the same, this final rule removes the requirement that vessels obtain and possess on board a yellowtail flounder LOA issued by the Regional Administrator in order to land yellowtail flounder from the CC/GOM or SNE/MA Yellowtail Flounder Areas.

This final rule expands the Regional Administrator's authority to modify the GB yellowtail flounder trip limit, removes the requirement that NMFS impose a GB yellowtail flounder trip limit when 70 percent of the TAC is reached, and removes the threshold harvest levels of 30 percent and 60 percent before other management measures can be adjusted. Instead, this final rule implements an initial GB yellowtail flounder trip limit of 10,000 lb (4,536.2 kg) per trip and allows the Regional Administrator to make adjustments to the GB yellowtail flounder trip limit at any time during the FY, and to eliminate or adjust the initial 10,000-lb (4,536.2–kg) trip limit before the start of the FY, in order to prevent exceeding or in order to facilitate harvesting the GB yellowtail flounder TAC, in a manner consistent

with the Administrative Procedure Act, as more fully described under Section 22 of this preamble. If no trip limit is specified for the beginning of a FY, the 10,000–lb (4,536.2–kg) yellowtail flounder trip limit will remain in effect. The Regional Administrator may specify a yellowtail flounder trip limit for all of the U.S./Canada Management Area or for either of its two sub-areas (*i.e.*, the Western U.S./Canada Area or the Eastern U.S./Canada Area). This final rule also recognizes non-binding guidance developed by the Council to assist the Regional Administrator regarding potential in-season modifications to the GB yellowtail flounder trip limit. Table 5 contains catch thresholds and associated trip limits offered as non-binding Council guidance for consideration.

TABLE 5.—GB YELLOWTAIL FLOUNDER TRIP LIMIT ADJUSTMENT GUIDANCE

FY quarter	If catch is projected to reach 30% of the TAC during the specified quarter, the suggested trip limit is as follows:	If catch is projected to reach 60% of the TAC during the specified quarter, the suggested trip limit is as follows:
Quarter 1 (May–July)	7,500 lb (3,402.1 kg)	3,000 lb (1,360.9 kg).
Quarter 2 (August–October)	10,000 lb (4,536.2 kg)	5,000 lb (2,268.1 kg).
Quarter 3 (November–January)	25,000 lb (11,340.4 kg)	10,000 lb (4,536.2 kg).
Quarter 4 (February–April)	Remove trip limits	25,000 lb (11,340.4 kg).

This final rule eliminates the current initial haddock trip limit provision (May–Sept 3,000 lb (1,360.8 kg) per DAS up to 30,000 lb (13,608 kg) per trip; Oct–Apr 5,000 lb (2,268 kg) per DAS up to 50,000 lb (22,680 kg) per trip) and as more fully described under Section 22 of this preamble, the automatic trip limit reduction for Eastern GB haddock (1,500 lb (680.4 kg) per DAS or up to 15,000 lb (6,804.1 kg) per trip) when 70 percent of the TAC is projected by the Regional Administrator.

The requirement for NE multispecies DAS vessels to obtain a GB Cod Trip Limit Exemption LOA from the Regional Administrator when fishing outside of the GOM RMA, if the vessel operator desires to be exempt from the more restrictive cod trip limit in the GOM, is eliminated because this law enforcement tool is no longer necessary. Instead, with the exception of vessels declared into the U.S./Canada Management Area, a NE multispecies DAS vessel fishing south of the GOM RMA must declare through the VMS, prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, its intent to fish south of the GOM RMA in order to be subject to the less restrictive GB cod trip limits. Such a vessel is exempt from the GOM cod landing limit, but may not fish in the GOM RMA for the duration of the trip. Such a vessel may transit the GOM RMA, provided that its gear is properly stowed while in the GOM RMA. A vessel that has not declared through VMS that it will be fishing south of the GOM RMA, is subject to the most restrictive applicable cod trip limit, regardless of area fished for the entire trip.

The Regional Administrator retains the authority to require a vessel to obtain a GOM Cod Trip Limit Exemption LOA (as under pre-FW 42 regulations), if NMFS's administration of the VMS program is not operational. If an LOA is required, such a vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and must carry the LOA on board.

For a vessel that is not declared into and does not fish in either of the two differential DAS areas and that catches cod in excess of the GOM or GB cod trip limits (i.e., the vessel possesses up to 1 extra day's worth of cod in relation to the amount of DAS that have elapsed), the current requirement for vessels to ''run'' their clocks upon entering port (to account for the amount of cod on board) is replaced by a requirement to make a declaration via VMS prior to crossing the VMS demarcation line. For a vessel making this VMS declaration, NMFS will make the appropriate increase to the DAS accrued (up to 23 hours and 59 minutes) to round up the next 24-hr increment of DAS.

10. Regular B DAS Program

This final rule renews the Regular B DAS Program, but modifies certain aspects in order to further reduce the potential risks associated with the use of a Regular B DAS and to minimize impacts to the monkfish fishery. The program will no longer be characterized as a ''Pilot,'' and will remain in effect indefinitely.

The Regular B DAS Program allows limited access NE multispecies DAS vessels with an allocation of Regular B DAS to fish under a Regular B DAS in order to harvest relatively healthy groundfish stocks (GB haddock, pollock, redfish, GOM winter flounder, and GOM haddock). GB winter flounder and GB yellowtail flounder are now considered ''stocks of concern'' that require additional reductions in F. Vessels eligible to fish in the Regular B DAS Program may not fish in this program and in a Special Access Program (SAP) (e.g., the Eastern U.S./Canada Haddock SAP, Closed Area (CA) I Hook Gear Haddock SAP, or CA II yellowtail flounder SAP) on the same trip. In order to limit the potential biological impacts of the program, only 500 Regular B DAS may be used during the first quarter of the CY (May through July), while 1,000 Regular B DAS may be used in subsequent quarters (August through October, November through January, and February through April). DAS that are not used in one quarter will not be available for use in subsequent quarters. As implemented previously under FW 40–A, Regular B DAS will accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished.

A vessel participating in this program must be equipped with an approved VMS and must notify the NMFS Observer Program at least 72 hr in advance of a trip in order to facilitate observer coverage. This notification requires reporting of the following information: The general area or areas that will be fished (GOM, GB, or SNE), vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity to fish only in that area on that trip, but will be used to plan observer coverage. Prior to departing on the trip, the vessel owner or operator must notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program must report their catches of certain groundfish stocks of concern (cod, yellowtail flounder, winter flounder, witch flounder,

American plaice, and white hake) and haddock daily through VMS, including the amount of fish kept and discarded. These reporting requirements are consistent with the standardized reporting requirements that, as implemented by this final rule, apply to all Special Management Programs of the FMP, as explained in section 17 of this preamble.

In contrast to the Regular B DAS Pilot Program, in which a trawl vessel was not required to utilize any particular gear type, under this final rule, a trawl vessel must use an approved haddock separator trawl when participating in the Regular B DAS Program. Other trawl net configurations may be on board the vessel, provided they are properly stowed when the vessel is fishing under the Regular B DAS Program rules. The intent of this restriction is to further reduce the potential for vessels to catch stocks of concern, notably cod, yellowtail flounder, and winter flounder. Furthermore, for a trawl vessel fishing with the proposed haddock separator trawl, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited, to help promote and ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species.

A vessel fishing under a Category B DAS while in this program is prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, ocean pout, and monkfish, and is limited to landing 100 lb (45.4 kg) per DAS, or any part of a DAS, of each of the following groundfish stocks: GOM cod, GB cod, GB yellowtail flounder, American plaice, witch flounder, white hake, SNE/MA winter flounder, GB winter flounder, southern windowpane flounder, and ocean pout, unless further restricted (see below). In addition, a vessel fishing in this program is limited to landing no more than one Atlantic halibut and 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip, of CC/GOM or SNE/MA yellowtail flounder. A limited access monkfish DAS vessel fishing with gear other than trawl gear that is participating in this program under a NE multispecies DAS is subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E) (i.e., 400 lb (181.4 kg) tail weight/DAS, or 50 percent of the total weight of fish on board, whichever is less, when fishing in the monkfish Northern Fishery Management Area (NFMA); and 50 lb (22.7 kg) tail weight/DAS when fishing in the monkfish Southern Fishery Management Area (SFMA)). A limited access monkfish DAS vessels fishing with trawl gear that is participating in this program under a NE multispecies DAS is subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E), as well as the monkfish restrictions associated with the required use of the haddock separator trawl (as described below). That is, vessels may not land more than 500 lb (226.8 kg) whole weight of monkfish per trip when fishing in the monkfish NFMA; and 500 lb (226.8 kg) whole weight per trip or 50 lb (22.7 kg) tail weight per DAS, whichever is less, when fishing in the monkfish SFMA.

If a vessel fishing under the Category B DAS Program harvests and brings on board a stock with an Incidental Catch TAC (cod, yellowtail, American plaice, witch flounder, white hake, SNE winter flounder, GB winter flounder), or southern windowpane flounder, ocean pout, Atlantic halibut, or monkfish, in excess of the landing limits, the vessel operator must retain on board the excess catch of these species, and immediately notify NMFS, via VMS, that it is changing its DAS category from a Regular B DAS to a Category A DAS (i.e., ''DAS flip''). If a vessel flips from a Regular B DAS to a Category A DAS, it will be charged Category A DAS, which will accrue to the nearest minute, for the entire trip (i.e., not to the nearest day). Once the vessel flips, it is subject to the Category A trip limit restrictions. A vessel fishing in the Category B DAS Program must abide by all the reporting requirements described above for the duration of the trip, even if the vessel ''flips'' to a Category A DAS.

In order to ensure that a vessel will always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), with the exception of vessels fishing in one of the differential DAS areas (as explained below), the number of Regular B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5. If a vessel is fishing in either the GOM Differential DAS Area or the SNE Differential DAS Area, the number of Regular B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip divided by two. For example, if a vessel plans a trip under the Regular B DAS Program and has 10 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5.

This action provides the Regional Administrator authority to approve the use of additional gear specifically for this program, based on approved gear standards recommended by the Council. After consideration of the Groundfish Committee's recommendation on the standards that must be met by potential gears, the Council may determine what standards, if any, will be recommended to the Regional Administrator to facilitate the determination of whether a proposed gear type is acceptable based on whether the proposed gear has been demonstrated to reduce catch of groundfish stocks of concern. Upon receipt of the Council's recommendation on gear standards, NMFS may implement these standards in a manner consistent with the Administrative Procedure Act. If NMFS decides not to implement the Council's recommendation on gear standards, it must provide a written rationale to the Council regarding its decision not to do so.

The Pilot Program implemented by FW 40–A allowed a vessel issued a limited access monkfish Category C or D permit to use a NE multispecies Regular B DAS to fulfill the requirements of the Monkfish FMP, which requires such a vessel to use a NE multispecies DAS every time a monkfish DAS is used. To reduce fishing mortality on monkfish resulting from the use of Regular B DAS, this final rule implements the Monkfish FW 3 provision prohibiting a limited access monkfish DAS vessel that also possesses a limited access NE multispecies DAS permit from using a monkfish DAS (in conjunction with a NE multispecies Regular B DAS) when participating in the Regular B DAS Program. This vessel may still participate in this program and use a NE multispecies Regular B DAS, but it must fish under a NE multispecies DAS only and is subject to the monkfish trip limits. Discarding of legal-sized monkfish is prohibited when fishing under this program.

NMFS will administer the Regular B DAS Program quarterly DAS cap by monitoring the total number of Regular B DAS accrued on trips that begin and end under a Regular B DAS. Mere declaration of a Regular B DAS Program trip through VMS does not reserve a

vessel's right to fish under this program, because the vessel must also cross the demarcation line to begin a trip in this program. Once the maximum number of Regular B DAS are projected to be used in a quarter, the Regional Administrator will end the Regular B DAS Program for that quarter. In order to limit the potential impact of the Regular B DAS Program on the fishing mortality of groundfish stocks of concern, a quarterly Incidental Catch TAC will be set for certain groundfish stocks of concern for this program. Based upon the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among Special Management Programs (Table 3 and 4, respectively), the proposed Incidental Catch TACs allocated to the Regular B DAS Program are calculated and divided into quarterly Incidental Catch TACs as shown in Table 6. The quarterly Incidental Catch TACs are divided among quarters in order to correspond to the allocation of DAS among quarters. The 1st quarter (May–July) will receive 13 percent of the Incidental Catch TACs, and the remaining quarters (August–October, November–January, and February–April) will each receive 29 percent of the Incidental Catch TACs.

TABLE 6.—INCIDENTAL CATCH TACS FOR THE REGULAR B DAS PROGRAM

[mt, live weight]

	FY 2006		FY 2007		FY 2008	
	Qtr 1	Qtr 2–4	Qtr 1	Qtr 2–4	Qtr 1	Qtr 2–4
GB cod	8.0	17.8	See **Note**			
GOM cod	6.5	14.5	12.9	28.7	13.5	30.1
GB yellowtail flounder	2.7	6.0	See **Note**			
SNE/MA yellowtail	0.2	0.4	0.3	0.6	0.4	0.9
CC/GOM yellowtail	0.8	1.9	1.4	3.1	1.8	4.1
American plaice	18.1	40.3	21.1	47.0	26.9	60.0
Witch flounder	35.8	79.9	33.0	73.6	28.2	62.8
White hake	5.3	11.9	4.4	9.7	3.6	7.9
SNE/MA winter flounder	3.2	7.2	3.9	8.7	4.7	10.4
GB winter flounder	1.9	4.1	2.1	4.6	2.2	5.2

Note: TACs for this stock depend on annual specification of TACs in the U.S./Canada Management Area. TACs are calculated using the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among Special Management Programs (Table 3 and 4, respectively), as well as the quarterly division of the TAC described above. Separate specification of these TACs is not necessary, because they are calculated based upon an explicit formula.

With the exception of white hake, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder, if the Incidental Catch TAC for any one of these species is caught (landings plus discards) during a quarter, use of Regular B DAS in the pertinent stock area will be prohibited for the remainder of that quarter. Vessels can once again use Regular B DAS at the beginning of the subsequent quarter. When the white hake Incidental Catch TAC is caught, the possession of white hake when fishing under the Regular B DAS Program will be prohibited. For the CC/GOM and SNE/MA stocks of yellowtail flounder, when the respective Incidental Catch TACs are caught, only a portion of the stock area where the species is predominantly caught will be closed to Regular B DAS Program participants. Upon attainment of the CC/GOM yellowtail flounder incidental Catch TAC, the following 30-minute square blocks will close: Blocks 98, 114, 123, 124, 125, 132, and 133. Upon attainment of the SNE/MA yellowtail flounder Incidental Catch TAC, the following 30-minute square blocks will close: Blocks 70 to 73, 82 to 88, 98, 99, and 101 to 103.

Under the Pilot Program, the Regional Administrator had the authority to prohibit the use of Regular B DAS for the duration of a quarter or FY, if it was projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program. This final rule continues this authority, but provides additional reasons for terminating the program. Additional reasons for terminating the program include, but are not limited to, the following: Inability to restrict catches to the Incidental Catch TACs; evidence of excessive discarding; evidence of a significant difference in flipping rates between observed and unobserved trips; and insufficient observer coverage to adequately monitor the program, particularly if coverage declines below the Council's recommendation of 36 percent (the same level of observer coverage as occurred during the original Pilot Program).

11. Renewal of DAS Leasing Program

This final rule continues the DAS Leasing Program, without change, to help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort.

12. Renewal and Modification of the Eastern U.S./Canada Haddock SAP

This final rule renews and modifies the Eastern U.S./Canada Haddock SAP for FY 2006 through 2008 as described below, and no longer characterizes this SAP as a ''Pilot Program.''

The Eastern U.S./Canada Haddock SAP Program allows limited access NE multispecies DAS vessels fishing with an authorized haddock separator trawl to catch haddock using a Category B DAS, in a portion of the Eastern U.S./Canada Area, including the northernmost tip of CA II. The time period for the SAP is revised to August 1–December 31. Delaying the start date from May 1 to August 1 is intended to help prevent an early closure of this area and thereby prolong the period of time during which vessels have access to the haddock fishery in the area under a Category B DAS.

In a manner similar to the provision proposed under the Regular B DAS Program, this final rule provides the Regional Administrator authority to approve the use of additional gear specifically for this SAP based on approved gear standards recommended by the Council.

This final rule implements new restrictions for trips on which use of the haddock separator trawl is required (including this SAP). For trawl trips, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates is limited to 500 lb (227 kg) each per trip; and possession of lobsters is

prohibited to help ensure the proper utilization of the haddock separator trawl.

In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an annual GB cod Incidental Catch TAC is specified for this SAP that represents 34 percent of the overall Incidental Catch TAC for GB cod (19.6 mt for FY 2006). In addition to an Incidental Catch TAC for GB cod, this action also establishes an Incidental Catch TAC for GB yellowtail flounder and GB winter flounder for this SAP. The Incidental Catch TACs for these two species in this SAP each represent 50 percent of the respective overall Incidental Catch TACs for these stocks allocated to Special Management Programs. The 2006 GB yellowtail flounder Incidental Catch TAC is 20.7 mt, and the GB winter flounder Incidental Catch TACs for 2006–2008 are 14.3, 16.1, and 17.8 mt, respectively. The GB yellowtail flounder Incidental Catch TAC is dependent upon the annual specification of the U.S./Canada TACs, and therefore will be calculated on an annual basis for FYs 2007 and 2008. Separate specification of this Incidental Catch TAC is not necessary, because it is calculated based upon an explicit formula. Participation in the SAP by vessels using a Category B DAS will be prohibited when any one of the three Incidental Catch TACs are projected to have been caught.

Under this final rule, many of the reporting requirements for this SAP are the same as the reporting requirements that are applicable to all Special Management Programs, as explained under Section 17 in this preamble. Finally, this rule restricts vessels that are fishing in this SAP while under a Category B DAS, from discarding regulated NE multispecies, Atlantic halibut, and ocean pout. All other measures for this SAP are consistent with the measures previously implemented.

13. Modification to CA I Hook Gear Haddock SAP

This final rule specifies a haddock TAC for the CA I Hook Gear Haddock SAP for FY 2006 through 2008, and provides the Regional Administrator the authority to adjust these TACs based on future stock assessments using a specified formula. The formula is based upon the size of the haddock TAC allocated for FY 2004 (1,130 mt live weight) and, based on new information, will be adjusted according to the growth/decline of the western GB (WGB) haddock exploitable biomass in relationship to its size in 2004. The size of the WGB component of the stock is currently considered to be 35 percent of the total stock size (unless modified by a new stock assessment). The formula is as follows: $TAC_{year\ x}$ = (1,130 mt live weight) × (Projected WGB Haddock Exploitable $Biomass_{year\ x}$ / WGB Haddock Exploitable $Biomass_{2004}$).

TABLE 7.—CA I HADDOCK GEAR HADDOCK SAP TACS FOR FY 2006–2009, AND PERTINENT HISTORIC INFORMATION

FY	Total GB haddock stock exploitable biomass (mt × 1,000)	WGB haddock exploitable biomass (mt × 1,000)	Ratio of total GB haddock stock to WGB component	TAC (mt live weight)
2004	100.907	35.317	N/A	1,130
2005	137.341	48.069	1.361	1,538
2006	202.261	70.791	2.004	2,265
2007	442.427	154.849	4.385	4,955
2008	560.303	196.106	5.553	6,275

For example for FY 2006, based on the information in the table and the formula: 202.261 × 35% = 70.792; 70.792/35.317 = 2.004; and 1,130 × 2.004 = 2,265 mt.

When the haddock TAC is projected to be harvested, the SAP will close. The standardized reporting requirements as discussed in Section 17 of this preamble apply to this SAP.

14. GB Cod Fixed Gear Sector

This final rule authorizes the formation of a second sector in the FMP, the GB Cod Fixed Gear Sector (Fixed Gear Sector), in accordance with the procedures and requirements implemented by Amendment 13 (§ 648.87). Requirements under § 648.87(b) that apply to all sectors apply to the Fixed Gear Sector. This final rule implements a requirement that the Fixed Gear Sector fish only in the geographic area defined as the GB Cod Hook Gear Sector Area, which is that portion of the GB cod stock area north of 39°00′ N. lat. and east of 71°40′ W. long. Because the FW 42 document was silent with respect to the geographic area to be associated with the proposed Fixed Gear Sector, NMFS proposed, based on the inferred intent of the Council, the above geographic area in the FW 42 proposed rule, due to the fact that the goals of the GB Cod Fixed Gear Sector are very similar the goals of the GB Cod Hook Gear Sector. However, the Fixed Gear Sector's 2006 Operations Plan has proposed that this area be expanded. A proposed rule (71 FR 48903, August 22, 2006) soliciting comment on this Operations Plan is currently under review. Depending on the outcome of that proposed rulemaking, this area could be revised through a separate final rule.

The primary purpose of the Fixed Gear Sector is to fish in an efficient manner, under customized managed measures, for the primary purpose of harvesting GB cod. A vessel fishing in the Fixed Gear Sector is restricted to fishing with either jigs, non-automated demersal longline, hand gear, or sink gillnets. The Fixed Gear Sector, as required under § 648.87(b)(2), must submit an Operations Plan and Fixed Gear Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each FY. As described above, a vessel fishing in the Fixed Gear Sector would be restricted to fishing with various gear, including jigs; however jigs are not defined in the regulations. This final rule includes a definition of jigging and jig as follows: Jigging, with respect to the NE multispecies fishery, means fishing for groundfish with hook and line gear (hand line or rod and reel) using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

This final rule authorizes the formation of the Fixed Gear Sector, but neither approves nor disapproves the 2006 Operations Plan of the Fixed Gear Sector. Approval or disapproval of the Fixed Gear Sector's 2006 Operation Plan will be announced through publication

of a separate final rule in the **Federal Register**.

15. Eastern U.S./Canada Area Flexibility

This final rule modifies the regulations to allow a vessel that fishes in the Eastern U.S./Canada Area to choose to fish in other areas outside of the Eastern U.S./Canada Area on the same trip, with an exception noted below. If a vessel chooses to fish both inside and outside of the Eastern U.S./Canada Area on the same trip, the operator must notify NMFS via VMS prior to leaving the dock or at any time during the trip prior to leaving the Eastern U.S./Canada Area, and must comply with the most restrictive DAS counting, trip limits, and reporting requirements for the areas fished, regardless of area fished, for the entire trip. For example, a vessel electing to fish inside and outside of the Eastern U.S./Canada Area on the same trip will not receive any steaming time credit, and all cod, haddock, and yellowtail flounder caught on the entire trip will be applied against the pertinent U.S./Canada Management Area TACs for these species. In addition, the vessel must comply with the reporting requirements for the Eastern U.S./Canada Area for the entire trip.

A vessel is prohibited from fishing in the CC/GOM or SNE/MA yellowtail flounder stock areas if, when fishing in the Eastern U.S./Canada Area, it exceeds the yellowtail flounder trip limit specified for these areas (i.e., 250 lb (113.4 kg)/day to 1,000 lb (453.6 kg)/trip). Prohibiting a vessel from fishing outside of the Eastern U.S./Canada Area on the same trip if it has exceeded the CC/GOM or SNE/MA trip limit for yellowtail flounder is necessary to preclude the possibility of a vessel discarding its yellowtail flounder in order to fish outside of the area. A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip may also fish in one of the Differential DAS Areas (and accrue DAS at the higher rate) described in Sections 7 and 8 of this preamble, provided the vessel declares its intent to fish in such areas via VMS prior to leaving the Eastern U.S./Canada Area.

16. Modification of the DAS Transfer Program

This final rule modifies several aspects of the DAS Transfer Program. The intent of these changes are to increase the utility of the program, provide clarification of program details that were not previously considered, and support effective administration of the program by NMFS. The vessel transferring its NE multispecies DAS permit (transferor) is no longer required to exit all state and Federal fisheries, and may acquire other fishing permits (i.e., other Federal limited access permits, Federal open access permits, and/or state permits) after the transfer. Secondly, other non-groundfish permits that the transferor vessel has no longer automatically expire, and may be transferred as a bundle to the vessel receiving the NE multispecies DAS permit (subject to pertinent regulations regarding vessel replacement). Duplicate permits must expire, and a vessel may not consolidate DAS or other allocations from non-groundfish permits. Non-groundfish permits are subject to all applicable regulations such as vessel replacement size restrictions. The program maintains the conservation tax of 20 percent on Category A and Category B DAS, as well as the conservation tax of 90 percent on Category C DAS, in order to support the program's goal of long-term reduction in fishing effort.

Because the execution of a DAS transfer is a process whereby two limited access NE multispecies permits (with two baselines, DAS allocations, and histories) become a single permit (with a single baseline, DAS allocation, and history), this action also specifies the rules that pertain to the resultant single permit. All history associated with the transferred NE multispecies DAS permit is acquired by the recipient (transferee), and is subsequently associated with the permit rights of the transferee. The pertinent history includes catch history, DAS use history, and permit rights history. Neither the individual elements of the history associated with the transferor vessel, nor the total history may be separated from the NE multispecies DAS being transferred. With respect to vessel baseline characteristics, the baseline of the transferee vessel will be the smaller baseline of the two vessels or, if the transferee vessel has not previously upgraded under the vessel replacement rules, the vessel owner may choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules. For a vessel involved in a DAS transfer that was granted a one-time downgrade of its DAS Leasing Program baseline specifications, as described in § 648.82(k)(4)(xi), the DAS leasing specifications would revert to those specifications prior to the one-time downgrade, except in the case when the downgrade was made by the transferee vessel and the transferee's vessel baseline specifications were adopted during the DAS transfer.

Because limited access NE multispecies Hook Gear vessels (Category D) are not allowed to change permit categories under current permit rules, this final rule clarifies that vessels with a limited access NE multispecies Category D permit will only be allowed to transfer their NE multispecies DAS (acting as a transferor) to another Category D vessel. However, such vessels may participate in a DAS transfer as a transferee vessel and acquire DAS from any limited access NE multispecies DAS permit category. That is, a Category D Hook Gear vessel may transfer DAS only to another Category D Hook Gear vessel, but may receive transferred DAS from any limited access NE multispecies DAS permitted vessel.

In order to simplify the DAS Transfer Program, this final rule clarifies that, for the purposes of calculating the DAS conservation tax, the transferee vessel must specify which vessel's DAS are being acquired and are, therefore, subject to the conservation tax. If a conservation tax were to apply strictly to the DAS acquired from the transferor vessel, buyers would have a strong incentive to arrange the DAS Transfer Program transaction such that it would result in the permit with the least number of DAS being designated as the transferor (seller) permit. Lastly, this final rule prohibits a vessel from participating in the DAS Leasing Program as a lessee or lessor during a particular FY and then subsequently participating in the DAS Transfer Program as a transferor during the same FY. A vessel may participate in the DAS Leasing Program as a lessor or as a lessee and then submit an application for a DAS transfer as a transferor, but the transfer, if approved, will not be effective until the beginning of the following FY. Vessels are not prohibited from participating in the DAS Leasing Program after a DAS transaction has occurred.

17. Standardized Requirements for Special Management Programs

This final rule modifies and standardizes the requirements that apply to the Special Management Programs. The standardized requirements are described below, and any new requirement, or new application of an existing requirement is noted.

The requirement for the use of VMS and the advance notice to the observer program prior to each trip is continued. For all Special Management Programs, the species that must be reported daily (catch and discards) will be haddock

and all species for which a stock of concern has been identified as likely to be caught in a Special Management Program (currently, the species with stocks of concern identified as such are: Cod, yellowtail flounder, winter flounder, witch flounder, white hake, and American plaice).

For all Special Management Programs, there is a new requirement for the vessel operator to report the date of the catch. The vessel operator may report catch for a particular day of fishing at any time of the day on which it was caught, up until 0900 hr. the following day.

For all Special Management Programs, there is a new requirement to report the serial number of the VTR. A vessel operator must report the serial number from the first page of the logbook on the daily VMS catch report. Because the serial numbers are associated with individual vessels, a vessel operator is prohibited from sharing logbooks with other vessel operators. The VTR serial number serves as an important tool that enables fishery managers to make better use of available data by linking VTR data with dealer and DAS data.

While participating in SAPs and the Regular B DAS Program, a vessel is prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout while fishing under a Category B DAS. This final rule also requires a vessel that is participating in either the Regular B DAS Program or a SAP that exceeds any of the NE multispecies trip limits, to exit these respective programs. With the exception of the CA I Hook Gear Haddock SAP, a vessel must exit the Special Management Program and ''flip'' to a Category A DAS as soon as the maximum trip limit is exceeded. The requirement that vessels participating in the Special Management Programs report daily via VMS continues, even after a vessel is required to exit the program.

18. Gear Performance Incentives for Special Management Programs

In times and areas when a Special Management Program requires a vessel to use a haddock separator trawl or other gear authorized by the program to reduce catches of stocks of concern, possession of flounders (all species combined), monkfish (live/whole weight), and skates (live/whole weight) is limited to 500 lb (226.8 kg) each, per trip, and possession of lobsters is prohibited. If a specific program includes a possession limit that conflicts with these Gear Performance Incentives, the most restrictive limit will apply. For example, a vessel fishing under a NE multispecies Category B DAS in the proposed Regular B DAS Program in the monkfish SFMA, and that has a limited access monkfish Category C or D permit (and is therefore prohibited from fishing under a monkfish DAS), is limited to 50 lb (22.7 kg) of monkfish per trip. The intent of this measure is to increase the incentive for vessels to configure the gear properly, because only small amounts of these species may be landed when using the gear. This Gear Performance Incentive requirement applies to the Regular B DAS Program, NE multispecies SAPs, and the Eastern U.S./Canada Management Area (if/when the haddock separator trawl is the only allowable trawl net).

19. Modification of Cod Landing Limit in Eastern U.S./Canada Area

For vessels fishing in the Eastern U.S./Canada Area under a Category A DAS, this final rule removes the restriction that the amount of cod not exceed 5 percent of the total weight of fish on board.

20. SNE/MA RMA Trawl Codend Mesh Requirement

The trawl codend mesh requirement applicable to the SNE/MA RMA is modified from 6.5-inch (15.2-cm) square or 7.0-inch (17.8-cm) diamond mesh to 6.5-inch (15.2-cm) square or 6.5-inch (15.2-cm) diamond mesh.

21. Regional Administrator Authority To Adjust Measures in the U.S./Canada Management Area

This final rule expands the Regional Administrator's authority to adjust management measures in the U.S./Canada Management Area at any time during the FY, as well as prior to the start of the FY for the subsequent FY, if information is sufficient to make the necessary projections, and after consultation with the Council, in order to more effectively prevent overharvesting or to facilitate harvesting of the hard TACs (and achieving OY).

This final rule eliminates the required implementation of a trip limit for Eastern GB haddock (i.e., when 70 percent of the TAC is projected, the Regional Administrator must implement a possession limit of 1,500 lb (680.4 kg) per day, up to 15,000 lb (6,804.1 kg) per trip).

This final rule clarifies that the Regional Administrator may implement different management measures for vessels using Category A DAS and Category B DAS, and requires that the Regional Administrator, when determining in-season adjustments, consider Council intent that opportunities for fishing on Category A DAS should take precedence over opportunities to fish under Category B DAS.

Comments and Responses for FW 42 and FW 3

Eighty-three comments were received during the comment period on the proposed rule for this action from 61 individuals, 10 fishing industry groups, 1 conservation group, 1 research institution, 3 shoreside processors, 5 elected officials, and 2 state resource management agencies (Massachusetts Division of Marine Fisheries (DMF) and the Maine Department of Marine Resources (DMR)). Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. It is important to note in considering the responses to comments herein that, in the context of implementing a framework adjustment measures such as FW 42, NMFS may only approve or disapprove substantive measures, and, may not unilaterally modify any measure in a substantive way pursuant to section 304(a)(3) to the Magnuson-Stevens Act.

Recreational Restrictions

Comment 1: One commenter questioned the effectiveness of the proposed seasonal GOM cod possession prohibition for the charter/party sector, as few vessels would be affected by this measure, suggesting that more effective measures are necessary. This commenter also doubted that the seasonal (i.e., November through March) cod possession prohibition would affect private anglers as much as indicated in the FW 42 document, stating that weather and vessel size often limit their ability to fish during this period.

Response: The analysis prepared for FW 42 indicates that the seasonal GOM cod possession prohibition, in conjunction with an increase in the minimum size for GOM cod, would achieve the reduction in F for GOM cod deemed necessary from the charter/party and private recreational fishing sector. Therefore, additional recreational management measures are not necessary.

GB Yellowtail Flounder Rebuilding Plan

Comment 2: The DMR strongly supported the proposed GB yellowtail flounder rebuilding plan due to the high probability of rebuilding the stock by 2014, especially considering the negative retrospective patterns observed in recent biomass and mortality estimates.

Response: NMFS agrees and implements the proposed rebuilding program through this final rule.

Target TACs

Comment 3: One commenter suggested that all of the groundfish Target TACs specified for 2007 and 2008 should be reduced by 50 percent. Another commenter was concerned that increased Target TACs in 2007 do not reflect observed increases in F on particular stocks since 2004. A third commenter indicated that the Target TAC increases in 2007 and 2008 are overly optimistic and suggested that NMFS reevaluate Target TACs on a yearly basis using updated data. Finally, a fourth commenter cautioned that the Target TACs should not be reduced too quickly and that there should be a mechanism to increase these TACs.

Response: As specified in the EA prepared for this action, the PDT estimated F rates for CY 2005 using the best information available. While additional preliminary landings data have become available since the submission of the FW 42 EA for final review and the implementation of emergency measures on May 1, 2006, these data are not sufficient to adequately determine whether drastic changes have occurred in the fishery that would require revision of the objectives and measures proposed by FW 42. Specifically, this preliminary information is not sufficient to determine whether the measures implemented to date during CY 2006, including the emergency measures, have, in fact, achieved the necessary F reductions for specific stocks during CY 2006. Although the analysis prepared for FW 42 indicates that reductions in the Target TACs for several species are necessary, a 50-percent reduction in Target TACs is not warranted at this time because only six stocks require F reductions to maintain the Amendment 13 rebuilding programs. Finally, Amendment 13 established a process whereby Target TACs for each species are established through the Council's biennial adjustment process. The next adjustment is scheduled to be developed in 2008, and implemented on May 1, 2009. That adjustment will take into account the best scientific information available at the time, and use that information to determine whether additional adjustments to F are necessary.

Comment 4: One commenter expressed concern that the recent revelation that an incorrect F rate was used during the calculation of Target TACs for American plaice (see description of approved measure 3 above) could affect the determination whether FW 42 meets the Amendment 13 mortality objectives for 2006. This commenter suggested that NMFS should adjust these TACs to prevent overfishing.

Response: The revised Target TAC does not alter the determination that the proposed action meets the mortality targets for all stocks managed by the FMP. The most recent stock assessment (GARM II) and analysis prepared for this action indicate that American plaice is achieving the mortality reductions necessary under the Amendment 13 rebuilding program for this stock notwithstanding the error in the calculation of the Target TAC for this stock. Due to the Amendment 13 default DAS reductions, as well as other measures proposed to reduce F for overfished stocks, the FW 42 analysis indicates that F on American plaice will be reduced by an additional 11 percent which is expected to constrain landings from exceeding the revised Target TAC specified in this final rule.

Default DAS Allocations

Comment 5: Five commenters supported the Amendment 13 default DAS allocation reductions proposed to be continued through FW 42. However, six commenters asserted that this default measure is unnecessary because the triggers for this measure have not been met, as F for American plaice is below the Amendment 13 target F rate for 2006 and existing measures for SNE/MA yellowtail flounder already reduce F on this species to comply with the Amendment 13 rebuilding program. These commenters suggest that an evaluation of completed FY 2005 and preliminary 2006 data would further support this assertion. One commenter pointed out that Alternatives 1–5 were analyzed without the default DAS reduction measure and they still met the necessary F reductions for this action. One commenter opposed the suggestion in the proposed rule that the default DAS reduction was necessary for white hake.

Response: The regulations implementing Amendment 13 established three criteria to determine whether the default measures are necessary; these criteria are specified in the current regulations at § 648.82(d)(4): (1) Target stocks (SNE/MA yellowtail flounder and American plaice) are projected to be at the target biomass in the year the measures are to be implemented, and, overfishing is not occurring; or (2) biomass estimates show rebuilding is on track and the best available estimate of the fishing mortality rate for these stocks meets the target F_{MSY}, and (3) all other stocks that would be affected by the default measures are meeting their target F rates. Based on the results of GARM II and updated information reflecting the estimated F rate for these stocks in CY 2005, American plaice meet both the first and the second criteria. However, the third criterion for eliminating the default measures is not satisfied because the target F rates are not being achieved for five other stocks that would be subject to the default measures. Because the stock area defined for American plaice includes the stock areas of all other stocks managed by the FMP, the default measures, in conjunction with other measures proposed in FW 42, are still needed to reduce F on other stocks caught within the broadly defined American plaice stock area. Further, in 2006, SNE/MA yellowtail flounder is not projected to achieve its target biomass, is not meeting the target F rate, and, therefore, continues to experience overfishing. Any new data available at this time is still preliminary and insufficient to change the approved FW 42 measures.

It is true that Alternatives 1–5 considered by the Council in FW 42 did not include the Amendment 13 default DAS reduction, yet still achieved the necessary F reductions for this action. However, in order to achieve the necessary F reductions for this action, these alternatives required a greater reduction in the overall DAS allocation than the Amendment 13 default measure. For example, Alternative 5 proposed a 40-percent reduction in allocated Category A DAS by reducing the Category A:B DAS allocation ratio to 36:64 rather than the 55:45 allocation ratio of the default measure. In other words, these alternatives would have resulted in a greater overall reduction in available Category A DAS than the Amendment 13 default measure to achieve the necessary F reductions for this action.

According to analysis prepared for this action, the Amendment 13 default DAS reduction, as demonstrated by the analysis of the No Action alternative, will reduce F on SNE/MA yellowtail flounder by 46.6 percent and white hake by 2.5 percent. However, F on these stocks must be reduced by 55 percent and 13 percent, respectively, to maintain the Amendment 13 rebuilding programs for these stocks. As a result, the default measures alone are insufficient to achieve the necessary F reductions for these stocks. Therefore, the additional measures included in this final rule, as proposed in FW 42, are needed in order to maintain the Amendment 13 rebuilding programs for

these and other stocks. Further, the EA prepared for FW 42 indicates that additional F reductions beyond the measures proposed in this action and the subsequent Amendment 13 default measures scheduled for implementation in 2009 may be necessary to fully rebuild these stocks by the end of the rebuilding programs for these stocks.

The Council had the opportunity to revise the Amendment 13 default measures and did so by choosing to revise the differential DAS counting rate for SNE/MA yellowtail flounder to achieve the necessary F reduction for this stock. Because the Council chose not to revise the Amendment default DAS reduction, and because criteria to eliminate this default measure were not met, the default DAS reduction will remain effective upon implementation of this final rule. Measures proposed by FW 42, combined with the default DAS reduction, are expected to achieve the necessary F reductions for several groundfish stocks to maintain the Amendment 13 rebuilding programs.

VMS Requirement

Comment 6: Seven commenters supported the mandatory VMS requirement proposed by FW 42, recommending that FW 42 be implemented before September 30, 2006, to ensure reimbursement for the purchase of VMS units outlined in a recent notice in the **Federal Register** (71 FR 41425, July 21, 2006). One commenter indicated that a mandatory VMS requirement would facilitate the development of future area-specific measures. However, three commenters suggested that a VMS requirement offers little benefit to the industry and recommended deferring implementation unless the differential DAS counting rate is reduced.

Response: The increasing complexity of the management measures implemented or proposed by FW 42, including area-specific regulations such as differential DAS counting and real-time reporting requirements, necessitate an increased reliance on VMS to accurately and efficiently monitor vessel operations under the FMP. A mandatory VMS requirement for vessels fishing under a NE multispecies DAS allows NMFS to accurately count DAS used in the proposed differential DAS counting areas and monitor catch from Special Management Programs. Without the use of VMS, NMFS would be hindered in effectively administering many of the measures proposed in FW 42, or any of the existing Special Management Programs. Many of these programs provide at least some means of mitigating recent effort reductions in the fishery by facilitating the use of Category B DAS and access to SAPs within closed areas. In addition, because a vessel's DAS charge only starts once a vessel crosses the VMS demarcation line, rather than at the dock, as under the previous call-in system, a mandatory VMS requirement also provides some benefit to the fishing industry by reducing the DAS charged on most fishing trips.

Comment 7: One commenter requested that NMFS implement a power-down mechanism for periods when groundfish vessels participate in other non-VMS regulated fisheries. This commenter suggested a minimum participation period of 30 days to facilitate enforcement of this provision.

Response: Although the Council did not consider modifying the existing VMS power-down provision or implementing a new VMS power-down provision, NMFS does not support the commenter's request because it would compromise efforts to enforce proposed and existing regulations by preventing NMFS from monitoring vessel activity away from the dock.

Differential DAS Counting in GOM

Comment 8: Six commenters indicated that the proposed GOM Differential DAS Area restrictions are unjustified, that they do not strike a balance between conservation and economics, and that such restrictions will result in economic failure of the fishing industry; while eight other commenters expressed general opposition to this proposed measure and the economic impacts that it will cause.

Response: As discussed in further detail in the responses below, NMFS believes the GOM Differential DAS Counting Area is consistent with all of the National Standards, including National Standards 1 (measures shall prevent overfishing and achieve OY), 2 (measures shall be based on the best scientific information available), 4 (measures shall not discriminate among fishermen), 8 (measures shall minimize economic impacts to the extent practicable), and 10 (measures shall promote safety to the extent practicable). The National Standards indicate that management measures shall minimize adverse economic impacts to fishing communities to the extent practicable, provided the measures meet the conservation requirements of the Magnuson-Stevens Act. Analysis prepared for this action indicates that the GOM Differential DAS Area is necessary to achieve the required F reductions for GOM cod and CC/GOM yellowtail flounder. In addition, this analysis also indicates that this measure is part of the alternative that results in the least decrease in fishing revenue compared to the other alternatives considered by the Council for this action, while still achieving the F targets necessary to meet the rebuilding objectives of the FMP. As a result, this measure achieves not only the necessary conservation objectives of this action, but it also minimizes the economic impacts to fishing communities, thereby achieving the economic and social objectives of this action and balancing, to the extent possible and practicable, the requirements of the National Standards.

Comment 9: Nine commenters suggested that the GOM Differential DAS Area is too big and would exceed the necessary F reductions for both GOM cod and CC/GOM yellowtail flounder. Six of these commenters suggested that the area should not extend beyond 70 ° W. long. (an area that would include approximately 70 percent of the landings of GOM cod and CC/GOM yellowtail flounder), as landings from 30′ squares 115, 116, 123, 138, and 139 account for very little of the F for these stocks.

Response: The proposed size of the GOM Differential DAS Area is necessary to achieve the required F reductions for both GOM cod and CC/GOM yellowtail flounder based on the analysis of the Northeast Fisheries Science Center's Closed Area Model (CAM). Although catch from additional blocks identified by the commenters is low, it is expected that fishing effort would increase in these blocks, should differential DAS counting be limited to a smaller area within the GOM. The Council considered another alternative that included differential DAS counting within a smaller area of the GOM, but chose to adopt the larger area contained in the preferred Alternative B2 (modified) because the proposed area included a more substantial portion of the GOM cod and CC/GOM yellowtail flounder landings (approximately 85 percent of the landings from both stocks) and would effectively achieve the conservation objectives of this action when combined with the other proposed measures. Because the GOM Differential DAS Counting Area recommended by the commenters was not analyzed during the development of FW 42, it is uncertain whether this area would achieve the necessary F reductions for this action.

Comment 10: Eight commenters requested that NMFS only charge DAS at the differential counting rate of 2:1 when vessels are actually fishing within the GOM Differential DAS Area,

suggesting that the regulations governing vessel operations in this area should mirror those for the SNE/MA Differential DAS Area.

Response: Unlike the SNE/MA Differential DAS Area, the GOM Differential DAS Area is situated along the coast and vessels must transit through this area to return to port. During the development of FW 42, Council members expressed concern that vessels may elect to ''top off'' their trips by fishing within this area on their return to port if there were no differential DAS rate in effect. This would greatly undermine the effectiveness of this measure, as detailed in an example provided in Section 4.2.2 of the EA prepared to support FW 42. Charging DAS at the differential rate for the entire trip minimizes incentives to circumvent the intention of the GOM Differential DAS Area and increases the effectiveness of this measure towards reducing F and achieving the rebuilding objectives for GOM cod and CC/GOM yellowtail flounder by reducing effort in the inshore GOM.

Comment 11: Thirteen commenters argued that the proposed GOM Differential DAS Area compromises safety of fishing vessels by forcing vessels to fish farther offshore to avoid the higher DAS charge, thereby violating National Standard 10.

Response: The EA prepared for this action considered issues relating to safety within the alternatives considered. Of the alternatives considered in FW 42, including a minimum 24-hr DAS charge and more extensive DAS reductions for all vessels, the proposed action is described as being the best option for achieving the necessary conservation objectives of the action while having the least negative impact on vessel safety. In terms of practicability, this alternative is estimated to have the least reduction in revenues which, in turn, is thought to have the least impact on vessel safety. NMFS acknowledges that the GOM Differential DAS Area may influence vessels to fish farther offshore. However, the safe operation of a fishing vessel is ultimately the responsibility of the master of the vessel. FW 42 proposes a provision that allows vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate, provided the vessel notifies NMFS that it is not fishing and the gear is properly stowed. This provision will allow vessels fishing outside of the GOM Differential DAS Area to seek the safety of coastal waters should weather conditions deteriorate and was intended to mitigate the impacts to safety from the proposed GOM Differential DAS Area without compromising the conservation objectives of this measure. As a result, the Council and NMFS have determined that the measure promotes safety to the extent practicable, as specified in National Standard 10.

Comment 12: Five commenters supported the proposed provision that would allow vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate, provided the vessel notifies NMFS that it is in the area and that the gear is properly stowed.

Response: NMFS agrees with the Council that it is important to allow vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate to minimize safety concerns associated with the size of the differential DAS Area (see response to Comment 10 above) and has approved this provision. This final rule also implements a similar provision in the SNE/MA Differential DAS Area.

Comment 13: Four commenters suggested that the differential DAS counting measure was never intended to reduce F for white hake. These commenters argued that the proposed trip limits for this stock are sufficient to achieve the necessary F reductions for this species, while another commenter indicated that such F reductions have already taken place, based on 2005/2006 catch data. Two commenters supported the proposed trip limit for white hake.

Response: NMFS acknowledges that, according to the EA prepared for FW 42, the proposed GOM Differential DAS Area was not intended to specifically reduce F on white hake. However, the GOM Differential DAS Area is an integral component of a suite of measures necessary to achieve the necessary F reduction for this species and other species caught in conjunction with white hake. This suite of alternatives was selected as part of a targeted approach to reduce F on specific stocks, in specific areas, without unnecessarily reducing catch of other healthier stocks by imposing across-the-board reductions in DAS allocations included in five of the other alternatives considered in FW 42. Further, because the white hake stock area encompasses the stock areas of all other stocks managed by the FMP, measures necessary to reduce F on other overfished stocks, such as the GOM Differential DAS Area, also contribute towards achieving the necessary F reductions for white hake. The primary analytical tool used to evaluate the impacts of the proposed measures (i.e., the CAM) takes into consideration all of the proposed measures, including both the white hake trip limit and differential DAS counting. As a result, it is impossible to attribute the expected F reductions resulting from one specific measure from the CAM results, as vessel behavior is influenced by all of the proposed measures combined. Therefore, all of these measures, including differential DAS counting in the GOM, are necessary to maintain the Amendment 13 rebuilding program for this species, as well as other overfished stocks.

It is possible that the emergency management measures implemented by the April 13, 2006, emergency interim final rule could reduce F for white hake more than is necessary for the entire FY 2006. However, data regarding the realized effectiveness of the emergency measures are not available at this time and were not available at the time FW 42 was submitted by the Council for final review by NMFS. Even assuming that the emergency measures resulted in reducing F for white hake more than is required for 2006, similar reductions in F would not be realized during FY 2007 and 2008, because the emergency measures are superceded by this final rule. As a result, differential DAS counting in the GOM, in addition to the Amendment 13 default DAS reduction and the trip limits in FW 42 are necessary to achieve the necessary F reductions for white hake for the expected duration of this action (i.e., through 2009). Because white hake is overfished and overfishing is still occurring, a precautionary approach potentially resulting in a greater reduction in F for white hake than is necessary in FY 2006 is consistent with the National Standard 1 guidelines at § 600.310(f)(5), and would increase the likelihood that these stocks would meet the Amendment 13 rebuilding objectives.

Comment 14: Eight commenters stated that the proposed differential DAS counting measure in the GOM is inconsistent with National Standard 4 because it denies reasonable access to healthy groundfish stocks for vessels operating out of ports in Massachusetts and New Hampshire, and discriminates against such vessels by disproportionally imposing the conservation burden on these states. Five of these commenters argued that this measure is also inconsistent with National Standard 8 because it does not provide for the sustained participation by fishing communities in Massachusetts and New Hampshire and does not minimize economic impact, as vessels cannot afford to lease DAS if

fishing within the GOM Differential DAS Area.

Response: The proposed GOM Differential DAS Area applies to any vessel intending to fish under a NE multispecies DAS in this area, regardless of principal port or home port. Area-specific measures such as this are necessary if the management strategy in FW 42 is to selectively reduce F on overfished stocks, while facilitating greater access to healthier stocks in an attempt to help achieve OY in the fishery. As detailed further in the response to Comment 15 below, differential DAS counting in the inshore GOM is necessary to achieve the necessary F reductions for GOM cod and CC/GOM yellowtail flounder and to maintain the Amendment 13 rebuilding programs for these stocks. Vessels that fish primarily in this area are necessarily more negatively affected than vessels that fish outside of this area, but there is neither discriminatory intent to this measure, nor direct or deliberate distribution of DAS or access to the fishery among individual vessels based on principal or home port. Any disproportionate impact is an unavoidable consequence of geography, not a result of intent to discriminate. As specified in the National Standard 4 guidelines, allocation of fishing privileges may disadvantage one group over another if it is necessary to achieve the objectives of the FMP. As a result, the GOM Differential DAS Area is reasonably calculated as necessary to promote conservation and is consistent with the guidelines developed for National Standard 4 and the objectives of the FMP.

As required by National Standard 8, the EA prepared to support this action analyzes and fully takes into account the social and economic impacts of the proposed GOM Differential DAS Area. This analysis indicates that the alternative adopted by the Council not only meets the conservation objectives of this action, but it would also result in the least reduction in fishing revenues of all of the alternatives considered. The proposed measure minimizes the adverse economic impacts to fishing communities and provides the greatest potential for sustained participation of such communities among the alternatives considered. Therefore, the GOM Differential DAS Area measure is fully consistent with National Standard 8.

Comment 15: Ten commenters suggested that the GOM Differential DAS Area in particular, and the suite of measures proposed by FW 42, in general, are inconsistent with National Standard 1 because they fail to achieve OY on many healthy stocks or provide the greatest overall benefit to the nation. They based their claim on the fact that recently observed landings are lower than the Target TACs established for several species. Further, eight commenters argued that the GOM Differential DAS Area will fail to prevent overfishing of GOM cod, but will actually increase F on this species by providing incentives for vessels that traditionally fish within this area to concentrate fishing effort on the highest-valued species, primarily GOM cod. Finally, four commenters suggested that, because some vessels will be unable to steam outside of this area due to their vessel size, these vessels will be forced to fish within this area, therefore, increasing discards of GOM cod and CC/GOM yellowtail flounder.

Response: The model used to evaluate the impacts of the differential DAS counting areas (i.e., the CAM) attempts to predict vessel behavior to maximize fishing profit in response to the suite of proposed measures. As a result, the CAM attempts to capture any change in fishing behavior to target the highest-valued species. Therefore, the results of the CAM reflect anticipated behavior changes in response to the GOM Differential DAS Area and indicate that the proposed measure still meets the mortality objectives of this action. In addition, because the CAM incorporates trip limits, the model's results incorporate any changes in F attributable to discards of GOM cod and CC/GOM yellowtail flounder, although it is not possible to isolate the direction and degree of change with respect to discards from these results.

As acknowledged many times in Amendment 13 and FW 42, it is difficult to achieve an exact balance of measures that will achieve the necessary conservation objectives for all stocks while ensuring OY at the same time in a fishery as diversified and complex as the groundfish fishery. Due to the comingled nature of the groundfish fishery and the reliance upon non-selective measures such as DAS reductions to manage the fishery, effort and subsequent F reductions on one stock will likely result in effort and F reductions on other stocks. Because several stocks managed by the FMP require F reductions to comply with the Amendment 13 rebuilding programs, the consequence of measures such as the GOM Differential DAS Area result in decreased catch of other, including healthier, groundfish stocks. FW 42 attempts to balance out and mitigate the impacts of such unavoidable reductions in catch by proposing the continuation of programs that facilitate the harvest of healthier stocks. Examples of such programs include approved SAPs and the Regular B DAS Program. Further, the DAS Leasing Program attempts to allow vessels to obtain additional DAS to pursue other stocks. Should vessels take advantage of these programs, it is likely that the fishery will better achieve OY while overfished stocks rebuild according to the Amendment 13 rebuilding programs.

As highlighted in the response to Comment 39 below, it is important to point out that Target TACs are an imprecise indicator of whether the fishery is achieving OY. As originally defined by Amendment 9, and described in Section 3.1.4 of Amendment 13, ''OY for a stock is achieved when fishing at the target F for a given stock size.'' Therefore, the important factor determining OY is not whether the fishery harvests the Target TACs for each stock, but whether the fishery is achieving the F targets established for each stock. The rebuilding programs established under Amendment 13 were designed to end overfishing and achieve OY for the fishery. These rebuilding programs comply with National Standard 1 and other applicable law in that they end overfishing on all stocks managed by the FMP and rebuild overfished groundfish stocks within the required timeframe. Measures proposed by FW 42 are necessary to end overfishing for some stocks and to continue to achieve the F targets established by the Amendment 13 rebuilding programs. This rebuilding strategy was designed to achieve OY, as reduced by social, economic, and ecological factors, in order to provide the greatest benefit to the nation, once all stocks are rebuilt, consistent with the National Standard 1 guidelines at § 600.310. Because the measures proposed by FW 42, including the GOM Differential DAS Area, ensure that several grounfish stocks remain on the Amendment 13 rebuilding trajectory, they are also consistent with National Standard 1.

Comment 16: One commenter argued that vessels within both the gillnet and hook gear sectors of the fishery should be exempt from the GOM Differential DAS Area restrictions, citing the recent decision by NMFS to exempt members of the GB Cod Hook Sector from differential DAS counting because they do not land very much yellowtail flounder (71 FR 42087, July 25, 2006).

Response: NMFS does not believe it is appropriate to exempt vessels fishing with gillnets or hook gear from the requirements of the GOM Differential DAS Area for several reasons. First, these vessels are not required to use

gillnets or hook gear for the entire FY and may elect to fish with trawl gear at any time during the FY. However, members of the GB Cod Hook Sector are required to fish with hook gear throughout the year. Further, the Sector demonstrated through catch reports that Sector vessels caught only minimal amounts of flatfish, including yellowtail flounder. It has not been demonstrated that gillnets are capable of avoiding yellowtail flounder; in fact, some gillnet gear specifically targets flatfish. Second, members of the GB Cod Hook Sector are restricted by a hard TAC on the amount of cod that such vessels can land, whereas non-Sector vessels, including non-Sector vessels using hook gear, would have no such limitation on the amount of cod catch and would only be restricted by DAS use and daily possession limits. Thus, the intent of the GOM Differential DAS Area could be easily undermined and F could actually increase on GOM cod. Third, the GB Cod Hook Sector Area is entirely outside of the GOM cod stock area and these vessels target GB cod, not GOM cod. Therefore, it would be inappropriate and inconsistent with the goals and objectives of this action and the FMP to allow vessels using gillnet gear and hook gear outside of the GB Cod Hook Sector to be exempt from the requirements of the GOM Differential DAS Area.

Comment 17: Eight commenters suggested that the differential DAS counting rate should be kept at 1.4:1 within the GOM Differential DAS Area. Some claimed that incorrect data for CC/GOM yellowtail flounder was used in the analysis for FW 42 and that, if corrected data were used for this stock, the need to implement a differential DAS rate of 2:1 to reduce F would be eliminated. Others claimed that updated data describing the effects of the emergency measures implemented by the April 13, 2006, emergency interim final rule will indicate that the fishery has already met the necessary F reductions for CC/GOM yellowtail flounder for 2006, eliminating the need for additional F reductions for this stock. One other commenter claimed that updated data for FY 2005 will reveal that the Amendment 13 measures were more effective at reducing F for most stocks than previously estimated. Commenters suggested that differential DAS counting within the GOM should be limited to FY 2006 only, and that the Council should substitute this with another measure for FY 2007 and 2008, including either eliminating differential DAS counting entirely or by substituting differential DAS counting with the industry proposal offered by the Northeast Seafood Coalition during the development of FW 42.

Response: Data used to evaluate whether additional measures proposed by FW 42 are necessary to meet the F targets for 2006 represent the best scientific information available. Additional catch data identified by the commenters were not available at the time the Council adopted FW 42 and submitted it to NMFS for final review. The National Standard 2 guidelines indicate that new information that becomes available between the initial drafting of the action and its submission for final review should be incorporated into the final action where practicable, but only if the information indicates that drastic changes have occurred in the fishery that could require the revision of the proposed action. The catch data identified by the commenters did not become available until after the Council submitted FW 42 to NMFS for final review. As a result, no analysis was conducted to determine the effects of incorporating this information into the analysis of the FW 42 measures. Because no analysis of the impact of this information was provided by the commenters, it is uncertain whether this additional information would be sufficient to indicate that the existing management measures, including those implemented by the April 13, 2006, emergency interim final rule, achieved the necessary F reductions for all stocks. Further, because the catch data referred to by the commenters is preliminary information, these data are not sufficient to evaluate whether drastic changes have occurred in the fishery that could require revision of the measures proposed by FW 42. However, NMFS has no reason to believe that drastic changes in the fishery have occurred. Because F is evaluated on a CY basis instead of a FY basis, it is not appropriate to use final landings from FY 2005, or even preliminary landings from FY 2006, to evaluate whether the F targets for CY 2005 were achieved, or whether the measures implemented by the emergency action were sufficient to reduce F for particular stocks for CY 2006, respectively. Although additional data may provide a more accurate depiction of catch and effort in the fishery during the entire FY 2005 and the first portion of FY 2006, as it would be in hindsight of any action, consideration of such preliminary data would further delay FW 42. Because measures in the emergency action do not fully achieve the necessary F reductions in FY 2006 for CC/GOM yellowtail flounder, it is critical that FW 42 be implemented as soon as possible in order to prevent overfishing on this stock and other stocks and prevent delaying the Amendment 13 rebuilding programs for all stocks. For a discussion regarding the validity of the data used to support measures proposed by FW 42, see the response to Comment 42 below. Therefore, FW 42 measures are based on the best scientific information available, consistent with National Standard 2.

The Council never considered a differential DAS counting rate of 1.4:1 within the GOM Differential DAS Area, but rather adopted a differential DAS counting rate of 2:1 because it met the mortality objectives of this action for FY 2006 through 2008 within a small geographic area. In contrast to the emergency action that implemented a differential DAS counting rate of 1.4:1 throughout the entire GOM RMA, FW 42 proposed to implement a higher differential DAS counting rate of 2:1 within a smaller inshore GOM Differential DAS Area as part of a targeted approach to reduce F on overfished stocks while minimizing reductions in F for other healthier stocks. Under the emergency action, a differential DAS counting rate of 1.4:1 was able to meet the necessary F reductions for GOM cod because it was applied to the entire GOM RMA, not just the inshore portion of the area. However, even over this expanded area, this lower differential rate was unable to achieve the necessary F reduction for CC/GOM yellowtail flounder. Therefore, it is unlikely that such a revision would achieve the necessary F reductions for GOM cod and CC/GOM yellowtail flounder over the much smaller area proposed by the GOM Differential DAS Area. The Council did not specify an end date for this measure, implying that this measure would remain in place until changed by a subsequent action. The Council may elect to modify or revise this measure through a future management action. Substituting the GOM Differential DAS measure proposed in FW 42 with the Northeast Seafood Coalition's proposal, as submitted at the March 2006 Council meeting, would not be approvable since the PDT found that the proposal, as proposed, would not achieve the necessary F reductions for several stocks.

Comment 18: One commenter suggested that NMFS allow vessels to declare into the GOM Differential DAS Area while at sea in a manner similar to the ''flex'' options.

Response: In general, NMFS requires that vessels declare their intent to fish in a particular area via VMS prior to

leaving port to ensure effective administration, monitoring, and enforcement of the area-specific provisions such as DAS counting and trip limits. Because FW 42 would allow a vessel fishing in the Eastern U.S./Canada Area to elect to fish outside of this area on the same trip via declaring a ''flex'' trip, NMFS has determined that it would be appropriate to also provide the industry with an option to declare their intent to fish in the GOM Differential DAS Area via the ''flex'' options, as recommended by this commenter. Therefore, a vessel could elect to ''Flex into the GOM Differential DAS Area'' while at sea to enable it to fish in the Eastern U.S./Canada Area and the GOM Differential DAS Area on the same trip. Alternatively, the vessel could declare into this area prior to leaving port. More information regarding area declarations and available ''flex'' options will be detailed in a permit holder letter sent to all groundfish vessels.

Commercial Trip Limits

Comment 19: Eight commenters supported the proposed GB yellowtail flounder trip limit.

Response: NMFS also supports the proposed trip limit for GB yellowtail flounder and implements this limit through this final rule.

Comment 20: Four commenters supported the proposed trip limits for CC/GOM and SNE/MA yellowtail flounder, while one other commenter suggested that such trip limits would increase discards.

Response: FW 42 indicates that, although the proposed trip limits may increase discard rates for CC/GOM and SNE/MA yellowtail flounder, the amount of discards should actually decrease due to effort reductions in the form of the default DAS reduction and GOM and SNE Differential DAS Areas also proposed in FW 42. Further, the proposed mesh revision in the SNE/MA RMA should also decrease discards of SNE/MA yellowtail flounder. The proposed trip limits for CC/GOM and SNE/MA yellowtail flounder may also decrease discards by standardizing the trip limits between the two stock areas and throughout the FY. Analysis conducted for this action accounts for discard mortality when evaluating the efficacy of the proposed trip limits on F. Based on this analysis, the proposed trip limits are necessary to achieve the rebuilding objectives of this action.

Comment 21: Three commenters supported the proposed trip limit of 5,000 lb/trip (2,268 kg/trip) for GB winter flounder, while four commenters supported a trip limit of 7,500 lb/trip (3,402 kg/trip) and one commenter thought it should be 10,000 lb/trip (4,536 kg/trip) instead. Those supporting a higher trip limit suggest that the higher trip limit is supported by the FW 42 analysis.

Response: Two of the alternatives considered by the Council during the development of FW 42, Alternative B2 and E (modified), included a GB winter flounder trip limit of 750 lb/DAS (340 kg/DAS), up to 7,500 lb/trip (3,402 kg/trip). However, the Council modified the GB winter flounder trip limit in Alternative B2 to 5,000 lb/trip (2,268 kg/trip) by unanimous consent and subsequently adopted this revised alternative as its preferred alternative for FW 42. Council members expressed concern that excessive discards would result under a daily possession limit for this stock, suggesting that an overall trip limit of 5,000 lb/trip (2,268 kg/trip) would more effectively reduce discards by minimizing the time necessary to catch the GB winter flounder trip limit. The proposed trip limit of 5,000 lb/trip (2,268 kg/trip) was selected based on the average trip duration of seven DAS multiplied by the proposed daily trip limit of 750 lb/DAS (340 kg/DAS) (7 DAS × 750 lb/DAS (340 kg/DAS) = 5,250 lb/trip (2,381.4 kg/trip)). Because the Council did not analyze the 10,000 lb/trip (4,536 kg/trip) limit suggested by one commenter, it is unknown whether this trip limit would achieve the necessary F reductions for this stock, given the other measures proposed by FW 42. Therefore, implementation of the proposed GB winter flounder trip limit of 5,000 lb/trip (2,268 kg/trip), which was demonstrated to achieve the necessary F reductions, is justified.

Regular B DAS Program

Comment 22: Seven commenters, including the DMR, supported the proposed revisions to the Regular B DAS Program. One of these commenters stated that this program was important to help mitigate the economic impacts of recent effort reductions.

Response: NMFS agrees that this program is an important way for vessels to mitigate the economic impacts of recent effort reductions and that the proposed revisions to this program would allow vessels to use Regular B DAS to target healthy stocks without compromising the rebuilding efforts of overfished stocks.

Comment 23: Two commenters suggested that NMFS should maximize the observer coverage to improve the effectiveness of this program. One commenter indicated that the 3-day Observer Program notice is unreasonable and unfairly limits the flexibility of vessel operations.

Response: A relatively high rate of observer coverage (a target observer coverage rate of approximately 36 percent based on previous observer coverage) is specified for this program. During the recent pilot phase of this program, approximately 36 percent of trips into this program were observed. NMFS believes the current observer coverage rate is sufficient to effectively monitor this program without compromising efforts to observe vessel operations in the rest of the fishery. A 3-day notice is necessary to allow the Observer Program to deploy observers and ensure that the proper amount of coverage for this program is achieved throughout the FY.

Comment 24: One commenter observed that the overall Target TACs and resulting Incidental Catch TACs for several species are too small to support an active Regular B DAS Program in the GOM. Three other commenters contended that the program offers little value to vessels unless they are capable of fishing on GB for haddock.

Response: Because of the need to reduce F for several stocks in the GOM and SNE RMAs, the Target TACs and Incidental Catch TACs for several species are necessary to achieve the F objectives in FW 42. Therefore, participation in the Regular B DAS Program will likely be limited by the availability of the incidental catch TACs for specific stocks of concern, in particular GOM cod and CC/GOM yellowtail flounder, which have quarterly Incidental Catch TACs as low as 6.7 mt (14,771 lb, or 6,700 kg) and 0.8 mt (1,764 lb, or 800 kg), respectively. FW 42 identifies several healthy groundfish stocks that may be targeted by vessels participating in the Regular B DAS Program: GB haddock, redfish, pollock, GOM winter flounder, and GOM haddock. Therefore, although limited, this program offers benefits to participating vessels in both the GOM and GB, to the extent practicable, provided vessels can selectively target these stocks without catching large quantities of the stocks of concern.

Comment 25: Three commenters, including the DMF, stated that it is impossible for gillnet vessels and small trawl vessels to effectively participate in this program, given the proposed small possession limits and the haddock separator trawl requirement. One commenter specifically requested a special Regular B DAS Program for gillnet vessels, stating that these vessels cannot fish with the haddock separator trawl.

Response: The proposed measures outlined for the Regular B DAS Program only require trawl vessels to fish with a haddock separator trawl when participating in this program. Gillnet vessels may fish with gillnet gear under this program. Gillnet vessels will be limited to 100 lb/DAS (45.4 kg/DAS) for each stock of concern and will not be limited to the restrictive trip limits for monkfish, flounders, skates, and lobsters required by the haddock separator trawl performance standards proposed for trawl vessels fishing in the Regular B DAS Program. The intent of this program is to selectively target healthy stocks (primarily haddock) while avoiding stocks of concern. The restrictive possession limits are necessary to reduce incentives to catch stocks of concern, which would compromise the effectiveness of the haddock separator trawl.

Comment 26: Three commenters requested that NMFS make several revisions to the proposed requirements for the Regular B DAS Program, as follows: (1) Remove the haddock separator trawl requirement; (2) eliminate the restrictive trip limits of 500 lb/trip (227 kg/trip) for flatfish and monkfish outlined in the Gear Performance Incentives; (3) increase the possession limits of groundfish stocks of concern proportionate to the Incidental Catch TACs for these stocks; and (4) increase the number of Regular B DAS allocated in each quarter, using catch rates from the Regular B DAS Pilot Program. These commenters stated that the proposed gear requirement would eliminate the incentive to test and improve the effectiveness of other gear under this program. Further, they question the effectiveness of the haddock separator trawl. These commenters contend that the proposed trip limits are confusing, are not supported by any identified conservation or management objectives, and that the quarterly Incidental Catch TACs and DAS limits provide sufficient protection for stocks of concern. Although the commenters supported the concept of gear performance standards, they contested that the proposed standards are arbitrary since the performance of the separator trawl to date indicates that this gear is not capable of achieving these standards. Three other commenters, including the DMR, supported the proposed Gear Performance Incentives for Special Management Programs, stating that they minimize incentives to compromise the effectiveness of the haddock separator trawl.

Response: The intent of the proposed haddock separator trawl requirement was to facilitate the harvest of healthy stocks such as haddock and pollock, while reducing the catch of overfished stocks such as cod, yellowtail flounder, and winter flounder. When properly configured, the haddock separator trawl is capable of effectively reducing the catches of cod, flounders, and other bottom-dwelling species such as monkfish, skates, and lobsters when targeting haddock. However, when improperly configured, the net is capable of catching larger amounts of these species, as observed in the recent performance of the haddock separator trawl in the NE multispecies fishery. The proposed Gear Performance Incentives, reflected in the trip limits associated with the use of the haddock separator trawl in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, were developed by the Council to increase incentives to configure the gear properly to avoid catching cod, flounder, skates, monkfish, and lobsters, thereby minimizing bycatch and time sorting catch on deck. These performance incentives were first proposed by the Groundfish Advisory Panel and later modified by the Groundfish Oversight Committee to provide a minimal allowance of bycatch of these other species. The proposed performance incentives are similar to the results achieved by a 1992 experiment by the Canadian Department of Fisheries and Oceans to test the performance of a haddock separator trawl. These standards are necessary to help promote and help ensure that the haddock separator trawl is used as intended in order to reduce catches of stocks of concern and prolong the availability of Incidental Catch TACs and access to this program. FW 42 does provide a mechanism whereby additional gears can be authorized in this program. The Council did not increase the number of Regular B DAS allocated to each quarter, as suggested by the commenter, but instead chose to reduce the number of Regular B DAS allocated to the first quarter to reduce the impact of this program on spawning fish. NMFS finds, therefore, that the suggested revisions to the Regular B DAS Program are not justified.

Comment 27: The Council recommended that NMFS consider requiring vessels participating in the Regular B DAS Program within the proposed differential DAS Areas to declare their intent to fish in these areas prior to leaving port to accurately count DAS, should the vessel is required to flip its DAS, in order to simplify enforcement and administration of this measure.

Response: As proposed, vessels would only be charged DAS at the differential DAS counting rate of 2:1 when declared into either the GOM or the SNE Differential DAS Areas and fishing under a Category A DAS. Because a vessel participating in this program is not subject to differential DAS counting while under a Regular B DAS, NMFS is requiring vessels to declare their intent to fish within the differential DAS Areas only when flipping to a Category A DAS. NMFS believes that the measure, as proposed, is sufficient to simplify administration and enforcement of this provision.

Renewal of DAS Leasing Program

Comment 28: Nine commenters, including the DMR, supported the extension of the DAS Leasing Program, as it mitigates the economic impacts of recent and continuing effort reductions. Six commenters, including the DMF, contest this belief and suggest that the leasing program will not mitigate the economic impacts of recent effort reductions, but will instead increase effort, and therefore F, on GOM cod, and result in further effort reductions and economic impacts in the future.

Response: The DAS Leasing Program provides benefits to fishermen that help offset some of the economic and social impacts resulting from continued effort reductions in the fishery. Analysis of the impacts of the DAS Leasing Program indicates that it is difficult to isolate the impacts of the DAS Leasing Program from the impacts of other management measures. However, an estimation of the impact from this program indicated that landings of most stocks by lessee vessels increased during CY 2004 when compared to their landings in CY 2003, suggesting that the leasing program is responsible for nominal increases in landings and F for these stocks. Although landings of GOM cod increased by approximately 3 percent, the stocks for which the DAS Leasing Program contributed the highest increase in landings (GB haddock, pollock, redfish, witch flounder, and American plaice) are all considered healthy stocks that do not need F reductions to maintain the Amendment 13 rebuilding program. This suggests that the DAS Leasing Program actually increases landings of these healthy species, thereby increasing the likelihood that the fishery will harvest OY from these stocks. The analysis further indicated that the DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead

and crew expenses, resulting in economic benefits to the fishery. As a result, the DAS Leasing Program does, in fact, help mitigate the economic impacts of recent effort reductions. National Standards 5 and 8 require that management measures consider efficiency in the utilization of fishery resources, where practicable, and provide for the sustained participation of fishing communities, respectively, consistent with the conservation objectives of the FMP. Consistent with these national standards, this final rule continues the DAS Leasing Program in order to increase the efficient utilization of fishery resources and help provide a means of mitigating some of the economic impacts of effort reductions in the fishery to promote continued participation. FW 42 concludes that the DAS Leasing Program, in light of other measures in FW 42, will not undermine conservation objectives of this action or the FMP.

Comment 29: Five commenters, including the DMF, asserted that the DAS Leasing Program is discriminatory because it consolidates DAS onto fewer vessels, preventing other vessels from gaining access to the fishery, suggesting an inconsistency with National Standard 4. Further, they claimed that smaller vessels that fish within the GOM are effectively restricted from participating in the DAS Leasing Program due to the proposed differential DAS counting in the inshore GOM and the higher cost to lease DAS to fish in this area.

Response: The DAS Leasing Program was designed with several provisions that limit the potential for consolidation of DAS within the fleet, including a cap on the number of DAS that a vessel could lease and limiting leases to vessels that are within specific size restrictions of the lessor vessel. As specified above, the DAS Leasing Program allows active groundfish vessels to continue to participate in the fishery by acquiring additional DAS from other vessels. An evaluation of the DAS Leasing Program reveals that this program allowed lessee vessels, including small trawl vessels, to fish enough DAS to cover overhead and crew expenses. This analysis also points out that the DAS Leasing Program resulted in a net increase in DAS for vessels operating out of Massachusetts, a state bordering the GOM. The FW 42 analysis acknowledges that vessels that have traditionally fished within the GOM Differential DAS Area may have a difficult time acquiring sufficient DAS through the DAS Leasing Program to fish in this area due to differential DAS counting. However, as noted above, differential DAS counting is necessary to achieve the conservation objectives of this action. Should a vessel determine that it is not profitable to fish within the GOM, given the impact of differential DAS counting, the DAS Leasing Program would enable such vessels to earn some revenue by leasing DAS to other vessels. Because the DAS Leasing Program does not contain any provision that discriminates among participants based on state of residence or any other criteria and makes no direct or deliberate distribution of DAS among individuals, the continuation of the DAS Leasing Program is consistent with the guidelines developed for National Standard 4 and contributes towards achieving goals 4 and 5 and objective 7 of the FMP as defined in Amendment 13.

Renewal and Modification of the Eastern U.S./Canada Haddock SAP

Comment 30: Six commenters, including the DMR, expressed general support for the renewal and proposed modifications to the Eastern U.S./Canada Area Haddock SAP.

Response: NMFS has also approved the proposed modifications to this SAP and continues it through FY 2008.

GB Cod Fixed Gear Sector

Comment 31: Thirty commenters expressed support for the proposed GB Cod Fixed Gear Sector, as it facilitates responsibility and accountability in the fishery, protects cod, and limits effort shifts within the fishery. Twenty-five commenters suggested that NMFS should correct the Fixed Gear Sector Area to reflect the larger area proposed by the Sector Operations Plan, rather than the existing GB Cod Hook Gear Sector Area, as this could facilitate pursuit of an offshore monkfish fishery while accounting for GB cod caught.

Response: NMFS agrees that the proposed Sector facilitates responsibility and accountability within the fishery. In addition, NMFS agrees that the proposed measure limits effort shifts within the fishery by requiring that Sector vessels fish with specific gear within a specific area. Further, by limiting catches of cod to a hard TAC, the proposed Sector ensures that F on GB cod from this Sector will not exceed its F targets. Because the catches of other species are regulated by DAS, NMFS believes that the proposed Sector is consistent with the F objectives of this action for other species and the overall objectives of the FMP.

Because the FW 42 document did not identify a geographic area associated with the proposed GB Cod Fixed Gear Sector, NMFS proposed that the GB Cod Fixed Gear Sector Area be the same as the GB Cod Hook Gear Sector Area, based on the fact that the goals of the GB Cod Fixed Gear Sector are very similar to those of the GB Cod Hook Gear Sector. The GB Cod Fixed Gear Sector submitted an Operations Plan requesting that Sector participants be allowed to fish in an area larger than the GB Cod Hook Sector Area identified in the FW 42 proposed rule in order to pursue an offshore gillnet fishery for monkfish. A proposed rule (August 22, 2006, 71 FR 48903) soliciting public comment on this Operations Plan is currently under review.

Comment 32: One commenter opposed the proposed Fixed Gear Sector, stating that NMFS should not encourage distribution of public resources into the control of private groups for their exclusive use. This commenter indicated that the proposed Sector neither advances rebuilding objectives, nor mitigates economic or social impacts of Amendment 13, and recommends that NMFS should expand participation in the fishery consistent with the 14th Amendment to the U.S. Constitution. Two commenters expressed concern that an exemption from the gillnet limits for the proposed Sector will allow vessels to exclusively target cod and then shift effort to other species, thereby reducing the effectiveness of the existing limit on the number of gillnets that may be fished by Day gillnet vessels and increasing effort on pollock and monkfish.

Response: Amendment 13 created the mechanism by which sectors can be formed. The objective of sectors is to provide incentives for groups of similar vessels (by port, gear type, size, etc.) to regulate themselves in an efficient and effective manner (see Section 3.4.16 of Amendment 13). Sectors also provide a mechanism for capacity reduction through consolidating effort onto fewer vessels, thereby ''reducing the cost of operations and possibly facilitating the profitable exit of some individual vessel owners from the fishery.'' The creation of a sector does not deprive other vessels from participating in the fishery, or from other fishing opportunities. Rather, it limits the fishing activities of a specific group of vessels to their historic participation in the fishery. Amendment 13 also requires that a sector stay within its allocation of GB cod and/or other hard TACs, which ensure that the sectors achieve the goals of the FMP for these species. Further, sectors provide substantial benefits to participants by creating incentives to regulate themselves in an effective and efficient manner.

The proposed Sector is limited by both a hard TAC on GB cod and by DAS for all other species. Therefore, Sector vessels would be required to use a NE multispecies DAS and/or monkfish DAS on every fishing trip and would be required to abide by all other regulations, unless specifically exempted by the Regional Administrator. As a result, the concern that Sector vessels could reduce the effectiveness of the gillnet limitation on pollock and monkfish by shifting effort onto these species appears unfounded.

Section 303(b) of the Magnuson-Stevens Act allows the establishment of a limited access system in a fishery to achieve OY. NMFS believes that it would be inappropriate to expand participation in the fishery beyond its current capacity, as this would compromise the Amendment 13 rebuilding programs and prevent the groundfish fishery from achieving OY.

Comment 33: Seven commenters recommended that NMFS only approve the proposed Sector if it would be allocated hard TACs for all stocks. Another commenter indicated that the proposed Sector should have hard TACs for bycatch species and monkfish. One other commenter opposed the approval of Sectors with a combination of both DAS and hard TACs as the primary management measures and indicated that the proposed Sector could cause effort to be redirected, having a significant impact on the rest of the fleet.

Response: Section 3.4.16 of Amendment 13 describes the mechanism by which sectors may be formed, indicating that ''Allocations to each sector may be based on catch (hard TACs) or effort (DAS) with target TACs specified for each sector.'' Although there has been some debate whether new sectors should be managed exclusively by either hard TACs or DAS restrictions, NMFS approved the GB Cod Hook Sector Operations Plan with a combination of both hard TACs and DAS limits after determining that DAS limits provide sufficient protection of stocks not subject to the hard TACs specified for a particular sector. In FW 42, the Council approved the GB Cod Fixed Gear Sector, which explicitly included a combination of hard TAC management for GB cod and DAS to manage all other groundfish stocks. It was unclear from the comment received how such sectors could cause effort to be redirected and what impact it would have on the rest of the fleet. As discussed in the response to Comment 32, the proposed Sector should not result in significant effort shifts, as Sector vessels would be limited to specific gear and area restrictions. By staying within these restrictions, Sector operations should not affect whether the rest of the fishery achieves the conservation objectives for GB cod and would have a minimal impact on potential future effort reductions in the fishery.

Eastern U.S./Canada Area Flexibility

Comment 34: Ten commenters, including the DMR, supported the proposed measure to allow vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, as it provides important flexibility in vessel operations in the event of bad weather or poor fishing opportunities.

Response: NMFS has approved this measure and implements it through this final rule.

Modification of the DAS Transfer Program

Comment 35: Eleven commenters, including the DMR, expressed support for the proposed modifications to the DAS Transfer Program, as they would increase the utility and effectiveness of the program. One commenter opposed allowing vessels to fish commercially after transferring its DAS, believing instead that the vessel should be permanently removed from all fisheries.

Response: Previous requirements to permanently exit all fisheries upon transferring DAS contributed to dissuading any vessel from participating in this program. This undermined the purpose and effectiveness of the program and neither reduced capacity in the NE multispecies fishery, nor increased the efficiency of the fleet, as intended. NMFS believes that the proposed modifications would provide incentives for vessels to participate in the program, thereby permanently reducing capacity and increasing efficiency in the NE multispecies fishery and has, therefore, approved this program as proposed in FW 42.

Standardized Requirements for Special Management Programs

Comment 36: Three commenters, including the DMR and the Council, believe that NMFS should continue to require vessels to declare the statistical area in which fish were caught via VMS. These commenters state that there has been no analysis to demonstrate that VMS location can be reliably used to assign catch to a particular statistical area, especially considering that some stocks are not uniformly distributed within all stock areas. In addition, the DMR suggested that NMFS require vessels to report catch by 30′ squares.

Response: The proposed elimination of this reporting requirement was intended to reduce the reporting burden on vessels participating in the Regular B DAS Program and for vessels fishing inside and outside of the Western U.S./Canada Area on the same trip. However, NMFS acknowledges that because some stocks are not uniformly distributed within all stock areas, it would be difficult to utilize VMS to accurately assign catch to a particular statistical area and reinserts this requirement into the final rule, thereby maintaining the requirement to report the statistical area in which fish were caught when participating in these programs. If appropriate, the Council may recommend that vessels report catch by 30′ squares by proposing such requirements in a subsequent action.

Modification of Cod Landing Limit in Eastern U.S./Canada Area

Comment 37: Nine commenters supported the modification to the GB cod trip limit in the Eastern U.S./Canada Area.

Response: NMFS has approved the proposed trip limit modification for GB cod and implements it through this final rule.

SNE/MA RMA Trawl Codend Mesh Requirement

Comment 38: Four commenters supported the proposed revision of the SNE/MA RMA trawl mesh requirements because it maintains consistency with mesh requirements in other areas and provides an incentive to use diamond mesh to reduce discards of yellowtail flounder.

Response: NMFS has approved the proposed measure and implements it through this final rule.

Regional Administrator Authority To Adjust Trip Limits for Target TAC Stocks

Comment 39: Eleven commenters, including the Council, expressed support for the proposed Regional Administrator authority to adjust trip limits upwards to facilitate the harvest of the Target TACs specified for six species, stating that it would facilitate the harvest of OY in these fisheries. Two of these commenters contested concerns expressed in the proposed rule that this measure would be problematic to administer, stating that the Regional Administrator has sufficient real-time data to effectively project whether the Target TAC would be harvested to allow trip limits to be increased. One commenter opposed this provision, indicating that the proposed Target TACs are set too high, that there is

limited real-time monitoring capability, that the proposed measure does not also include a provision to reduce Target TACs, and that Target TACs are not effective for determining whether the management program is meeting F targets.

Response: Contrary to assertions made by several commenters, sufficient data are not available to adequately assess total catch for these six species on a real-time basis. The Target TAC for GOM cod is based on commercial landings, discards, and recreational harvest. Data on the recreational harvest of GOM cod are not available on a real-time basis and are only available at the end of the FY. Because recreational harvest of GOM cod is a substantial component of the overall catch of this stock (approaching 43 percent of the total catch in 2004) and has varied considerably within the past 10 years, it is not possible to accurately project the total harvest of this stock throughout the fishery on a real-time basis. Further, discard estimates are generated in several ways. For some stocks (e.g., GOM cod), discard estimates are derived from observer data on a quarterly basis. However, the availability of these data would be inadequate for real-time projections of total catch. For other stocks (e.g., CC/GOM and SNE/MA yellowtail flounder, in particular), discards are estimated using VTRs. However, discard data from VTRs are not considered reliable and are subject to change. Therefore, there is considerable uncertainty regarding the data available to project total harvest of particular stocks on a real-time basis. Because of these limitations, the data available to implement this measure would not constitute the best available scientific information, as required by National Standard 2. In addition, section 303(a)(8) of the Magnuson-Stevens Act requires that an FMP specify the nature and extent of scientific data needed for the effective implementation of the FMP. As detailed above, without additional real-time reporting requirements to provide reliable and timely catch and discard data from both the commercial and recreational sectors, NMFS would not have sufficient real-time data to accurately monitor catch of particular species within the fishery. Therefore, this measure is not consistent with National Standard 2 or the required provisions of the Magnuson-Stevens Act and NMFS has disapproved it.

Regional Administrator Authority To Adjust Measures in the U.S./Canada Management Area

Comment 40: Five commenters expressed general support for the Regional Administrator authority to adjust measures in the U.S./Canada Management Area.

Response: NMFS believes that this measure increases the flexibility of the Regional Administrator to adjust the measures regulating vessel operations in the U.S./Canada Management Area to facilitate harvesting or prevent the fishery from exceeding specified U.S./Canada Management Area TACs for GB cod, GB haddock, and GB yellowtail flounder, or to prevent these TACs from being exceeded at any time during the FY. Such flexibility eases the administration and monitoring of these TACs and allows more effective and efficient management of the resources within this area without compromising the conservation objectives of the FMP.

General Comments

Comment 41: One commenter suggested that NMFS extend the emergency action and eight commenters requested that NMFS implement the measures proposed by FW 42 as soon as possible, arguing that the measures implemented by the April 13, 2006, emergency interim final rule do not meet the conservation objectives, but that FW 42 would meet these objectives. Four of these commenters expressed their preference for another alternative considered by the Council during the development of FW 42, Alternative E (modified).

Response: The emergency measures implemented by the April 13, 2006, emergency interim final rule were meant as a stop-gap measure to immediately reduce F on specific stocks, but they were never meant to achieve the full conservation objectives for 2006 without subsequent implementation of additional measures proposed by FW 42. Because the emergency measures are not intended to achieve the necessary F reductions in 2006 for all stocks, it is not appropriate to continue these measures. Therefore, NMFS agrees that it is important to implement approved FW 42 measures as quickly as possible to ensure that the conservation objectives are fully met for 2006. Alternative E was considered, but not adopted by the Council during the development of FW 42 because the underlying conservation measure to reduce F was based on charging DAS used in 24-hr increments. Several Council members expressed concern that this alternative would pose greater risk to vessel safety than the alternative adopted in FW 42.

Comment 42: Two individuals questioned the validity of the science used to support measures proposed by FW 42. Sixteen other commenters, including the DMF, argued that the analysis supporting FW 42 is inconsistent with National Standard 2. They assert that the CAM used to evaluate the proposed measures is not considered the best available science because it assumes a ''linear relationship between catch-per-unit-effort (CPUE) and effort'' without sufficient supporting evidence that such a relationship exists. Also, they suggest that the assumptions used by the CAM are invalid, including overestimating the CPUE for CC/GOM yellowtail flounder, and that the model does not have sufficient resolution to predict individual vessel behavior.

Response: The CAM is the primary tool used to evaluate the effectiveness of the proposed measures at achieving the necessary F reductions for this action. In 2001, the fundamental structure of the CAM was reviewed and endorsed by the Social Sciences Advisory Committee of the Council. In addition, a second review of this model was conducted by a panel of independent experts in January 2004. Based upon this second review, slight modifications to the CAM were performed to enhance the effectiveness of the model. Comparing the results of the CAM to the change in F between CY 2001 and CY 2004 observed by GARM II indicates that the CAM results were a reasonable approximation of the effectiveness of the Amendment 13 measures in terms of realized F for most stocks. Although the commenters highlight additional and ongoing evaluations of the performance and adequacy of the CAM, to date these reviews have yet to be completed and submitted to the Northeast Fisheries Science Center for review.

Commenters offered several criticisms of the CAM that have been determined to be inaccurate. First, the CAM is a non-linear model based on profit, not catch. The marginal profit of a particular vessel is considered non-linear, affecting where and when the vessel is expected to fish to maximize profit. However, CPUE is assumed to be constant and does not change regardless of how much effort is attributed to a particular block fished in an effort to maximize profit.

Assertions that changes in the CC/GOM yellowtail flounder CPUE used in the model would affect whether the proposed measures are able to achieve the necessary F reductions are also inaccurate. The CAM evaluates the

changes in exploitation from the proposed measures relative to status-quo measures. Therefore, if the same CPUE for CC/GOM yellowtail flounder is used to evaluate exploitation for both status-quo and proposed measures, then the relative change in exploitation between the two sets of measures would be the same, regardless of the value of the CC/GOM yellowtail flounder CPUE used by the model. The end result is that the fishery requires a 40-percent reduction in exploitation (or 46-percent reduction in F) to maintain the Amendment 13 rebuilding program for this stock. In addition, applying the same logic used to argue that the CPUE for CC/GOM yellowtail flounder was overestimated in the evaluation of FW 42 (that the absence of trip limits for this stock during the 2001–2004 period used to calculate the average CPUE for the CAM overestimate the actual CPUE for this stock) would suggest that the CPUE for GOM cod was underestimated in the evaluation of FW 42, as the proposed trip limit of 800 lb/DAS (363 kg/DAS) is substantially higher than the 400–800 lb/DAS (181 kg–363 kg/DAS) trip limits implemented between 2001–2004 and used as the average CPUE in the CAM.

The commenters repeatedly infer that catch is an adequate measure of the performance of the fishery. They state that the small reductions in Target TAC signify that only small F reductions are necessary, eliminating the need for draconian management measures. However, the reason the Target TACs are not as large as the required F reductions is because the projection model used to calculate Target TACs assumes that biomass increases because F is reduced to the necessary levels upon implementation of the proposed measures. As discussed in the response to Comment 39, the true indicator of the performance of the fishery is F, not catch. Even though the fishery may underharvest the Target TAC for a particular stock during the FY, the F may still be too high for that CY. The CAM does not evaluate the proposed measures based on expected catch, but rather relative changes in exploitation, which is then converted into F. Because F is evaluated on a CY basis and not a FY basis, it is inaccurate to compare catch from a particular FY with F for a particular CY.

One of the commenters stated that the CAM only evaluates the impacts on 10 of the 20 stocks managed by the FMP. This is not correct, as the CAM assesses the impacts of proposed measures on 19 of the 20 stocks managed by the fishery (Atlantic halibut is not included in the CAM).

Finally, contrary to assertions made by the commenters, the CAM uses the fishing locations of similarly-configured vessels from their fishing ports to determine whether vessels would shift effort into areas that they had never fished previously. Because the CAM uses data from VTRs, the CAM is limited in its resolution regarding time and area fished. However, the CAM is able to sufficiently predict individual vessel behavior to maximize profits based on the available data. Additional reporting requirements would need to be implemented to improve the data available to, and the resolution of, the existing model. The commenters did not question the validity of the economic analysis conducted for FW 42, despite the fact that the economic analysis relies upon the output from the CAM to estimate impacts on the fleet and fishing communities. In summary, NMFS has determined that the information relied on, and the analysis conducted, including analysis using the CAM, represents the best scientific information available, consistent with National Standard 2.

Comment 43: One commenter recommended that the GOM cod possession limit remain at 600 lb/DAS (272 kg/DAS) during FY 2006 to minimize incentives to target GOM cod and then increase the trip limit to 800 lb/DAS (363 kg/DAS) in FY 2007, once the stock starts to improve.

Response: Emergency measures implemented by the April 13, 2006, emergency interim final rule established a GOM cod trip limit of 600 lb/DAS (272 kg/DAS) to minimize incentives to target GOM cod in the short term under that action. However, in light of the other measures proposed in FW 42, the Council decided that it was not necessary to change the proposed trip limit of 800 lb/DAS (363 kg/DAS) in FW 42. The analysis for FW 42 concluded that a change in the trip limit was not necessary to achieve the necessary F reductions for GOM cod, given the suite of measures proposed by FW 42, including the default DAS reduction and the GOM Differential DAS Area. By leaving the trip limit at 800 lb/DAS (363 kg/DAS) bycatch is reduced and economic impacts on the fishing industry is mitigated.

Comment 44: Some commenters believed that the development of FW 42 was rushed and that the Council was not given enough time to develop a workable solution to address the conservation objectives of the action. Fifteen commenters argued that the public were not given adequate opportunity to evaluate the alternatives considered by Council because the social and economic analysis of two of the alternatives developed by the PDT (Alternative E (modified) and Alternative B2—the preferred alternative adopted by the Council) was not available for public review prior to the Council's vote to adopt a preferred alternative in FW 42. Twelve commenters believed that the social and economic impacts of the proposed measures were not given meaningful consideration during the development of FW 42, while four other commenters specifically stated that a full environmental impact statement (EIS) should have been prepared for this action because socio-economic impacts and sacrificed OY resulted from an inadequate range of alternatives. Finally, two commenters advocated that NMFS should disapprove FW 42 and remit it to the Council for further evaluation and consideration in order to reconsider whether effort controls are adequate in this fishery.

Response: The timeline available to develop FW 42 was based on the Amendment 13 requirement to implement any modifications to the management measures necessary to achieve the Amendment 13 F targets for each species and maintain the Amendment 13 rebuilding programs by the start of FY 2006 on May 1, 2006. The development of FW 42 began in January 2005 and involved more than 10 public meetings, including 5 Groundfish Oversight Committee and 5 Council meetings. In addition, the PDT held more than 19 conference calls and meetings that were often attended by members of the public. To ensure that these rebuilding programs remain on track, the Council needed to complete FW 42 by its November 2005 meeting to ensure a May 1, 2006, implementation date. Unfortunately, the Council was unable to adopt FW 42 at its November meeting, prompting NMFS to implement emergency measures through the April 13, 2006, emergency interim final rule in time for the start of FY 2006. This delay afforded the Council 2 additional months to develop and refine measures included in FW 42. In addition, the emergency interim final rule provided another mechanism to comment on the measures implemented by the April 13, 2006, emergency interim final rule. Therefore, there was ample opportunity for public input during the development of a workable solution to the management issues addressed by FW 42.

The commenters are correct that analysis of two additional alternatives (Alternatives B2 and E (modified)) were first presented to the public at the January 26, 2006, Groundfish Oversight

Committee meeting. These alternatives were originally developed by the PDT at the request of the Council at its November 15–17, 2006, meeting to analyze two separate areas for differential DAS counting. In fact, the PDT developed nine other alternatives in response to the Council's request, but only forwarded Alternatives B2 and E to the Groundfish Oversight Committee for further consideration, as they more effectively achieved the conservation objectives of the action. A table summarizing the measures included within these new alternatives, as well as tables comparing the biological and economic impacts of these new alternatives with the other alternatives fully analyzed within the draft FW 42 document (Alternatives 1–5), were presented to the Groundfish Oversight Committee on January 26, 2006, and later to the Council at its February 1, 2006, meeting. The full economic and social impacts analyses of these two new alternatives were still being written and, therefore, were not available at this meeting, however. Although more detailed information regarding the economic impacts of the other alternatives in the draft document (Alternatives 1–5) was available for the Council's February 1, 2006, meeting, the Council focused its discussion on the new Alternatives B2 and E because they would avoid the sweeping reductions in DAS allocations proposed in Alternatives 1–5. The public and the Council were provided with a summary of the primary biological and economic impacts (expected F and exploitation rates for each stocks along with changes in revenues by port) for each alternative at the earliest opportunity and could compare the alternatives under consideration prior to the Council vote to adopt a preferred alternative for FW 42. Therefore, the public and the Council had all of the necessary information and time to make an informed decision about the overall impacts of the alternatives considered. Once completed, the final EA was posted on the NMFS Northeast Regional Office Web site and made available to the public. Moreover, the public has had the benefit of fully considering FW 42 measures and their analysis since the proposed rule was published in July.

According to the NOAA guidelines for complying with the National Environmental Policy Act (NEPA) (NOAA Administrative Order 216–6), an EA must consider a reasonable range of alternatives, including the preferred action and the no action alternative. The eight alternatives considered in the EA prepared for FW 42 represent a reasonable range of alternatives. These alternatives included a wide range of options to reduce F in the fishery, including DAS allocation reductions, a minimum DAS charge, and differential DAS counting. In addition, as specified in the response to Comment 17, the Council considered an additional alternative, the industry proposal, that was offered for the first time at the February 1, 2006, Council meeting. The Council requested that the PDT evaluate the impacts of this industry proposal and debated whether to substitute it for the preferred alternative in FW 42 if analysis suggested that it would meet the necessary F reductions. Subsequent analysis presented at the April 5, 2006, Council meeting revealed that this alternative would not achieve the necessary F reductions for this action and the alternative was not considered further. All of the alternatives considered were designed to meet the purpose and need identified for this action. Other alternatives that did not meet the purpose and need for this action were not pursued. Therefore, NMFS asserts that a reasonable range of alternatives were considered for this action, consistent with the requirements of the NAO 216–6 and the NEPA.

Both NAO 216–6 and NEPA specify that significant economic and social impacts, by themselves, do not trigger the need to prepare an EIS. Further, the biological analysis prepared for this action indicates that the proposed FW 42 measures would not result in a significant impact to the human environment. Thus, an EA is appropriate and sufficient to support FW 42. Finally, this action is necessary to ensure that overfishing is stopped and that the stocks continue to rebuild according to the Amendment 13 rebuilding programs. The Council may reconsider whether DAS controls are effective in the groundfish fishery, or whether alternative management regimes would better meet the objectives of the FMP during the development of a subsequent action.

Comment 45: Three commenters specifically questioned whether FW 42 is consistent with National Standard 3 requirements to manage a group of interrelated stocks as a unit or in sufficiently close coordination. These commenters suggested that the fishery is instead managed through a series of individual stock-specific F targets and management measures that attempt to achieve MSY from each stock simultaneously, which may not be possible due to the interrelation of stocks in an ecosystem.

Response: All of the 19 groundfish stocks in the FMP are managed in close coordination with one another and as one unit to the extent practicable, as required by National Standard 3. Many of the primary management measures of this fishery are shared across the entire stock complex, including DAS limits, gear restrictions, limited access, and size limits. The National Standard 3 guidelines indicate management measures do not need to be identical for each geographic area within the management unit, provided that the FMP justifies these differences. Both the proposed GOM and SNE Differential DAS Area include different regulations that would only apply to portions of the entire geographic range of a individual stock and the stock complex as a whole. The EA prepared for FW 42 justifies these proposed measures by indicating that a targeted approach was taken to reduce F on GOM cod and CC/GOM and SNE/MA yellowtail flounder by charging DAS at a higher rate within discrete areas responsible for the majority of the catch of these stocks. This was intended to effectively reduce F on these stocks while maintaining opportunities to harvest other stocks within the GOM and SNE RMAs. While it is true that the FMP establishes individual stock-specific F targets, these targets are necessary to maintain the rebuilding programs established under Amendment 13, as each individual stock is at a different point along its rebuilding trajectory. These rebuilding programs are intended to rebuild the stocks to B_{MSY}, as required by the Magnuson-Stevens Act.

Comment 46: Four commenters, including the DMF, requested that NMFS use the mixed-stock exemption provided in the guidelines for National Standard 1 to allow the fishery to overfish CC/GOM yellowtail flounder in order to avoid unnecessarily sacrificing OY from other healthy stocks through the implementation of drastic effort reductions such as the proposed GOM Differential DAS Area.

Response: The guidelines for National Standard 1 at § 600.310(d)(6) indicate that a Council may construct an FMP such that it allows overfishing of one stock in a multispecies complex to achieve OY for another stock in the multispecies complex, provided three criteria are met: (1) Analysis indicates that overfishing one stock to achieve OY for another stock will result in net benefits to the Nation; (2) analysis indicates that similar long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner that no overfishing would occur; and (3) the F rate would not cause any stock to

require protection under the Endangered Species Act. The commenters have not provided any analysis that suggest that the three criteria necessary to implement this exemption would be met. Although this alternative was discussed by the Council in developing FW 42, it was not seriously considered and not analyzed, given the time constraints necessary to complete FW 42 and uncertainty that the necessary criteria could be met. Moreover, the mixed-stock exemption alternative would be such a radical departure from the current management regime that an amendment to the FMP, rather than a framework adjustment, would be necessary to implement it.

Comment 47: One commenter was concerned that the proposed measures may cause redirection of effort onto GB.

Response: Based on the CAM, the proposed measures are not predicted to cause effort shifts that would result in increases in F on GB stocks. Analysis prepared for FW 42 indicates that the proposed measures will meet the necessary F reductions for all stocks, including those on GB. In addition, because most of GB is governed by the provisions of the U.S./Canada Management Area, the Regional Administrator has the authority to revise specific measures to ensure that vessel operations within this area do not exceed specified TACs for GB yellowtail flounder, and GB cod and GB haddock in the Eastern U.S./Canada Area. Any revisions to management measures to protect these stocks will likely also result in protection for other groundfish stocks.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule, including changes as a result of public comment and the disapproval of the measure that would have provided the Regional Administrator with the authority to adjust trip limits for specific stocks. Some of these changes are administrative in nature, clarify the new or existing management measures, or correct inadvertent omissions in the proposed rule. These changes are listed below in the order that they appear in the regulations.

The Council indicated that the PDT recently discovered that there was a mistake in the projection for American plaice that over-estimated the Target TACs and Incidental Catch TACs for this species for FYs 2006–2008. The Target TACs and Incidental Catch TACs specified in Tables 2 and 3 above, respectively, were corrected to rectify this error.

In § 648.14, paragraph (a)(174) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.82, paragraph (e)(2)(iii)(A) has been revised, in response to comment and in order to be consistent with Council intent, by removing language specifying that a vessel may be in the GOM Differential DAS Area due to bad weather or circumstances beyond a vessel's control.

In § 648.82, paragraph (e)(2)(iii)(B) has been revised, in response to comment and in order to be consistent with Council intent and FW 42, by adding language that allows a vessel to be in the SNE Differential DAS Area when not fishing or transiting.

In § 648.82, paragraph (e)(2)(iv) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.82, paragraph (e)(3) has been revised to clarify that, for vessels fishing in both the Eastern U.S./Canada Area and the Regular B DAS Program on the same trip, the applicable DAS accounting rules for both areas apply.

In § 648.82, paragraph (k)(4)(xi)(B) has been revised to clarify the rules regarding the DAS Leasing Program baseline downgrade in the context of a DAS Transfer.

In § 648.82, paragraph (l)(1)(ii) has been revised to insert a cross reference to § 648.82(k)(4)(xi)(B) pertaining to the rules regarding the DAS Leasing Program baseline downgrade in the context of a DAS Transfer.

In § 648.85, paragraph (a)(3)(ii)(A) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.85, paragraph (a)(3)(iv)(C)(*2*) has been revised, in response to comment and in order to be consistent with Council intent, by inserting language specifying that the Regional Administrator may also adjust the GB yellowtail flounder landing limit to facilitate harvesting the GB yellowtail flounder TAC.

In § 648.85, paragraph (a)(3)(v)(B) has been revised, in response to comment and in order to be consistent with Council intent, to reinsert language requiring vessels to report the statistical area in which fish were caught.

In § 648.85, paragraph (b)(6)(iv)(E) has been revised order to insert cross references to applicable trip limits in § 648.85(a) that were omitted from the proposed rule.

In § 648.85, paragraph (b)(8)(v)(I) has been revised to insert cross references to applicable trip limits in § 648.85(a) that were omitted from the proposed rule.

In § 648.87, paragraph (d)(2)(ii)(C), has been revised to replace a reference to the GB Cod Hook Gear Sector with the GB Cod Fixed Gear Sector.

Classification

The Regional Administrator determined that the management measures implemented by this final rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws. This final rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in FW 42. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR in the FW 42 document, and this final rule document. The IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule are contained in the preamble to the proposed and this final rule and are not repeated here.

Summary of the Issues Raised by Public Comments in Response to the IRFA. A Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments

Comment A: One commenter disputed the determination in the IRFA that the economic loss to groundfish fishery will only be $21 million. This commenter claimed that the economic impact will be much more. This commenter suggested that the estimate of lost groundfish revenue is not 19 percent of groundfish revenue, as claimed in the IRFA, but rather 25–30 percent of 2005 groundfish revenue, as he suspected that the total fishing revenue for FY 2005 was only $80 million.

Response: The commenter did not provide any specific information to explain the basis for the disputed level of impacts and, therefore, as summarized below, NMFS supports the conclusion of the FRFA. The impacts on revenue in the IRFA are detailed in

Section 7.2.4 of the EA prepared for this action. As noted in the EA, the economic impacts were compared to FY 2004, not FY 2005, because complete FY 2005 data were not available at the time the analysis was completed. During FY 2004, the value of the total catch of groundfish, not total fishing revenue, was approximately $78 million. Of the estimated loss of $21 million attributable to measures proposed by FW 42, $15 million is due to a reduction in groundfish landings, while the remaining $6 million is due to reduced landings of other species. As a result, compared to the estimated $78 million in groundfish revenue landed in FY 2004, the estimated revenue loss of $15 million from FW 42 reflects a 19-percent reduction in groundfish revenue from FY 2004. It should be noted, however, that these economic impacts are the result of modeled impacts and may not accurately reflect the realized impacts of measures proposed by FW 42. Realized impacts may be higher or lower than these estimates, depending on how vessels adapt to the regulations implemented and how markets adjust to the resulting changes in seafood supply.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

Any vessel that possesses a NE multispecies permit would be required to comply with the proposed regulatory action. However, for the purposes of determination of impacts, only vessels that actually participated in an activity during FY 2004 that would be affected by the proposed action were considered for analysis. Vessels that were inactive were not considered because it is not likely that the participation level will increase in the future under the proposed regulatory regime. During FY 2004, 1,002 permit holders had an allocation of Category A DAS. Limited access NE multispecies permit holders may participate in both commercial and charter/party activity without having an open access NE multispecies charter/party permit. In FY 2004, 705 entities participated in the limited access commercial groundfish fishery, and 6 participated in the open access charter/party fishery for GOM cod. Four of these entities participated in both commercial and charter/party activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by the proposed action. Based on FY 2004 data, the proposed action would have a potential impact on a total of 3,216 limited and open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or charter/party activity that would be affected by the proposed action. Of these, 858 commercial fishing vessels would be affected by this proposed action, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during FY 2004–2005.

The Small Business Administration (SBA) size standard for small commercial fishing entities is $4 million in gross sales, and the size standard for small charter/party operators is $6.5 million. Available data for FY 2004 gross sales show that the maximum gross sales for any single commercial fishing vessel was $1.8 million, and the maximum gross sales for any affected charter/party vessel was $1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and charter/party fishing entities would fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

The reporting requirements for this final rule are as follows: This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been previously approved by OMB under control numbers 0648–0202, and 0648–0212. Public reporting burdens for these collections of information are as follows: (1) VMS purchase and installation; (2) VMS proof of installation; (3) spawning block declaration; (4) automated VMS polling of vessel position; (5) declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP; (6) notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas, associated SAPs, and CA I SAP; (7) standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, respectively; (8) standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP; (9) Sector Manager daily reports for CA I SAP; (10) DAS ''flip'' notification via VMS for the Regular B DAS Program; (11) DAS Leasing Program application; (12) declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip; (13) vessel baseline downgrade request for the DAS Leasing Program; (14) annual declaration of participation in the CA I Hook Gear Haddock SAP; (15) declaration of area and gear via VMS when fishing under a NE multispecies DAS; and (16) declaration of entry into the GOM and SNE Differential DAS Areas when not fishing or transiting. The burdens associated with these information collections include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

The alternative selected will continue the Amendment 13 default DAS allocations that took effect on May 1, 2006, under the emergency action; specify Target TACs and Incidental Catch TACs for FYs 2006, 2007, and 2008; implement a VMS requirement for limited access groundfish DAS vessels; implement differential DAS counting in specific areas of the GOM and SNE; modify the recreational possession restrictions and size limits for GOM cod; modify current and implement new commercial trip limits for several species; renew and modify the Regular B DAS Program, including the rules pertaining to monkfish vessels; renew and modify the Eastern U.S./Canada Haddock SAP; renew the DAS Leasing Program; modify the CA I Hook Gear Haddock SAP; authorize the formation of the Fixed Gear Sector; provide flexibility for vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip; modify reporting requirements for Special Management Programs; modify the DAS Transfer Program; modify the cod trip limit for the Eastern U.S./Canada Area; implement Gear Performance Incentives for the haddock separator trawl; and modify the trawl codend mesh size requirement in the SNE RMA.

The primary purpose of this action is to implement a rebuilding program for GB yellowtail flounder and modify NE multispecies fishery management measures to reduce F on six other groundfish stocks in order to maintain compliance with the rebuilding program

of the FMP. FW 42 also modifies and continues specific measures to mitigate the economic and social impacts of the FMP and allow harvest levels to approach OY.

The alternative that was adopted and implemented achieves the biological goals of FW 42, while minimizing the negative economic and social impacts. The principal feature that distinguishes one alternative from another is the strategy each alternative proposes to reduce F. As such, this discussion focuses on the measures designed to reduce F. Although all alternatives, with the exception of the No Action alternative, would have complied with the legal requirement to reduce F, the alternatives were not equal with respect to their compliance with the mandate to minimize negative social and economic impacts. The FW 42 analyses (Table 193 in the FW 42 document) indicate that the selected alternative will result in the least amount of reduction in total revenue for affected vessels (in dollars), and result in the least percentage decline in groundfish revenue, when compared with other alternatives. In addition, based on public testimony, the selected alternative was believed to promote safety better than another alternative that also had relatively low economic impacts when compared with all of the alternatives. The conclusion that the selected alternative was superior with respect to the potential estimated negative economic impacts was the primary reason this particular alternative was selected and approved. Implementation of the selected alternative will result in minimization of negative impacts on small entities. Although the No Action alternative would have resulted in less negative economic impact, the No Action alternative does not comply with the legal requirements of the Magnuson-Stevens Act regarding conservation since F would not be sufficiently reduced.

The GB yellowtail flounder rebuilding program implements a strategy and timeline for rebuilding this stock and complies with the legal requirements of the Magnuson-Stevens Act. Because the current regulations implementing the U.S./Canada Resource Sharing Understanding (Understanding) effectively control F on this stock, the rebuilding program does not represent a new restriction that has a negative impact on small entities. However, the rebuilding program is binding, in a manner in which the Understanding is not. The No Action alternative would not be in compliance with the Magnuson-Stevens Act. The GB yellowtail flounder rebuilding strategy implemented through this final rule was preferred over the non-selected alternatives because it is consistent with the rebuilding time periods of most of the stocks in the FMP, and has a higher probability associated with rebuilding. This is an adaptive rebuilding plan, effectively balancing the need to minimize impacts to the fishing industry while rebuilding the stock, and therefore minimizing impacts to small entities to the extent practicable.

Implementation of Target and Incidental TACs provide important tools for the functioning of the FMP by enabling harvest of various stocks in a manner consistent with the goals of the FMP. The No Action alternative would not enable the revised Target and Incidental TACs based on the best scientific information available to be used to informally evaluate the fishery. Furthermore, because revised Incidental Catch TACs were not proposed under the No Action alternative, that alternative would not have provided the necessary protection for stocks of concern. Without Incidental Catch TACs, either the Special Management Programs would not be allowed to open (and the associated revenue would be lost), or such programs would operate without the necessary restrictions that ensure compliance with the biological objectives of the FMP.

The implemented measure that allows flexibility for vessels to fish both inside and outside of the Eastern U.S./Canada Area on the same trip decreases the chance that vessels fishing in the Eastern U.S./Canada Area will have an unprofitable trip and, therefore, serves to further minimize negative impacts on small entities.

The requirement that all limited access groundfish DAS vessels using a groundfish DAS must be equipped with an approved VMS was selected in order to support the monitoring, reporting, and enforcement of the increasingly complex measures under the FMP. Although implementation of the VMS requirement will result in additional costs to the active members of the groundfish fleet (all of which are small entities), one of the primary reasons the regulations are so complex is to accommodate the extremely diverse characteristics and interests of the fishery. For example, in the SNE and GOM RMAs the use of VMS enables NMFS to administer and enforce complex rules that charge vessels DAS at different rates depending upon where the vessel fishes. Vessels that do not fish in the geographic areas associated with the stocks that require the largest reduction in fishing effort are not subject to the same restrictions as those vessels that do fish in such areas. The differential DAS system is designed to reduce F on several fish stocks, while allowing vessel owners choices regarding where to fish and the amount of DAS costs to incur. Although it is not possible to precisely quantify economic gains that result from the use of VMS, selection of the VMS alternative supports the complex regulations that are designed to allow the fishery to approach OY. For example, it may have been possible to implement Alternative 5 without a VMS requirement, because Alternative 5 does not include differential DAS counting by areas, but relies instead on a larger reduction in allocated Category A DAS. However, economic impacts of Alternative 5 are greater than those associated with either of the differential DAS alternatives.

Although all the alternatives for recreational and charter/party measures were designed to achieve the same percentage in F reductions for GOM cod as for the commercial sector, the preferred alternative was selected in order to minimize impacts on the recreational and charter/party fisheries. Although impacts on charter/party operators depend on how their potential clients react to the regulatory changes, the analysis suggests that the selected alternative will have less harmful economic impacts then the two non-selected alternatives. Part of the reason for the different economic impacts is the different months encompassed by the alternatives and the traditional seasonality of the recreational and charter/party fisheries. The No Action alternative is not justified because the recreational and charter/party fisheries have contributed to the excessive F rate on GOM cod, and therefore must contribute to the necessary reductions in F under FW 42. If the No Action alternative were selected, the commercial sector would have had to adopt even more restrictive regulations to reduce fishing mortality on GOM cod than those implemented by the final rule.

All of the alternatives, with the exception of the No-Action alternative, include various trip limits for some of the stocks in need of F reductions. Such trip limits, in conjunction with the DAS strategies in the various alternatives, serve to mitigate the amount of DAS restrictions necessary. The no action alternative, which proposes no change to the trip limits, would not have met the biological requirements of the FMP.

All of the alternatives, with the exception of the No-Action alternative, include the renewal and/or modification of the Special Management Programs (CA I Hook Gear Haddock SAP, Eastern

U.S./Canada Haddock SAP, Regular B DAS Program). These programs were renewed and/or modified in order to continue to mitigate the negative economic impacts of the FMP and enable the fishery to approach OY. By renewing and modifying these Special Management Programs, vessels are allowed to access fish stocks in a restricted manner that protects stocks of concern. In contrast, yield and revenue from the fishery would have been reduced under the No Action alternative because that alternative would not have provided enhanced access to various stocks. The DAS Leasing Program provides additional economic opportunity for vessels, as it may have an important role in maintaining profitability for small entities, and the revision of the DAS Transfer Program provides additional incentive to participate in the program and, therefore, provides different types of economic opportunities for vessel owners. Both of these programs minimize the negative impacts of FW 42 by providing economic opportunities for the groundfish fleet, which the No Action alternative would not provide.

Other management measures implemented by this final rule, such as standardization of reporting requirements, modification of Regional Administrator Authority, Gear Performance Incentives, modification to the cod trip limit for the Eastern U.S./Canada Area, and the change in the minimum trawl mesh requirement when fishing in the SNE RMA, serve to improve and facilitate the functioning of the FMP and increase the likelihood that the regulations will have the intended effects. As such, the alternative selected and implemented has a beneficial economic impact on small entities when compared with the No Action Alternative.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

1. VMS purchase and installation, OMB# 0648–0202 (1 hr/response);
2. VMS proof of installation, OMB# 0648–0202 (5 min/response);
3. Spawning block declaration, OMB# 0648–0202 (2 min/response);
4. Automated VMS polling of vessel position, OMB# 0648–0202 (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Area, associated SAPs, and CA I SAP, and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB# 0648–0202 (5 min/response);
6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Area, associated SAPs, and CA I SAP, OMB# 0648–0202 (2 min/response);
7. Standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, respectively, OMB# 0648–0212 (15 min/response);
8. Standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, OMB# 0648–0212 (15 min/response);
9. Sector Manager daily reports for CA I Hook Gear Haddock SAP, OMB# 0648–0212 (2 hr/response);
10. DAS ''flip'' notification via VMS for the Regular B DAS Program, OMB# 0648–0202 (5 min/response);
11. DAS Leasing Program application, OMB# 0648–0475 (10 min/response);
12. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB# 0648–0202 (5 min/response);
13. Vessel baseline downgrade request for the DAS Leasing Program, OMB# 0648–0202 (1 hr/response);
14. Annual declaration of participation in the CA I Hook Gear Haddock SAP, OMB #0648–0202 (2 min/response);
15. Declaration of area and gear via VMS when fishing under a NE multispecies DAS, OMB# 0648–0202 (5 min/response); and
16. Declaration of entry into the GOM and SNE Differential DAS Area when not fishing or transiting via VMS, OMB# 0648–0202 (5 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burdern, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

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

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the multispecies and monkfish fisheries. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 16, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is 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 § 648.2, a new definition for ''Jigging'' is added and the definition for ''Regulated species'' is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Jigging, with respect to the NE multispecies fishery, means fishing for regulated species with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

* * * * *

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake, also referred to as regulated NE multispecies.

* * * * *

■ 3. In § 648.10, paragraphs (b)(1)(vii) and (viii) are removed and reserved; paragraphs (b)(1)(v), (vi), (b)(2) and (3), the introductory text to paragraph (c),

and paragraphs (c)(5), (d), and (f) are revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(v) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section; and

(vi) A vessel issued a limited access NE multispecies permit that fishes under a NE multispecies Category A or B DAS.

* * * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all limited access NE multispecies DAS permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use.

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out (i.e., not fishing under the applicable DAS program) of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing exclusively in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

(iv) The Regional Administrator may authorize or require the use of the call-in system instead of using the use of VMS, as described under paragraph (d) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(3)(i) A vessel issued a limited access monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section.

(ii) [Reserved].

(iii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Vessels electing to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. A vessel that calls in is exempt from the prohibition specified in § 648.14(c)(2).

* * * * *

(c) *Call-in notification.* The owner of a vessel issued a limited access monkfish or red crab permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the Occasional category and who has not elected to fish under the VMS notification requirements of paragraph (b) of this section, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(b)(2)(iii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1) shall be deemed to be in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (b) or (c) of this section.

* * * * *

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section, instead of the use of the VMS. If use of the call-

in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

* * * * *

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of a vessel issued a valid Small Vessel category permit or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if required by the Regional Administrator) and provide the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in.* A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

■ 4. In § 648.14, paragraphs (a)(130), (145), (146), (148), (151), (152), and (156); the introductory text of paragraph (c); paragraphs (c)(7), (25), (33), (49) through (53), (55) through (65) and (78) are revised; paragraphs (c)(48), (c)(54), and (c)(79) are removed and reserved; and paragraphs (a)(173) through (177), (c)(23), (c)(81) through (88), (g)(4), and (g)(5) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

* * * * *

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP, exceed the possession limits specified in § 648.85(b)(8)(v)(F).

(146) If fishing under the Eastern U.S./Canada Haddock SAP, fish for, harvest, possess, or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (I).

* * * * *

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

* * * * *

(151) If fishing in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

* * * * *

(156) If fishing under an approved Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year or, if fishing under a NE multispecies DAS, fish in an approved Sector in a given fishing year, unless otherwise provided under § 648.87(b)(1)(xii).

* * * * *

(173) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(ii)(A)(*1*).

(174) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(ii)(A) and the other applicable area fished.

(175) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(176) If fishing under the GB Fixed Gear Sector specified under § 648.87(d)(2), fish with gear other than jigs, non-automated demersal longline, handgear, or sink gillnets.

(177) Fail to comply with the reporting requirements under § 648.85(a)(3)(ii)(A)(*2*) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

* * * * *

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access NE multispecies permit or letter under § 648.4(a)(1)(I), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (e), (g), (h), and (j), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

(23) Fail to declare through VMS its intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

* * * * *

(25) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(1)(ii)(B).

* * * * *

(33) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(2)(ii)(B).

* * * * *

(48) [Reserved]

(49) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in §§ 648.85(b)(3)(xi), 648.85(b)(7)(iv)(H) or 648.85(b)(8)(v)(I).

(50) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(6)(iv)(E).

(51) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel

harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(52) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in § 648.82(d)(2)(i)(A).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Area, and other portions of the Eastern U.S./Canada Haddock SAP Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(54) [Reserved]

(55) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in § 648.85(b)(8)(v)(F) or under § 648.86.

(56) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), (I), and (J).

(58) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), use a Regular B DAS after the program has closed, as required under § 648.85(b)(6)(iv)(G) or (H).

* * * * *

(78) Fish in the Eastern U.S./Canada Haddock SAP specified in § 648.85(b)(8), if the SAP is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(79) [Reserved]

* * * * *

(81) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A).

(82) If fishing under a NE multispecies Category A DAS in either the GOM Differential DAS Area, or the SNE Differential DAS Area defined under § 648.82(e)(2)(i), fail to declare into the area through VMS as required under § 648.82(e)(2)(ii).

(83) If fishing under a NE multispecies Category A DAS in one of the Differential DAS Areas defined in § 648.82(e)(2)(i), and under the restrictions of one or more of the Special Management Programs under § 648.85, fail to comply with the most restrictive regulations.

(84) Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(85) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required under § 648.85(a)(3)(ii)(A).

(86) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via VMS that it is electing to fish in this manner, as required by § 648.85(a)(3)(ii)(A)(*1*).

(87) Possess or land more white hake than allowed under § 648.86(e).

(88) Possess or land more GB winter flounder than allowed under § 648.86(j).

* * * * *

(g) * * *

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in § 648.89(c)(1)(v) or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing under § 648.89(c)(2)(v).

(5) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(v) or (c)(2)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

* * * * *

5. In § 648.80, paragraph (b)(2)(i) is revised to read as follows:

§ 648.80 NE multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

6. In § 648.82, paragraph (c)(1)(iv) is removed; paragraphs (d)(2)(i)(A), the introductory text to paragraph (d)(4), paragraphs (e), (j)(1)(iii), (k)(1), (k)(3), (k)(4)(iv), (k)(4)(xi)(B), (l) introductory text, and paragraphs (l)(1)(i) through (v) are revised; and paragraphs (l)(1)(viii), and (l)(1)(ix) are added to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(6). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing in an approved SAP as described in § 648.85(b)). Vessels that are required by the Monkfish Fishery Management Plan

to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not elect to use a NE multispecies Category B DAS to satisfy that requirement.

* * * * *

(4) *Criteria and procedure for not reducing DAS allocations.* The schedule of reductions in NE multispecies DAS shall not occur if the Regional Administrator:

* * * * *

(e) *Accrual of DAS.* (1) DAS shall accrue to the nearest minute, and with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10(c)(5).

(2) *Differential DAS.* For a NE multispecies DAS vessel that intends to fish some or all of its trip, or fishes, some or all of its trip other than for transiting purposes, under a Category A DAS in the GOM Differential DAS Area, as defined in paragraph (e)(2)(i)(A) of this section, or in the SNE Differential DAS Area, as defined in paragraph (e)(2)(i)(B) of this section, with the exception of Day gillnet vessels, which accrue DAS in accordance with paragraph (j)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the differential DAS rate described in paragraph (e)(2)(iii) of this section, and be subject to the restrictions defined in this paragraph (e).

(i) *Differential DAS Areas.* (A) *GOM Differential DAS Area.* The GOM Differential DAS Area is defined by straight lines connecting the following points in the order stated:

GOM DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
GMD1	43°30′	Intersection with Maine Coastline.
GMD2	43°30′	69°30′.
GMD3	43°00′	69°30′.
GMD4	43°00′	69°55′ eastern boundary, WGOM Closed Area.
GMD5	42°30′	69°55′.
GMD6	42°30″	69°30′.
GMD7	41°30′	69°30′.
GMD8	41°30′	70°00′.
GMD9	North to intersection with Cape Cod, Massachusetts, coast and 70°00′ W.	

(B) SNE Differential DAS Area. The SNE Differential DAS Area is defined by straight lines connecting the following points in the order stated:

SNE DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
SNED1	41°05′	71°45′
SNED2	41°05′	70°00′
SNED3	41°00′	70°00′
SNED4	41°00′	69°30′
SNED5	40°50′	69°30′
SNED6	40°50′	70°20′
SNED7	40°40′	70°20′
SNED8	40°40′	70°30′
SNED9	40°30′	72°30′
SNED10	40°10′	73°00′
SNED11	40°00′	73°15′
SNED12	40°00′	73°40′
SNED13	40°15′	73°40′
SNED14	40°30′	73°00′
SNED15	40°55′	71°45′
SNED16	41°05′	71°45′

(ii) *Declaration.* With the exception of vessels fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii)(A), a NE multispecies DAS vessel that intends to fish, or fishes under a Category A DAS in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in paragraph (e)(2)(i) of this section, must, prior to leaving the dock, declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific differential DAS area the vessel will fish in on that trip. A DAS vessel that fishes in the Eastern U.S./Canada Area and intends to fish, or fishes, subsequently in the GOM Differential DAS Area or the SNE Differential DAS Area under Category A DAS Area must declare its intention to do so through its VMS prior to leaving the Eastern U.S./Canada Area, as specified in § 648.85(a)(3)(ii)(A)(*3*).

(iii) *Differential DAS counting*—(A) *Differential DAS counting when fishing in the GOM Differential DAS Area.* For a NE multispecies vessel that intends to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the GOM Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to1 for the entire trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel that has not declared its intent to fish in the GOM Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the GOM Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area, and the vessel declares immediately upon entering the GOM Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2 to1 for the entire trip.

(B) *Differential DAS counting when fishing in the SNE Differential DAS Area.* For a NE multispecies DAS vessel that intends to fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the SNE Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the duration of the time spent in the SNE Differential DAS Area, as determined from VMS positional data. A vessel that has not declared its intent to fish in the SNE Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the SNE Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area and the vessel declares immediately upon entering the SNE Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip. If the Regional Administrator requires the use of the DAS call-in, as described under § 648.10(b)(2)(iv), a vessel that fishes any portion of its trip in the SNE Differential DAS Area will be charged DAS at the rate of 2 to1 for the entire trip.

(iv) *Restrictions.* A NE multispecies vessel fishing under a Category A DAS in one of the Differential DAS Areas defined in paragraph (e)(2)(i) of this section, under the restrictions of paragraph (e)(2) of this section and under the restrictions of one or more of the Special Management Programs under § 648.85 must comply with the most restrictive DAS counting, trip limits, and reporting requirements, specified in this paragraph (e)(2) and in § 648.85, under the pertinent Special Management Program.

(v) *Transiting.* A vessel may transit the GOM Differential DAS Area and the SNE Differential DAS Area, as defined in paragraph (e)(2)(i) of this section, provided the gear is stowed in accordance with the provisions of § 648.23(b).

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), and that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on one calendar day

from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can legally land. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in one of the Differential DAS Areas, defined in (e)(2)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(2)(iii) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS accounting rules specified in § 648.10(b)(2)(iii).

* * * * *

(j) * * *

(1) * * *

(iii) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(3) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, when not subject to differential DAS counting as specified under paragraph (e)(2) of this section, shall accrue 15 hr of DAS for each trip of more than 3 hr, but less than or equal to 15 hr. Such vessel shall accrue actual DAS time at sea for trips less than or equal to 3 hr, or more than 15 hr.

(C) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the GOM Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(A) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours used for any trip of 0–3 hr in duration, and for any trip of greater than 7.5 hr. For such vessels fishing from 3 to 7.5 hr duration, vessels will be charged a full 15 hr. For example, a Day gillnet vessel fishing in the GOM Differential Area for 8 actual hr would be charged 16 hours of DAS, or if fishing for 5 actual hr would be charged 15 hr of DAS.

(D) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the SNE Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(B) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours that are in the SNE Differential DAS Area that are from 0–3 hr in duration and greater than 7.5 hr. For hours in the SNE Differential DAS Area that are over 3 hr and less than or equal to 7.5 hr duration, a vessel shall be charged a full 15 hr. For a Day gillnet vessel that fishes both inside and outside of the SNE Differential DAS Area on the same trip, time fished outside the area shall accrue on the basis of actual time, unless otherwise specified in this paragraph (j)(1)(iii). A Day gillnet vessel fishing inside and outside of the SNE Differential DAS Area on the same trip shall not accrue less DAS for the entire trip than would a Day gillnet vessel fishing the same amount of time outside of the SNE Differential DAS Area for the entire trip (accruing DAS as specified under paragraph (j)(1)(iii)(B) of this section).

* * * * *

(k) * * *

(1) *Program description.* Eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

* * * * *

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(4) * * *

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's current allocation of Category A DAS.

* * * * *

(xi) * * *

(B) *Duration and applicability of one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer unless otherwise specified in this paragraph (k)(4)(xi)(B). Once the permit is transferred to another vessel, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade, unless otherwise specified. Once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit. The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), or any other provision respectively. For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid.

(l) *DAS Transfer Program.* Except for vessels fishing under a sector allocation as specified in § 648.87, or a vessel that acted as a lessee or lessor in the DAS Leasing Program transaction, a vessel issued a valid limited access NE

multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS. Upon approval of the DAS transfer, all history associated with the transferred NE multispecies DAS (moratorium right history, DAS use history, and catch history) shall be associated with the permit rights of the transferee. Neither the individual permit history elements, nor total history associated with the transferred DAS may be retained by the transferor.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(B) of this section.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, i.e, those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

(iv) For the purpose of calculating the DAS conservation tax as described in this paragraph (l), the applicants must specify which DAS (the transferor's DAS or the transferee's DAS) are subject to the DAS reduction. NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, shall be reduced by 20 percent upon transfer. Category C DAS, as defined under paragraph (d)(3) of this section, shall be reduced by 90 percent upon transfer.

(v) In any particular fishing year, a vessel may not execute a DAS transfer as a transferor if it previously participated in the DAS Leasing Program as either a lessee or a lessor, as described under paragraph (k) of this section. A vessel may participate in DAS lease transaction (as a lessee or a lessor) and submit an application for a DAS transfer (as a transferor) during the same fishing year, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Other combinations of activities under the DAS Leasing and DAS Transfer programs are permissible during the same fishing year (i.e., act as a transferee, or act as transferor and subsequently conduct a DAS lease).

* * * * *

(viii) A vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

(ix) A vessel with a DAS allocation resulting from a DAS Transfer in accordance with this paragraph (l) may acquire, through leasing, up to the sum of the DAS allocations for the 2001 fishing year, associated with the transferred and original DAS (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit), in accordance with the restrictions of paragraph (k) of this section.

* * * * *

7. In § 648.85, paragraphs (a)(3)(ii)(A); (a)(3)(iv)(A); (a)(3)(iv)(C)(*1*) and (*2*); (a)(3)(iv)(D); (a)(3)(v); (b)(3)(xi); (b)(5); (b)(6)(iii); (b)(6)(iv)(C) through (F), (H), and (I); (b)(6)(v)(C) and (E); (b)(6)(vi); (b)(7)(iv)(F) through (H); (b)(7)(v)(D); (b)(7)(vi)(D); the introductory text of paragraph (b)(8); (b)(8)(i) and (iv); introductory text of paragraph (b)(8)(v)(A); (b)(8)(v)(A)(*2*) through (*4*); and (b)(8)(v)(E), (F), (H), (I) and (K) are revised; paragraphs (b)(6)(ii) and (b)(8)(iii) are removed and reserved; and paragraph (b)(6)(iv)(J) is added to read as follows:

§ 648.85 Special Management Programs.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting, trip limits, and reporting requirements for the areas fished for the entire trip, and provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. On a trip when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS any time prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS, once a vessel that has elected to fish outside of the Eastern U.S./Canada Area leaves the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS demarcation line at the start of its fishing trip until the time the vessel crosses the demarcation line on its return to port, in accordance with § 648.10(b)(2)(iii).

(*2*) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under § 648.85(a)(3)(v) for the duration of the trip.

(*3*) If the vessel fishes or intends to fish in one of the Differential DAS Areas defined under § 648.82(e)(2)(i), it must declare its intent to fish in the specific Differential DAS Area prior to leaving the Eastern U.S./Canada Area, and must not have exceeded the CC/GOM or SNE/MA yellowtail flounder trip limits, specified in § 648.86(g), for the respective areas.

(*4*) If a vessel possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions

under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs as required under this section.

* * * * *

(C) * * *

(1) *Initial yellowtail flounder landing limit.* Unless further restricted under paragraph (a)(3)(iv)(D) of this section (gear performance incentives), or modified pursuant to paragraph (a)(3)(iv)(D), the initial yellowtail flounder landing limit for each fishing year is 10,000 lb (4,536.2 kg) per trip.

(2) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC or to facilitate harvesting the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC, in a manner consistent with the Administrative Procedure Act. The Regional Administrator may specify yellowtail flounder trip limits that apply to the whole U.S./Canada Management Area or to either the Western or Eastern Area.

* * * * *

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, modify the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or facilitate achieving the TAC. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg)(whole weight) each (*i.e.*, no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The vessel must continue to report daily, even after exiting the U.S./Canada Management Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; and total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded;

(B) Date fish were caught and statistical area in which fish were caught; and

(C) Vessel Trip Report (VTR) serial number, as instructed by the Regional Administrator.

* * * * *

(b) * * *

(3) * * *

(xi) *No-discard provision and DAS flips.* A vessel fishing in the CA II Yellowtail Flounder SAP, may not discard legal-sized regulated NE multispecies, Atlantic halibut, or ocean pout. If a vessel fishing in the CA II Yellowtail Flounder SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a vessel operator fishing in the CA II Yellowtail Flounder SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies, ocean pout, or Atlantic halibut than the maximum landing limits allowed per trip, specified under paragraph (b)(3)(iv) or (viii) of this section, or under § 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be specified through the periodic adjustment process described in § 648.90, and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder, and GB winter flounder, the Incidental Catch TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The Incidental Catch TAC for GB cod specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; and 50 percent to

the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

* * * * *

(6) * * *

(ii) [Reserved].

(iii) *Quarterly Incidental Catch TACs.* The Incidental Catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs as follows: The first quarter shall receive 13 percent of the Incidental Catch TACs and the remaining quarters shall each receive 29 percent of the Incidental Catch TACs. NMFS shall send letters to all limited access NE multispecies permit holders notifying them of such TACs.

(iv) * * *

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip. Mere declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program, if the vessel has not crossed the VMS demarcation line.

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout, and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, Atlantic halibut, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species is prohibited. If such a vessel harvests and brings on board legal-sized regulated NE multispecies, or Atlantic halibut in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified under § 648.86 or § 648.85(a) and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in § 648.82(e)(2)(i), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by 2. For example, if a vessel plans a trip under the Regular B DAS Program into the GOM Differential DAS Area and has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(3).

* * * * *

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May-July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(3).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished; total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described under paragraph (b)(6)(iv)(E) of this section.

(J) *Gear requirement*—(*1*) Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section, or other type of gear if approved as described under this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program.

(*2*) The Regional Administrator may authorize additional gear if the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Regular B DAS Program, NMFS must provide a written rationale to the Council regarding its decision not to do so.

(v) * * *

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area for the purposes of the

Regular B DAS Program is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
CCGOM1	43°00′	Intersection with New Hampshire Coastline.
CCGOM2	43°00′	70°00′.
CCGOM3	42°30′	70°00′.
CCGOM4	42°30′	69°30′.
CCGOM5	41°30′	69°30′.
CCGOM6	41°30′	69°00′.
CCGOM7	41°00′	69°00′.
CCGOM8	41°00′	69°30′.
CCGOM5	41°30′	69°30′.
CCGOM9	41°30′	70°00′.
CCGOM10 ..	(1)	70°00′.
CCGOM11 ..	42°00′	Intersection with east facing shoreline of Cape Cod, Massachusetts.
CCGOM12 ..	42°00′	Intersection with west facing shoreline of Massachusetts.
CCGOM13 ..	(2)	70°00′

[1] Intersection with south facing shoreline of Cape Cod, Massachusetts.
[2] Intersection with east facing shoreline of Cape Cod, Massachusetts.

* * * * *

(E) SNE/MA yellowtail flounder stock area. The SNE/MA yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
SNEMA1	40°00′	74°00′
SNEMA2	40°00′	72°00′
SNEMA3	40°30′	72°00′
SNEMA4	40°30′	69°30′
SNEMA5	41°00′	69°30′
SNEMA6	41°00′	69°00′
SNEMA7	41°30′	69°00′
SNEMA8	41°30′	70°00′
SNEMA9	41°00′	70°00′
SNEMA10	41°00′	70°30′
SNEMA11	41°30′	70°30′
SNEMA12	(1)	72°00′
SNEMA13	(2)	72°00′
SNEMA14	(3)	73°00′
SNEMA15	40°30′	73°00′
SNEMA16	40°30′	74°00′
SNEMA17	40°00′	74°00′

[1] South facing shoreline of Connecticut.
[2] North facing shoreline of Long Island, New York.
[3] South facing shoreline of Long Island, New York.

* * * * *

(vi) *Closure of the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, in a manner consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program. Reasons for terminating the program include, but are not limited to the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(7) * * *

(iv) * * *

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: $Biomass_{YEAR\ X}$ = (1,130 mt live weight) x (Projected WGB Haddock Exploitable $Biomass_{YEAR\ X}$ / WGB Haddock Exploitable $Biomass_{2004}$). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the Closed Area I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the Closed Area I Hook Gear Haddock SAP, and must exit the SAP if the vessel exceeds the applicable landing limits described in paragraph (b)(7)(iv)(H) of this section.

(H) *Landing limits.* For all eligible vessels declared into the Closed Area I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(7)(v)(C) and (b)(7)(vi)(C) of this section, are as specified at § 648.86. Such vessels are prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

* * * * *

(v) * * *

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager will provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(8) *Eastern U.S./Canada Haddock SAP*—(i) *Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section, is eligible to participate in the Eastern U.S./Canada Haddock SAP, and may fish in the Eastern U.S./Canada

Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section, or the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section.

* * * * *

(iii) [Reserved].

(iv) *Season.* An eligible vessel may fish in the Eastern U.S./Canada Haddock SAP from August 1 through December 31.

(v) * * *

(A) *DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP may elect to fish under a Category A or Category B DAS, in accordance with § 648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

* * * * *

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8)(i) of this section may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the Closed Area II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder Access Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(*4*) A vessel that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting, trip limits, and reporting requirements of the areas fished for the entire trip, including those in paragraph (a)(3)(ii)(A)(*3*) of this section.

* * * * *

(E) *Gear restrictions*—(*1*) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section, or other type of gear, if approved as described under this paragraph (b)(8)(v)(E). No other type of fishing gear may be on the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, with the exception of a flounder net, as described in paragraph (a)(3)(iii) of this section, provided that the flounder net is stowed in accordance with § 648.23(b).

(*2*) The Regional Administrator may authorize additional gear if the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Eastern U.S./Canada Haddock SAP, NMFS must provide a written rationale to the Council regarding its decision not to do so.

(F) *Landing limits.* Unless otherwise restricted, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight), and skates (whole weight) is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited.

* * * * *

(H) *Incidental TACs.* The maximum amount of GB cod, and the amount of GB yellowtail flounder and GB winter flounder, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout. If a vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified under paragraph (b)(8)(v)(F) of this section, or under § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified under § 648.85(a) or § 648.86. If a vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified under paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined under paragraph (b)(8)(ii) of this section for the remainder of the trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP.* When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP, through publication in the **Federal Register** consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Program.

* * * * *

■ 8. In § 648.86, the section heading and paragraphs (a)(1), (b)(1), (b)(2), (b)(4), (e), and (g) are revised; and paragraph (j) is added, to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(1) *NE multispecies DAS vessels*—(i) *Implementation and adjustments to the haddock trip limit to prevent exceeding the Target TAC.* At any time prior to or during the fishing year, if the Regional Administrator projects that the Target TAC for haddock will be exceeded in that fishing year, NMFS may implement or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to prevent

exceeding the Target TAC in that fishing year.

(ii) *Implementation and adjustments to the haddock trip limit to facilitate harvest of the Target TAC.* At any time prior to or during the fishing year, if the Regional Administrator projects that less than 90 percent of the Target TAC for that fishing year will be harvested, NMFS may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to facilitate a haddock harvest and enable the total catch to approach the Target TAC for that fishing year.

* * * * *

(b) * * *

(1) *GOM cod landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard and, after returning to port, does not depart from a dock or mooring in port, unless transiting as allowed under paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port) may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip).

(B) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system, as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.

(2) *GB cod landing and maximum possession limits.* (i) Unless otherwise restricted under § 648.85 or the provisions of paragraph (b)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (b)(1) of this section as authorized under the Sector provisions of § 648.87, a NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod per DAS, or part of a DAS, provided it complies with the requirements specified at paragraph (b)(4) of this section and this paragraph (b)(2). A NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after such vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg) of cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) of cod for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4,536 kg) of cod per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 2,000 lb (907.2 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.)

(B) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard, and after returning to port does not depart from a dock or mooring in port, unless transiting, as allowed under paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip.)

* * * * *

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the Gulf of Maine Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration.* With the exception of vessels declared into the U.S./Canada Management Area, as described under § 648.85(a)(3)(ii), a NE multispecies DAS vessel that fishes or intends to fish south of the line described in paragraph (b)(4) of this section, under the cod trip limits described under paragraph (b)(2) of this section, must, prior to leaving the dock, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the authorization letter on board.

(ii) A vessel exempt from the GOM cod landing limit may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

* * * * *

(e) *White hake.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 5,000 lb (2,268.1 kg) per trip.

* * * * *

(g) *Yellowtail flounder.* (1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined under § 648.85(a)(1), may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,000 lb (453.6 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g)) or § 648.85(a)(3)(iv)(C).

(2) *GB yellowtail flounder landing limit.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1) is subject to the GB yellowtail flounder limit described under paragraph § 648.85(a)(3)(iv)(c).

* * * * *

(j) *GB winter flounder.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1), may not possess or land more than 5,000 lb (2,268.1 kg) of GB winter flounder per trip.

* * * * *

■ 9. In § 648.87, paragraph (d)(2) is added to read as follows:

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(2) *GB Cod Fixed Gear Sector.* Eligible NE multispecies DAS vessels, as specified in paragraph (d)(2)(i) of this section, may participate in the GB Cod Fixed Gear Sector within the area defined as the GB Cod Hook Sector Area, as specified under paragraph (d)(1)(i) of this section, under the GB Cod Fixed Gear Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner complies with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section.

(i) *Eligibility.* All vessels issued a limited access NE multispecies DAS permit are eligible to participate in the GB Cod Fixed Gear Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001, regardless of gear fished.

(ii) *TAC allocation.* For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operations Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, regardless of gear used, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(2)(ii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(2)(ii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Fixed Gear Sector for the fishing year in question.

(iii) *Requirements.* A vessel fishing under the GB Cod Fixed Gear Sector may not fish with gear other than jigs, non-automated demersal longline, hand gear, or sink gillnets.

■ 10. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 NE multispecies open access permit restrictions.

* * * * *

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

* * * * *

■ 11. In § 648.89, paragraphs (b)(1), (c)(1)(i), and (c)(2)(i) are revised, and paragraphs (b)(3), (c)(1)(v), and (c)(2)(v) are added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(1) *Minimum fish sizes.* Unless further restricted under paragraph (b)(3) of this section, persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL), as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes
Cod	22″ (58.4 cm)
Haddock	19″ (48.3 cm)
Pollock	19″ (48.3 cm)
Witch flounder (gray sole)	14″ (35.6 cm)
Yellowtail flounder	13″ (33.0 cm)
Atlantic halibut	36″ (91.4 cm)
American plaice (dab)	14″ (35.6 cm)
Winter flounder (blackback)	12″ (30.5 cm)
Redfish	9″ (22.9 cm)

* * * * *

(3) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) of this section may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

* * * * *

(c) * * *

(1) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

* * * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for or possess any cod from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(2) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(2)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day.

* * * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard charter/party fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for or possess any cod from November 1 through March 31. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

■ 12. In § 648.92, paragraph (b)(2)(i) is revised to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used. However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B DAS in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

* * * * *

[FR Doc. 06–8811 Filed 10–17–06; 4:22 pm]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 138/P.L. 109–354

To revise the boundaries of John H. Chafee Coastal Barrier Resources System Jekyll Island Unit GA-06P. (Oct. 16, 2006; 120 Stat. 2017)

H.R. 479/P.L. 109–355

To replace a Coastal Barrier Resources System map relating to Coastal Barrier Resources System Grayton Beach Unit FL-95P in Walton County, Florida. (Oct. 16, 2006; 120 Stat. 2018)

H.R. 3508/P.L. 109–356

2005 District of Columbia Omnibus Authorization Act (Oct. 16, 2006; 120 Stat. 2019)

H.R. 4902/P.L. 109–357

Byron Nelson Congressional Gold Medal Act (Oct. 16, 2006; 120 Stat. 2044)

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Lake Mattamuskeet Lodge Preservation Act (Oct. 16, 2006; 120 Stat. 2047)

H.R. 5160/P.L. 109–359

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H.R. 5381/P.L. 109–360

National Fish Hatchery System Volunteer Act of 2006 (Oct. 16, 2006; 120 Stat. 2058)

S. 2562/P.L. 109–361

Veterans' Compensation Cost-of-Living Adjustment Act of 2006 (Oct. 16, 2006; 120 Stat. 2062)

H.R. 233/P.L. 109–362

Northern California Coastal Wild Heritage Wilderness Act (Oct. 17, 2006; 120 Stat. 2064)

H.R. 4957/P.L. 109–363

To direct the Secretary of the Interior to convey the Tylersville division of the Lamar National Fish Hatchery and Fish Technology Center to the State of Pennsylvania, and for other purposes. (Oct. 17, 2006; 120 Stat. 2074)

H.R. 5122/P.L. 109–364

John Warner National Defense Authorization Act for the Financial Year 2007 (Oct. 17, 2006; 120 Stat. 2083)

H.R. 6197/P.L. 109–365

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S. 3930/P.L. 109–366

Military Commissions Act of 2006 (Oct. 17, 2006; 120 Stat. 2600)

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

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