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# Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–22812; Directorate Identifier 2005–NM–134–AD; Amendment 39–14811; AD 2006–22–14]**

**RIN 2120–AA64**

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

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A330 airplanes and Model A340–200 and –300 series airplanes. This AD requires repetitive detailed inspections for cracking in the aft web of support rib 6 between certain bottom skin stringers on both wings; high frequency eddy current inspections for cracking of the attachment holes of the fuel pipes, and repair if necessary. This AD also provides for an optional modification, which extends a certain inspection threshold, and mandates, for certain airplanes, a new modification of support rib 6 on both wings, which ends the repetitive inspection requirement. This AD results from a report of significant cracking found in the aft web of support rib 6 on both wings. We are issuing this AD to prevent cracking in the aft web of support rib 6, which could result in overloading of adjacent ribs and the surrounding wing structure and consequent reduced structural integrity of the wing.

**DATES:** This AD becomes effective December 11, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 11, 2006.

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

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

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

### Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A330 airplanes and Model A340–200 and –300 series airplanes. That supplemental NPRM was published in the **Federal Register** on May 26, 2006 (71 FR 30340). That supplemental NPRM proposed to require repetitive detailed inspections for cracking in the aft web of support rib 6 between certain bottom skin stringers on both wings; high frequency eddy current inspections for cracking of the attachment holes of the fuel pipes, and repair if necessary. The supplemental NPRM also provided for an optional modification, which would extend a certain inspection threshold. For certain airplanes, the supplemental NPRM proposed to require a new modification of support rib 6 on both wings, which would end the repetitive inspection requirement. The supplemental NPRM also proposed to reduce the applicability in the original NPRM.

### Comment

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

### Request for Credit for Terminating Modification

The Air Transport Association (ATA), on behalf of its member Northwest Airlines (NWA), asks that we recognize Airbus Modification 54432 as terminating action for the repetitive inspection requirements in the supplemental NPRM. NWA states that this modification is being incorporated by Airbus in production as the ''production solution'' for the fatigue cracking problems. NWA adds that the modification will be installed on its Model A330 airplanes delivered with manufacturer's serial number 0778 and subsequent.

We agree that Airbus Modification 54432 will be terminating action for the referenced repetitive inspections. However, that modification is not yet approved by either the European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, or the FAA. The modification is currently in the approval process with the EASA. This modification is the production solution that installs a re-designed rib for production airplanes with a new wing build. Once the modification is approved, the referenced EASA airworthiness directive will be revised to include this terminating action. After the modification is approved and available, operators may request an alternative method of compliance for installing the modification. We have not changed the AD in this regard.

### Explanation of Change to the Supplemental NPRM

Airbus Service Bulletins A300–57–3085 and A340–57–4093, both Revision 02, both dated September 29, 2005, were included in the service information section of the supplemental NPRM as the sources of service information for accomplishing the inspections. However, Revision 02 was inadvertently omitted from paragraph (l) of the supplemental NPRM; we have added Revision 02 to paragraph (l) accordingly.

## Conclusion

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

## Costs of Compliance

This AD affects about 25 airplanes of U.S. registry.

The inspections take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspections for U.S. operators is $8,000, or $320 per airplane, per inspection cycle.

The modification of support rib 6 on the left-hand wing takes about 38 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $5,020 per airplane. Based on these figures, the estimated cost of this modification of the left-hand wing on U.S. operators is $201,500, or $8,060 per airplane.

The modification of support rib 6 on the right-hand wing takes about 38 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost about $5,020 per airplane. Based on these figures, the estimated cost of this modification of the right-hand wing on U.S. operators is $201,500, or $8,060 per airplane.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2006–22–14 Airbus**: Amendment 39–14811. Docket No. FAA–2005–22812; Directorate Identifier 2005–NM–134–AD.

**Effective Date**

(a) This AD becomes effective December 11, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A330 airplanes and Model A340–200 and –300 series airplanes, certificated in any category; on which Airbus Modification 41114 or 44599 was done during production; except those airplanes on which Airbus Modification 53883 was done during production.

**Unsafe Condition**

(d) This AD results from a report of significant cracking found in the aft web of support rib 6 on both wings. We are issuing this AD to prevent cracking in the aft web of support rib 6, which could result in overloading of adjacent ribs and the surrounding wing structure and consequent reduced structural integrity of the wing.

**Compliance**

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

**Note 1:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

**Repetitive Inspections**

(f) For Model A330 series airplanes on which Airbus Modification 53882 was not done during production: At the applicable time specified in paragraph (f)(1), (f)(2), or (f)(3) of this AD, perform a detailed inspection for cracking in the aft web of support rib 6 between bottom skin stringers 18 and 20 on both wings, and high frequency eddy current inspections for cracking of the attachment holes of the fuel pipe and fuel pipe mounting, by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3085, Revision 02, dated September 29, 2005. If no crack is found during the initial inspections, repeat the inspections thereafter at intervals not to exceed 8,000 flight cycles or 25,000 flight hours, whichever is first, until the terminating action specified in paragraph (n) of this AD is done. If any crack is found during any inspection, repair as specified in paragraph (k) of this AD, or before further flight do the terminating action specified in paragraph (n) of this AD.

(1) For airplanes that have accumulated 7,999 or fewer total flight cycles, and 24,999 or fewer total flight hours, as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Before the accumulation of 8,000 total flight cycles or 25,000 total flight hours, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(2) For airplanes that have accumulated 8,000 or more total flight cycles, but fewer than 10,000 total flight cycles; or 25,000 or more total flight hours, but fewer than 30,000 total flight hours; as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 total flight cycles or 30,000 total flight hours, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 or more total flight cycles or 30,000 or more total flight hours as of the effective

date of this AD: Do the inspections within 3 months after the effective date of this AD.

(g) For Model A330 series airplanes on which Airbus Modification 53882 was done during production or on which Airbus Service Bulletin A330–57–3087, dated February 15, 2005, or Revision 01, dated September 22, 2005, has been done: Perform the applicable inspections required by paragraph (f) of this AD at the earliest of the initial inspection thresholds specified in Figure 4, Sheet 1, ''Inspection Flow Chart'' of Airbus Service Bulletin A330–57–3085, Revision 02, dated September 29, 2005; or within 6 months after the effective date of this AD, whichever is later. Repeat the inspections required by paragraph (f) of this AD at the time specified in paragraph (f) of this AD, until the terminating action specified in paragraph (n) of this AD is done.

(h) For Model A340 series airplanes on which Airbus Modification 53882 was not done during production: Perform the inspections required by paragraph (f) of this AD at the applicable time specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD. Perform the inspections by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4093, Revision 02, dated September 29, 2005. Repeat the inspections thereafter at intervals not to exceed 8,000 flight cycles or 30,200 flight hours, whichever is first, until the terminating action specified in paragraph (n) of this AD is done.

(1) For airplanes that have accumulated 7,999 or fewer total flight cycles, and 30,199 or fewer total flight hours, as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Before the accumulation of 8,000 total flight cycles or 30,200 total flight hours, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(2) For airplanes that have accumulated 8,000 or more total flight cycles, but fewer than 10,000 total flight cycles; or 30,200 or more total flight cycles, but fewer than 43,700 total flight hours, as of the effective date of this AD: Do the inspections at the later of the times specified in paragraphs (h)(2)(i) and (h)(2)(ii) of this AD.

(i) Before the accumulation of 10,000 total flight cycles or 43,700 total flight hours, whichever is first.

(ii) Within 8 months after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 or more total flight cycles or 43,700 or more total flight hours as of the effective date of this AD: Do the inspections within 3 months after the effective date of this AD.

(i) For Model A340 series airplanes on which Airbus Modification 53882 was done during production or on which Airbus Service Bulletin A340–57–4095, dated February 15, 2005, or Revision 01, dated September 22, 2005, has been done: Perform the applicable inspections required by paragraph (f) of this AD at the earliest of the initial inspection thresholds specified in Figure 4, Sheet 1, ''Inspection Flow Chart'' of Airbus Service Bulletin A340–57–4093, Revision 02, dated September 29, 2005; or within 6 months after the effective date of this AD, whichever is later. Repeat the inspections required by paragraph (f) of this AD at the time specified in paragraph (h) of this AD, until the terminating action specified in paragraph (n) of this AD is done.

**Inspections Accomplished According to Previous Issue of Service Bulletins**

(j) Inspections accomplished before the effective date of this AD according to Airbus All Operator Telex A330–57A3085 or A340–57A4093, each dated December 15, 2004; or Airbus Service Bulletin A330–57–3085 or A340–57–4093, each Revision 01, each dated March 25, 2005; are considered acceptable for compliance with the corresponding inspections specified in this AD.

**Repair**

(k) If any cracking is found during any inspection required by this AD: Before further flight, either repair and get a schedule for subsequent inspections, according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent); or accomplish the terminating action specified in paragraph (n) of this AD.

**Optional Modification**

(l) Accomplishing the modification of the fuel pipe connector and the fastener holes of support rib 6 on both wings by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330–57–3087 or A340–57–4095, each dated February 15, 2005, or Revision 01, each dated September 22, 2005, as applicable, extends the interval for the next inspection to the applicable post-modification inspection threshold specified in Figure 4, Sheet 1, ''Inspection Flow Chart'' of Airbus Service Bulletins A330–57–3085 or A340–57–4093, each Revision 02, each dated September 29, 2005, as applicable. After accomplishing that inspection, repeat the applicable inspections required by paragraph (f) or (h) of this AD at the applicable repetitive inspection interval specified in Figure 4 of the Accomplishment Instructions of the applicable service bulletin, until the terminating action specified in paragraph (n) of this AD is done.

**Hard or Overweight Landing**

(m) For Model A330 series airplanes with 8,000 or more total flight cycles or 25,000 or more total flight hours, and Model A340 series airplanes with 8,000 or more total flight cycles or 30,200 or more total flight hours that have not been modified in accordance with paragraph (n) of this AD: Before further flight after any hard or overweight landing of the airplane, accomplish the applicable follow-on inspections and any applicable corrective actions according to a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent). Accomplishing the inspections in Chapter 05–51–11, titled ''Inspection After Hard/Overweight Landing—Inspection/Check,'' dated April 1, 2005, or July 1, 2006, of the Airbus A330 Aircraft Maintenance Manual (AMM); or Chapter 05–51–11, titled ''Inspection After Hard/Overweight Landing—Inspection/Check,'' dated July 1, 2006, of the Airbus A340 AMM; as applicable; and Airbus A330/A340 Technical Disposition (TD) TD/J1/S3/00608/2005, Issue C, dated April 26, 2005, titled ''Inspections following hard landing, both wings,'' are approved methods. Operators can obtain the TD from Airbus.

**Terminating Modification**

(n) For airplanes on which support rib 6 on both wings has not been repaired in accordance with paragraph (k) of this AD: Within 60 months after the effective date of this AD, modify the fuel pipe connector and the fastener holes of support rib 6 on both wings by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330–57–3088 or A340–57–4096, each including Appendix 01, each dated September 21, 2005, as applicable. Accomplishing the modification in this paragraph ends the repetitive inspections required by this AD. Repair of support rib 6 on both wings before the effective date of this AD using Airbus A330/A340 Repair Instruction R572–57023, Issue D, dated May 11, 2005; or R572–57026, Issue C, dated December 2005; as applicable, ends the repetitive inspections required by this AD.

**Alternative Methods of Compliance (AMOCs)**

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

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Related Information**

(p) French airworthiness directives F–2006–008 and F–2006–009, both dated January 4, 2006, also address the subject of this AD.

**Material Incorporated by Reference**

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

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

| Airbus Service Bulletin | Revision level | Date |
|---|---|---|
| A330–57–3085 | 02 | September 29, 2005. |
| A330–57–3087 | Original | February 15, 2005. |
| A330–57–3087 | 01 | September 22, 2005. |
| A330–57–3088, including Appendix 01 | Original | September 21, 2005. |
| A340–57–4093 | 02 | September 29, 2005. |
| A340–57–4095 | Original | February 15, 2005. |
| A340–57–4095 | 01 | September 22, 2005. |
| A340–57–4096, including Appendix 01 | Original | September 21, 2005. |

Issued in Renton, Washington, on October 25, 2006.

**Kalene C. Yanamura,**

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

[FR Doc. E6–18471 Filed 11–3–06; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–23921; Directorate Identifier 2005–NM–205–AD; Amendment 39–14812; AD 2006–22–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 747 series airplanes. That AD currently requires repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary. This new AD reduces the interval for certain repetitive inspections and removes a certain optional inspection. This new AD also requires replacing the NWW side and top panels with new panels, which terminates the repetitive inspections. This AD results from the development of a new modification. We are issuing this AD to prevent fatigue cracks in the top and side panel webs and stiffeners of the NWW, which could compromise the structural integrity of the NWW and could lead to the rapid decompression of the airplane.

**DATES:** This AD becomes effective December 11, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 11, 2006.

On May 10, 2005 (70 FR 21141, April 25, 2005), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2465, Revision 4, dated February 24, 2005.

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

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

**FOR FURTHER INFORMATION CONTACT:** Nick Kusz, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6432; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Examining the Docket

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

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2005–09–02, amendment 39–14070 (70 FR 21141, April 25, 2005). [A correction of that AD was published in the **Federal Register** on May 25, 2005 (70 FR 29940).] The existing AD applies to all Boeing Model 747 series airplanes. That NPRM was published in the **Federal Register** on February 15, 2006 (71 FR 7883). That NPRM proposed to continue to require repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary. That NPRM also proposed to reduce the interval for certain repetitive inspections and remove a certain optional inspection. That NPRM also proposed to require replacing the NWW side and top panels with new panels, which would terminate the repetitive inspections.

### Comments

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

### Support for the NPRM

Boeing, the airplane manufacturer, agrees with the contents of the NPRM.

### Request To Remove Actions for Group 2 Airplanes or Extend Compliance Time

The Air Transport Association (ATA), on behalf of one of its members, Northwest Airlines (NWA), requests that either the proposed requirement for terminating action for Group 2 airplanes be removed from the NPRM or the compliance time for doing the termination action be extended from four years to six years. The ATA notes that there are no service instructions for the terminating action for Group 2 airplanes. The ATA also states that extending the compliance time will allow the development of the service instructions and an assessment of the requirement's impact. NWA adds that it has not experienced extensive cracking that would warrant serious consideration or justification to mandate the terminating action (replacement of the NWW side and top panels). NWA also states that it would be very difficult to accomplish the replacement without a service bulletin.

We agree with the commenter's concern regarding lack of availability of service instructions for Group 2 airplanes; however, we do not consider that removing the terminating action or delaying this action until after the

manufacturer develops a service bulletin for the replacement of the NWW side and top panels for Group 2 airplanes is warranted.

We have coordinated with Boeing regarding the availability of service instructions. Boeing states that it will issue a revised service bulletin that includes procedures for Group 2 airplanes by July 2007 and that there will parts available at that time. Therefore, we have revised the compliance time for Group 2 airplanes to allow adequate time to accomplish the actions specified in this final rule.

We have extended the compliance time specified in paragraph (o) of the final rule from 48 months to 57 months. We have determined that extending the compliance time will not adversely affect safety. In addition, under the provisions of paragraph (p) of the final rule, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

### Explanation of Change Made to NPRM

For clarification, the FAA has revised the definition of a ''detailed inspection'' in Note 1 of this final rule.

### Typographical Errors

The date of Revision 4 of Boeing Alert Service Bulletin 747–53A2465 was inadvertently specified as ''February 25'' instead of ''February 24'' in paragraph (f) and Table 1 of the NPRM. We have revised this final rule accordingly.

The **Federal Register** number and date of the existing AD was inadvertently specified as ''70 FR 29940, May 25, 2005'' in paragraph 2. of the NPRM. The existing AD was published April 25, 2005 (70 FR 21141). A correction of the existing AD was published May 25, 2005 (70 FR 29940). We have revised this final rule accordingly.

### Conclusion

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

### Costs of Compliance

There are about 1,127 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD. Work hours are estimated at an average labor rate of $65 per work hour.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Area 1 and 3 inspections (required by AD 2005–09–02). | 79 | $0 | $5,135, per inspection cycle | 255 | $1,309,425, per inspection cycle. |
| Area 2 inspections (required by AD 2005–09–02). | 8–18 | 0 | $520–$1,170, per inspection cycle. | 255 | Up to $298,350, per inspection cycle. |
| Replacement (new action) ..... | 800 | 115,765 | $167,765 ..... | 255 | $42,780,075. |

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14070 (70 FR 21141, April 25, 2005), corrected at 70 FR 29940, May 25, 2005, and by adding the following new airworthiness directive (AD):

**2006–22–15 Boeing:** Amendment 39–14812. Docket No. FAA–2006–23921; Directorate Identifier 2005–NM–205–AD.

#### Effective Date

(a) This AD becomes effective December 11, 2006.

#### Affected ADs

(b) This AD supersedes AD 2005–09–02.

#### Applicability

(c) This AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD results from the development of a new modification. We are issuing this AD to prevent fatigue cracks in the top and side panel webs and stiffeners of the nose wheel well (NWW), which could compromise the structural integrity of the NWW and lead to the rapid decompression of the airplane.

**Compliance**

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

**Restatement of Requirements of AD 2005–09–02 With New Repetitive Interval and Service Information**

*Initial and Repetitive Inspections of the Top and Side Panel Stiffeners*

(f) Prior to the accumulation of 16,000 total flight cycles, or within 1,000 flight cycles after January 27, 2005 (the effective date of AD 2004–25–23, amendment 39–13911), whichever is later, do internal detailed and surface high frequency eddy current (HFEC) inspections of the top and side panel stiffeners of the NWW (specified as Area 3 in the service bulletin) for cracks in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin (ASB) 747–53A2465, Revision 4, dated February 24, 2005. Repeat the inspections thereafter at the compliance times specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For airplanes on which an inspection has not been done before the effective date of this AD in accordance with any service bulletin listed in Table 1 of this AD: Within 1,500 flight cycles after doing the inspection specified in paragraph (f) of this AD, repeat the inspection. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles.

(2) For airplanes on which an inspection has been done before the effective date of this AD in accordance with any service bulletin listed in Table 1 of this AD: Within 6,000 flight cycles after doing the inspection specified in paragraph (f) of this AD or within 1,500 flight cycles after the effective date of this AD, whichever occurs first, repeat the inspection. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles.

TABLE 1.—BOEING SERVICE BULLETINS

| Service bulletin | Revision level | Date |
|---|---|---|
| Boeing ASB 747–53A2465 | Original | April 5, 2001. |
| Boeing ASB 747–53A2465 | 2 | November 11, 2004. |
| Boeing ASB 747–53A2465 | 3 | December 23, 2004. |
| Boeing ASB 747–53A2465 | 4 | February 24, 2005. |
| Boeing Service Bulletin 747–53A2465 | 1 | October 16, 2003. |

**Note 1:** For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

*Initial Inspections of the Top and Sidewall Panel Webs*

(g) Do an external detailed inspection of the top and sidewall panel webs of the NWW (specified as Area 1 and Area 2 in the service bulletin) for cracks, in accordance with the Accomplishment Instructions of Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005, at the earlier of the times specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) At the later of the times specified in paragraph (g)(1)(i) and (g)(1)(ii) of this AD:

(i) Before accumulating 20,000 total flight cycles.

(ii) Within 100 flight cycles or 90 days after May 10, 2005 (the effective date of AD 2005–09–02), whichever occurs first.

(2) At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD:

(i) Before accumulating 16,000 total flight cycles.

(ii) Within 1,000 flight cycles after May 10, 2005.

*Repetitive Inspections of the Top and Sidewall Panel Webs*

(h) Repeat the inspection required by paragraph (g) of this AD at the intervals specified in paragraphs (h)(1) and (h)(2) of this AD, as applicable.

(1) For airplanes with fewer than 20,000 total flight cycles as of May 10, 2005, repeat at intervals not to exceed 1,000 flight cycles until the first inspection after the airplane reaches 20,000 total flight cycles.

(2) For airplanes with 20,000 total flight cycles or more, repeat at intervals not to exceed 500 flight cycles.

*Ultrasonic (UT) Inspections*

(i) Do an UT inspection of the top and sidewall panel webs for cracks, in accordance with Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005, at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 500 flight cycles.

(1) Prior to the accumulation of 20,000 total flight cycles.

(2) Within 100 flight cycles or 90 days after May 10, 2005, whichever occurs first.

*Additional Inspections and Corrective Actions*

(j) Except as specified in paragraph (l) of this AD, if any crack is found during any inspection required by this AD, prior to further flight, do any applicable additional detailed inspections of stiffeners and beams and make repairs, in accordance with the Accomplishment Instructions of Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005.

*Actions Accomplished per Previous Issues of Service Bulletin*

(k) The actions specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD are acceptable for compliance with the corresponding action specified in the applicable paragraph.

(1) Inspections and corrective actions accomplished before January 27, 2005, in accordance with Boeing ASB 747–53A2465, dated April 5, 2001, are considered acceptable for compliance with the corresponding inspections specified in paragraph (f) of this AD.

(2) Inspections accomplished before the effective date of this AD, in accordance with Boeing Service Bulletin 747–53A2465, Revision 1, dated October 16, 2003; Boeing ASB 747–53A2465, Revision 2, dated November 11, 2004; and Boeing ASB 747–53A2465, Revision 3, dated December 23, 2004; are considered acceptable for compliance with the corresponding inspections specified in paragraph (f) of this AD.

**Note 2:** The detailed and surface HFEC inspections of the top and side panel stiffeners of the NWW specified in Boeing ASB 747–53A2465, dated April 5, 2001; and Boeing Service Bulletin 747–53A2465, Revision 1, dated October 16, 2003; are acceptable for compliance with the internal detailed and surface HFEC inspections specified in paragraph (f) of this AD.

(3) Inspections and corrective actions accomplished before May 10, 2005, in accordance with Boeing Service Bulletin 747–53A2465, Revision 1, dated October 16, 2003; Boeing ASB 747–53A2465, Revision 2, dated November 11, 2004; and Boeing ASB 747–53A2465, Revision 3, dated December 23, 2004; are considered acceptable for compliance with the corresponding inspections specified in paragraphs (g) and (h) of this AD.

*Certain Other Corrective Actions*

(l) Where Boeing Service Bulletin and ASB 747–53A2465 specify contacting the manufacturer if certain cracking is found, this AD requires, before further flight,

repairing the cracking using a method approved in accordance with the procedures specified in paragraph (p) of this AD.

*No Reporting Requirement*

(m) Although Boeing Service Bulletin and ASB 747–53A2465 specify that operators should report inspection results to the manufacturer, this AD does not require those inspection results to be reported.

**New Requirements of This AD**

*Terminating Action*

(n) For Group 1 and 3 airplanes identified in Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005: Before accumulating 22,000 total flight cycles or within 48 months after the effective date of this AD, whichever occurs later, replace the NWW side and top panels with new panels in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005. Doing the replacement terminates the requirements of this AD.

(o) For Group 2 airplanes identified in Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005, and Model 747 airplanes not identified in the service bulletin: Before accumulating 22,000 total flight cycles or within 57 months after the effective date of this AD, whichever occurs later, replace the NWW side and top panels using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Doing the replacement terminates the requirements of this AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

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

(4) AMOCs approved previously according to AD 2005–09–02 are approved as AMOCs for the corresponding provisions of paragraphs (f) through (j) and (l) of this AD.

(5) AMOCs approved previously according to AD 2004–25–23 are approved as AMOCs for the corresponding provisions of paragraph (f) of this AD.

**Material Incorporated by Reference**

(q) You must use Boeing Alert Service Bulletin 747–53A2465, Revision 4, dated February 24, 2005; and Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 747–53A2562, Revision 1, dated July 28, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On May 10, 2005 (70 FR 21141, April 25, 2005), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2465, Revision 4, dated February 24, 2005.

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

Issued in Renton, Washington, on October 25, 2006.

**Kalene C. Yanamura,**

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

[FR Doc. E6–18465 Filed 11–3–06; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2006–25501; Airspace Docket No. 06–ACE–9]**

## Establishment of Class D Airspace; Ft. Riley, KS

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

**ACTION:** Final rule.

**SUMMARY:** This notice amends Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area extending upward from the surface to and including 3,600 feet above sea level within a 3.7-mile radius of Fort Riley, Marshall Army Airfield, KS. The establishment of an air traffic control tower has made this action necessary.

**DATES:** *Effective Date:* 0901 UTC, November 23, 2006.

**FOR FURTHER INFORMATION CONTACT:** Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas, City, MO 64106; telephone: (816) 329–2522.

**SUPPLEMENTARY INFORMATION:**

**History**

On Friday, August 11, 2006, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Ft. Riley, KS (71 FR 46130). The proposal was to establish a Class D airspace area to provide controlled airspace for flight operations due to the establishment of an air traffic control tower. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. A comment was received regarding the size of Class D airspace area. The size of the Class D airspace area is determined by FAA Order 7400.2F Procedures for Handling Airspace Matters, Chapter 17, Section 2. Class D Airspace Standards.

**The Rule**

This notice amends Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class D airspace area extending upward from the surface to and including 3,600 feet above sea level within a 3.7-mile radius of Fort Riley, Marshall Army Airfield, KS. The establishment of an air traffic control tower has made this action necessary. The intended effect of this action is to provide controlled airspace for flight operations at Fort Riley, Marshall Army Airfield, KS. The are will be depicted on appropriate aeronautical charts.

Class D airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. of the same Order. The Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains flight operations at Fort Riley, Marshall Army Airfield, KS.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 16, 2006, is amended as follows:

*Paragraph 5000. Class D Airspace*

* * * * *

**ACE KS D Fort Riley, KS**

Fort Riley, Marshall Army Airfield, KS
(Lat. 39°03′19″ N., long. 96°45′52″ W.)
Junction City, Freeman Field, KS
(Lat. 39°02′36″ N., long. 96°50′36″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 3.7-mile radius of the Marshall Army Airfield excluding that airspace within R–3602B and excluding that airspace within a 1-mile radius of Junction City, Freeman Field, KS. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Forth Worth, Texas on October 17, 2006.

**Donald R. Smith,**

*Manager, System Support Group, ATO Central Service Area.*

[FR Doc. 06–9073 Filed 11–3–06; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD11–06–042]**

## Drawbridge Operation Regulations; Cerritos Channel, Los Angeles, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Henry Ford Drawbridge across the Cerritos Channel, mile 4.8 at Los Angeles, CA. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period. The deviation is necessary for the bridge owner, the Port of Los Angeles, to perform critical repairs which involve modifications to allow for the inspection of the bridge's counterweight wire ropes.

**DATES:** This deviation is effective from 8 a.m. on November 6, 2006 to 4 p.m. on December 8, 2006.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (dpw), Eleventh Coast Guard District, Building 50–2, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437–3515. The Bridge Section office maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

**SUPPLEMENTARY INFORMATION:** On October 5, 2006, The Port of Los Angeles requested a temporary change to the operation of the Henry Ford Drawbridge, mile 4.8, Cerritos Channel, at Los Angeles, CA. The Henry Ford Drawbridge navigation span provides a vertical clearance of 7 feet above Mean High Water in the closed-to-navigation position. Presently, the drawspan is maintained in the fully open position, except when a train is crossing or for maintenance. When the drawspan is in the closed position, it opens on signal as required by 33 CFR 117.147(b). Navigation on the waterway is mainly commercial traffic, servicing ships entering and leaving the port. The Port of Los Angeles requested the drawbridge be allowed to remain closed to navigation, Monday through Friday, from 8 a.m. on November 6, 2006 to 4 p.m. on December 8, 2006. During this time, critical repairs will be made which involves modifications to allow for the inspection of the bridge's counterweight wire ropes. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary rule were raised. While the bridge is in the closed-to-navigation position, vessels can transit around Terminal Island to reach the other side of the bridge.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 24, 2006.

**J.A. Breckenridge,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. E6–18602 Filed 11–3–06; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2006–0837; FRL–8239–3]**

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the State Implementation Plan (SIP) revision submitted by the State of Missouri to add a test method for compliance testing to the rule that will reduce emissions of nitrogen oxides ($NO_X$) of major sources in the St. Louis ozone nonattainment area.

**DATES:** This direct final rule will be effective January 5, 2007, without further notice, unless EPA receives adverse comment by December 6, 2006. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0837, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *E-mail: algoe-eakin.amy@epa.gov.*

3. *Mail:* Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery or Courier.* Deliver your comments to Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2006–0837. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

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

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

What Is a SIP?
What Is the Federal Approval Process for a SIP?
What Does Federal Approval of a State Regulation Mean To Me?
What Is Being Addressed in This Document?
Have the Requirements For Approval of a SIP Revision Been Met?
What Action Is EPA Taking?

## What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

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

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

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

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

## What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

## What Is Being Addressed in This Document?

EPA is approving a revision to the SIP for the State of Missouri that was State effective on May 30, 2006. The purpose of the revision is to add Method 19 at 10 CSR 10–5.510(5)(A)5. as an acceptable test method for compliance testing. Method 19 is a test method promulgated by EPA in 40 CFR part 60, appendix A, which is used to determine (calculate or compute) $NO_X$ (heat input specific) emission rates (pound per mmBtu). To accommodate the addition of Method 19, it was necessary to renumber the test methods in the State rule.

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

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA.

**What Action Is EPA Taking?**

EPA is approving a revision to the SIP for the State of Missouri to add Method 19 at 10 CSR 10–5.510(5)(A)5. as an acceptable test method for compliance testing. To accommodate the addition of Method 19, it was necessary to renumber the test methods in this rule.

We are processing this action as a direct final action because the revisions make routine changes to the existing SIP which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

**Statutory and Executive Order Reviews**

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 5, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: October 25, 2006.

**Martha Cuppy,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart AA—Missouri

■ 2. In § 52.1320(c) the table is amended under Chapter 5 by revising the entry for ''10–5.510'' to read as follows:

**§ 52.1320 Identification of Plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * * * | * | * | * | * |
| **Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area** | | | | |
| * * * | * | * | * | * |
| 10–5.510 | Control of Emissions of Nitrogen Oxides. | 05/30/06 | 11/06/06 [*insert FR page number where the document begins*]. | |
| * * * | * | * | * | * |

* * * * *

[FR Doc. E6–18567 Filed 11–3–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R04–OAR–2006–0676–200622(a); FRL–8239–5]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina; Redesignation of the Rocky Mount 8-Hour Ozone Nonattainment Area to Attainment

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

**ACTION:** Direct final rule.

**SUMMARY:** On June 19, 2006, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), Division of Air Quality, submitted a final request: to redesignate the Rocky Mount 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and to approve a North Carolina State Implementation Plan (SIP) revision containing a maintenance plan for Rocky Mount, North Carolina. The Rocky Mount 8-hour ozone nonattainment area is comprised of two counties, Edgecombe and Nash. EPA is approving the 8-hour ozone redesignation request for the Rocky Mount 8-hour ozone nonattainment area. Additionally, EPA is approving the 8-hour ozone maintenance plan for Rocky Mount, North Carolina. This approval is based on EPA's determination that the State of North Carolina has demonstrated that the Rocky Mount area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Rocky Mount 8-hour ozone nonattainment area has attained the 8-hour ozone standard. In this action, EPA is also finding adequate and approving the 2008 and 2017 motor vehicle emissions budgets (MVEBs) for nitrogen oxides ($NO_X$) (for both Edgecombe and Nash counties) that are contained in the 8-hour ozone maintenance plan for the Rocky Mount nonattainment area. North Carolina has established subarea MVEBs at the county level so each county must consider its individual subarea MVEBs for the purposes of implementing transportation conformity. Further, in this action, EPA is finding adequate and approving the insignificance determination for volatile organic compounds' (VOCs) contribution from motor vehicle emissions to the 8-hour ozone pollution in the Rocky Mount, North Carolina area.

**DATES:** This rule is effective on January 5, 2007, without further notice, unless EPA receives adverse written comments by December 6, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA–R04–OAR–2006–0676, by one of the following methods:

1. *http://www.regulations.gov* : Follow the online instructions for submitting comments.
2. E-mail: *ward.nacosta@epa.gov* or *wood.amanetta@epa.gov.*
3. Fax: 404–562–9019.
4. Mail: ''EPA–R04–OAR–2006–0676'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. Hand Delivery or Courier. Deliver your comments to: Nacosta C. Ward or Amanetta Wood, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No.: ''EPA–R04–OAR–2006–0676''. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward of the Regulatory Development Section or Amanetta Wood of the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140 or (404) 562–9025. Ms. Nacosta Ward can be reached via electronic mail at *ward.nacosta@epa.gov.* Ms. Amanetta Wood can also be reached via electronic mail at *wood.amanetta@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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XI. Statutory and Executive Order Reviews

## I. What Are the Actions EPA Is Taking?

Through this rulemaking, EPA is taking several related actions. EPA is making the determination that the Rocky Mount 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The Rocky Mount area is a basic 8-hour ozone nonattainment area. The Rocky Mount 8-hour ozone nonattainment area is comprised of Edgecombe and Nash counties. EPA is approving a request to change the legal designation of the Rocky Mount area from nonattainment to attainment for the 8-hour ozone NAAQS.

EPA is also approving North Carolina's 8-hour ozone maintenance plan for the Rocky Mount area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Rocky Mount area in attainment for the 8-hour ozone NAAQS for the next 12 years, and includes an insignificance finding for VOCs for the entire Rocky Mount, North Carolina area, and new $NO_X$ subarea MVEBs for the years 2008 and 2017 for Edgecombe and Nash counties.

Additionally, through this rulemaking, EPA is announcing its action on the Adequacy Process for the newly-established 2008 and 2017 $NO_X$ MVEBs for the Rocky Mount 8-hour ozone area. Further, EPA is announcing its action on the Adequacy Process for the insignificance finding related to VOCs from motor vehicles for the Rocky Mount 8-hour ozone area. The Adequacy comment period for the new $NO_X$ MVEBs and the VOCs insignificance finding began on August 8, 2006, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm).* The Adequacy comment period for these MVEBs and VOCs insignificance finding closed on September 7, 2006. No requests or adverse comments on this submittal were received during EPA's Adequacy comment period. Please see section VII of this rulemaking for further explanation of this process.

## II. What Is the Background for the Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of $NO_X$ and VOCs react in the presence of sunlight to form ground-level ozone. $NO_X$ and VOCs are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.* 0.084 ppm when rounding is considered). (See 69 FR 23857 (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''Comparisons with the Primary and Secondary Ozone Standards'' states: ''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Rocky Mount 8-hour ozone nonattainment area was designated using 2001 to 2003 ambient air quality data. The **Federal Register** notice making these designations was signed on April 15, 2004, and published on April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which covers areas that EPA refers to as ''basic'' nonattainment) contains general, less

prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which covers areas that EPA refers to as ''classified'' nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase 1 8-hour Ozone Implementation Rule, signed on April 15, 2004, an area was to be classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values. The Rocky Mount area was originally designated as a ''basic'' 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857) and is subject to subpart 1 of part D. In 2005, the ambient ozone data for the Rocky Mount nonattainment area indicated no further violation of the 8-hour ozone standard, using data from the 3-year period of 2003–2005 (with the 2003–2005 design value of 0.079 ppm), to demonstrate attainment. Available monitoring data through July 2006 indicates continued attainment of the 8-hour ozone standard. These data are depicted in Table 1 below:

TABLE 1.—CURRENT AIR QUALITY DATA IN THE ROCKY MOUNT, NC AREA

Air Quality System Monitoring Data for Edgecombe County (Leggett monitor AIRS ID #37–065–0099)

| | April 2006 | May 2006 | June 2006 | July 2006 |
|---|---|---|---|---|
| Monthly Maximum 8-hour ozone Values (ppm) | .074 | .077 | .074 | .068 |

On June 19, 2006, the State of North Carolina requested redesignation to attainment for the 8-hour ozone standard for the Rocky Mount, North Carolina 8-hour ozone nonattainment area. The redesignation request includes three years of complete, quality-assured ambient air quality data for the ozone seasons of 2003 through 2005, indicating the 8-hour ozone NAAQS had been achieved for the Rocky Mount area. The ozone season for this area is from April 1 until October 31 of a calendar year. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

## III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas, Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

## IV. Why Is EPA Taking These Actions?

On June 19, 2006, the State of North Carolina requested redesignation of the Rocky Mount 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA believes that the State of North Carolina has demonstrated that the Rocky Mount area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of CAA.

## V. What Is the Effect of EPA's Actions?

Approval of this redesignation request would change the official designation of Edgecombe and Nash counties in North Carolina for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the North Carolina SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2017. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and establishes MVEBs of 2,756 kilograms

per day (kg/d) (3.03 tons per day (tpd)), and 9,757 kg/d (10.77 tpd) for $NO_X$ for the year 2008 for Edgecombe and Nash counties, respectively. For the year 2017, the $NO_X$ MVEBs for Edgecombe and Nash counties are 1,383 kg/d (1.53 tpd) and 4,558 kg/d (5.03 tpd), respectively. Additionally, the maintenance plan includes an insignificance finding for VOCs' contribution from motor vehicles to the 8-hour ozone pollution in the Rocky Mount, North Carolina area. EPA's affirmative adequacy finding and approval for this insignificance determination waives the regional emissions analysis requirement (not the transportation conformity requirement) for VOCs for this area. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity.

## VI. What Is EPA's Analysis of the Request?

EPA is making the determination that the Rocky Mount 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The basis for EPA's determination is as follows:

(1) *The Rocky Mount area has attained the 8-hour ozone NAAQS.*

EPA is making the determination that the area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

NCDENR submitted ozone monitoring data to EPA for the ozone season from 2003 to 2005. There is currently one monitor measuring ozone, located in the town of Leggett in Edgecombe County, which provides air quality data for the entire Rocky Mount 8-hour ozone nonattainment area. This data has been quality assured and is recorded in AQS. The fourth-highest averages for 2003, 2004 and 2005, and the 3-year average of these values (*i.e.* design value), are summarized in Table 2:

TABLE 2.—QUALITY ASSURED MONITORING DATA IN THE ROCKY MOUNT, NC AREA FOR 2003–2005

| County | 4th Highest 8-hour ozone values (ppm) | | | Design Value (ppm) |
|---|---|---|---|---|
| | 2003 | 2004 | 2005 | 2003–2005 |
| Edgecombe (Leggett Monitor) | 0.088 | 0.072 | 0.079 | 0.079 |

In addition, as discussed below with respect to the maintenance plan, NCDENR has indicated a commitment to continue monitoring in the Rocky Mount area in accordance with 40 CFR part 58 by requiring the use of the data from the monitor in Edgecombe County to verify continued maintenance of the 8-hour ozone NAAQS. On September 11, 2006, NCDENR submitted a letter to EPA clarifying this commitment. NCDENR will operate and continue monitoring at the Leggett ozone monitor throughout the maintenance period and until there is a change approved by EPA to discontinue operation, relocate or otherwise affect the ambient monitoring network in place. In summary, EPA believes that the data submitted by North Carolina provides an adequate demonstration that the Rocky Mount 8-hour ozone nonattainment area has attained the 8-hour ozone NAAQS.

(2) *North Carolina has a fully approved SIP under section 110(k) for Edgecombe and Nash Counties and (5) has met all applicable requirements under section 110 and part D of the CAA.*

Below is a summary of how these two criteria were met.

EPA has determined that North Carolina has met all applicable SIP requirements for the Rocky Mount area under section 110 of the CAA (general SIP requirements). EPA has also determined that the North Carolina SIP satisfies the criterion that it meets applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. *Rocky Mount, North Carolina has met all applicable requirements under section 110 and part D of the CAA.*

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA; *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, MO).

*General SIP requirements:* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not

limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also guidance documents listed in section III above.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants ($NO_X$ SIP Call, Clean Air Interstate Rule (CAIR)). North Carolina's final CAIR submittal was received by EPA on August 15, 2006. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements applicable for purposes of redesignation under the 8-hour ozone standard became due prior to the submission of the redesignation request. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes that it has previously approved provisions in the North Carolina SIP addressing section 110 elements under the 1-hour ozone standard (51 FR 19834, June 3, 1986). EPA believes that the section 110 SIP approved for the 1-hour ozone standard is sufficient to meet requirements under the 8-hour ozone standard as well.

*Part D requirements:* EPA has also determined that the North Carolina SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Rocky Mount area.

*Part D, subpart 1 applicable SIP requirements:* For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), reasonable further progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

*Section 176 Conformity Requirements:* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See

also 60 FR 62748 (Dec. 7, 1995, Tampa, FL).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' North Carolina has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the area upon redesignation to attainment. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, OH (61 FR 20458, 20469–20470, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. *The area has a fully approved applicable SIP under section 110(k) of the CAA.*

EPA has fully approved the applicable North Carolina SIP for the Rocky Mount area under section 110(k) of the Clean Air Act for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memo at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, North Carolina has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Rocky Mount area (51 FR 19834, June 3, 1986).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

(3) *The air quality improvement in the Rocky Mount 8-hour ozone area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.*

EPA believes that the State has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA has determined that the implementation of the following permanent and enforceable emissions controls, that occurred from 2002–2005, have reduced local VOC and $NO_X$ emissions and brought the area into attainment:

- EPA's Tier 2 Vehicle Standards;
- EPA's Heavy-Duty Gasoline and Diesel Highway and Vehicle Standards;
- Federal controls on non-road spark ignition engines and recreational engine standard engines in 2003;
- State Clean Air Bill;
- State $NO_X$ SIP Call rule;
- State Clean Smokestacks Act;
- State Open Burning Ban;
- State Air Toxics Control Program;
- Prevention of Significant Deterioration;
- State Heavy Duty Diesel Gap Filling Rule.

In addition to the reductions mentioned above, the State of North Carolina has implemented an Air Awareness Program which is a public outreach program to reduce air pollution through voluntary action by individuals and organizations.

The State has demonstrated that the implementation of permanent and enforceable emissions controls have reduced local VOC and $NO_X$ emissions. Most of the reductions are attributable to Federal programs such as EPA's Tier 2/Low Sulfur Gasoline program and other national clean fuel programs that began implementation in 2004. Additionally, the State has indicated in its submittal that the Rocky Mount area has benefited from emissions reductions that have been achieved and will continue to be achieved through implementation of the $NO_X$ SIP Call, beginning in 2002. The State has also demonstrated that year-to-year meteorological changes and trends are not the likely source of the overall, long-term improvement in ozone levels. Also, the following non-highway mobile source reduction programs were implemented during the 2002–2005 period: small spark-ignition engines, large-spark ignition engines, locomotives and land-based diesel engines. EPA believes that permanent and enforceable emissions reductions in and surrounding the nonattainment area are the cause of the long-term improvement in ozone levels, and are the cause of the area achieving attainment of the ozone standard.

(4) *The area has a fully approved maintenance plan pursuant to section 175A of the CAA.*

In its request to redesignate the Rocky Mount 8-hour ozone nonattainment area to attainment status, NCDENR submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Rocky Mount area for at least 10 years after the effective date of redesignation to attainment.

*a. What Is Required in a Maintenance Plan?*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum, dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

*b. Attainment Emissions Inventory*

The Rocky Mount area has selected 2005 as ''the attainment year'' for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2005 VOC and $NO_X$ emissions for the Rocky

Mount area were developed consistent with EPA guidance and are summarized in the table in the following subsection.

*c. Maintenance Demonstration*

The June 19, 2006, submittal includes a 12-year maintenance plan for the Rocky Mount area. This demonstration:

(i) shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and $NO_X$ remain at or below attainment year 2005 emissions levels. The year 2005 was chosen as the attainment year because it is one of the most recent three years (i.e., 2003, 2004, and 2005) for which the Rocky Mount area has clean air quality data for the 8-hour ozone standard.

(ii) uses 2005 as the attainment year and includes future inventory projected years for 2008, 2011, 2014, and 2017.

(iii) identifies an ''out year,'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, a MVEB was established for the last year of the maintenance plan. See sections VIII and IX below.

(iv) provides the following actual and projected emissions inventories for the Rocky Mount area depicted in Tables 3 through 8:

TABLE 3.— $NO_X$ EMISSIONS (TPD) FOR EDGECOMBE COUNTY*

| Source category | 2005 | 2008 | 2011 | 2014 | 2017 |
|---|---|---|---|---|---|
| Point | 2.95 | 2.68 | 2.70 | 2.73 | 2.76 |
| Area | 0.53 | 0.54 | 0.55 | 0.56 | 0.57 |
| On-Road Mobile | 3.36 | 2.73 | 2.14 | 1.62 | 1.27 |
| Nonroad | 2.35 | 2.10 | 1.82 | 1.60 | 1.40 |
| Total Emissions | 9.19 | 8.05 | 7.21 | 6.51 | 6.00 |

*The total emissions in the tables above only include man-made emissions and not biogenic emissions.

TABLE 4.— $NO_X$ EMISSIONS (TPD) FOR NASH COUNTY*

| Source category | 2005 | 2008 | 2011 | 2014 | 2017 |
|---|---|---|---|---|---|
| Point | 0.60 | 0.60 | 0.63 | 0.69 | 0.72 |
| Area | 1.08 | 1.12 | 1.16 | 1.20 | 1.24 |
| On-Road Mobile | 12.07 | 9.70 | 7.42 | 5.39 | 4.16 |
| Nonroad | 2.10 | 1.90 | 1.69 | 1.48 | 1.29 |
| Total Emissions | 15.85 | 13.32 | 10.90 | 8.76 | 7.41 |

*The total emissions in the tables above only include man-made emissions and not biogenic emissions.

TABLE 5.—TOTAL $NO_X$ EMISSIONS (TPD) FOR EDGECOMBE AND NASH COUNTIES*

| Source category | 2005 | 2008 | 2011 | 2014 | 2017 |
|---|---|---|---|---|---|
| Point | 3.55 | 3.28 | 3.33 | 3.42 | 3.48 |
| Area | 1.61 | 1.66 | 1.71 | 1.76 | 1.81 |
| On-Road Mobile | 15.43 | 12.43 | 9.56 | 7.01 | 5.43 |
| Nonroad | 4.45 | 4.00 | 3.51 | 3.08 | 2.69 |
| Total Emissions | 25.04 | 21.37 | 18.11 | 15.27 | 13.41 |
| Safety Margin** | n/a | 3.67 | 6.93 | 9.77 | 11.63 |

* The total emissions in the tables above only include man-made emissions and not biogenic emissions.

** A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. North Carolina has calculated the $NO_X$ safety margin for the Rocky Mount area in its submittal which is summarized in Table 5.

TABLE 6.—VOC EMISSIONS (TPD) FOR EDGECOMBE COUNTY*

| Source category | 2005 | 2008 | 2011 | 2014 | 2017 |
|---|---|---|---|---|---|
| Point | 3.86 | 4.35 | 4.74 | 5.20 | 5.65 |
| Area | 5.62 | 5.88 | 6.12 | 6.35 | 6.58 |
| On-Road Mobile | 2.50 | 2.08 | 1.83 | 1.50 | 1.27 |
| Nonroad | 0.95 | 0.78 | 0.70 | 0.68 | 0.65 |
| Total Emissions | 12.93 | 13.09 | 13.39 | 13.73 | 14.15 |

* The total emissions in the tables above only include man-made emissions and not biogenic emissions.

TABLE 7.—VOC EMISSIONS (TPD) FOR NASH COUNTY*

| Source category | 2005 | 2008 | 2011 | 2014 | 2017 |
|---|---|---|---|---|---|
| Point | 1.35 | 1.45 | 1.56 | 1.65 | 1.78 |
| Area | 7.04 | 7.43 | 7.79 | 8.14 | 8.52 |

TABLE 7.—VOC EMISSIONS (TPD) FOR NASH COUNTY*—Continued

| Source category | 2005 | 2008 | 2011 | 2014 | 2017 |
|---|---|---|---|---|---|
| On-Road Mobile | 5.98 | 4.96 | 4.37 | 4.05 | 3.09 |
| Nonroad | 1.39 | 1.17 | 1.07 | 1.05 | 1.08 |
| Total Emissions | 15.76 | 15.01 | 14.79 | 14.89 | 14.47 |

* The total emissions in the tables above only include man-made emissions and not biogenic emissions.

TABLE 8.—TOTAL VOC EMISSIONS (TPD) FOR EDGECOMBE AND NASH COUNTIES*

| Source category | 2005 | 2008 | 2011 | 2014 | 2017 |
|---|---|---|---|---|---|
| Point | 5.21 | 5.80 | 6.30 | 6.85 | 7.43 |
| Area | 12.66 | 13.31 | 13.91 | 14.49 | 15.10 |
| On-Road Mobile | 8.48 | 7.04 | 6.20 | 5.55 | 4.36 |
| Nonroad | 2.34 | 1.95 | 1.77 | 1.73 | 1.73 |
| Total Emissions | 28.69 | 28.10 | 28.18 | 28.62 | 28.62 |
| Safety Margin*** | n/a | 0.59 | 0.51 | 0.07 | 0.07 |

* The total emissions in the tables above only include man-made emissions and not biogenic emissions.
*** A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. North Carolina has calculated the VOC safety margin for the Rocky Mount area in its submittal which is summarized in Table 8.

North Carolina has decided to allocate a portion of the available safety margin to the $NO_X$ subarea MVEBs for 2008 and 2017. This allocation and the resulting available safety margin is discussed further in section VIII of this rulemaking.

*d. Monitoring Network*

There is currently one monitor measuring ozone, the Leggett monitor, located within Edgecombe County, North Carolina, which provides air quality data for the entire Rocky Mount 8-hour nonattainment area. North Carolina has committed to continue operation of the Leggett ozone monitor in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

*e. Verification of Continued Attainment*

The State has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Rocky Mount area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

North Carolina will track the progress of the maintenance plan by performing future reviews of actual emissions for the area using the latest emissions factors, models and methodologies. For these periodic inventories the State will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, the State will re-project emissions.

*f. Contingency Plan*

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that a state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by a state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d). This requirement is met because all SIP measures are retained for maintenance.

In the June 19, 2006, submittal, North Carolina affirms that a combination of all programs instituted by the State and EPA have resulted in cleaner air in the Rocky Mount area and the anticipated future benefits from these programs are expected to result in continued maintenance of the 8-hour ozone NAAQS in this area. This submittal also includes a contingency plan which provides tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures. The primary trigger of the contingency plan will be a violation of the 8-hour ozone NAAQS at the Leggett monitor, or when the three-year average of the fourth-highest values is equal to or greater than 0.085 ppm. The trigger date will be 60 days from the date that the State observes a fourth-highest value that, when averaged with the two previous ozone season's fourth highest values, would result in a three-year average equal to or greater than 0.085 ppm. The second trigger will apply where no actual violation of the 8-hour ozone standard has occurred, but where the State finds monitored ozone levels indicating that an actual ozone NAAQS violation may be imminent. A pattern will be deemed to exist when there are two consecutive ozone seasons in which the fourth-highest values are 0.085 ppm or greater. The trigger date will be 60 days from the date that the State observes a fourth-highest value of 0.085 ppm or greater, following a season in which the fourth-highest value was 0.085 ppm or greater.

Once the primary or secondary trigger is activated, North Carolina will commence analyses including trajectory analyses of high ozone days, and emissions inventory assessment to determine those emission control measures that will be required for attainment and maintaining the 8-hour ozone standard. North Carolina commits that by May 1 of the year following the ozone season in which the primary (a

violation of the 8-hour ozone NAAQS occurs) or secondary trigger has been activated, that they will complete sufficient analyses to begin adoption of necessary rules for ensuring attainment and maintenance of the 8-hour ozone NAAQS. North Carolina also commits that such rules would become State-effective by the following January 1, unless legislative review is required. Specifically, the State will consider one or more of the following contingency measures to re-attain the standard:

- RACT for $NO_X$ on stationary sources in Nash and Edgecombe counties;
- Diesel inspection and maintenance program [1];
- Implementation of diesel retrofit programs, including incentives for performing retrofits;
- Implementation of additional controls in upwind areas.

In addition to the measures listed above, the future Consolidated Emissions Reporting Rule inventories that coincide with the attainment, interim, and final year inventories will be compared to determine if additional steps are necessary for continued maintenance of the 8-hour ozone standard in this area.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by North Carolina for the Rocky Mount area meets the requirements of section 175A of the CAA.

## VII. What Is an Adequacy Determination?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (e.g., reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

In addition, in certain instances, the transportation conformity rule allows areas not to establish a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant/precursor is an insignificant contributor to the air quality problem in an area. The general criteria for insignificance findings can be found in 40 CFR 93.109(k). Insignificance findings are based on a number of factors, including the percentage of motor vehicle emissions in context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for the allowance of insignificance findings can be found in the July 1, 2004, revision to the transportation conformity rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection entitled ''B. Areas With Insignificant Motor Vehicle Emissions.'' Any insignificance finding that EPA makes is subject to the adequacy and approval process for EPA's action on the SIP.

In summary, upon the effective date of EPA's adequacy finding or approval of such a SIP, an insignificance finding waives the regional emissions analysis requirements (for the purpose of transportation conformity implementation) for an insignificant pollutant or precursor in areas where EPA finds that the SIP's motor vehicle emissions for a pollutant or precursor for a given standard are an insignificant contributor to an area's regional air quality problem. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant requirements. Additionally, areas are required to satisfy the regional emissions analysis requirements for pollutants or precursors for which EPA has not made a finding of insignificance. For the Rocky Mount area, EPA is making an insignificance finding with regard to VOCs. This insignificance finding is discussed in more detail in Section IX below.

[1] At this time, there is not an approved method for determining emission reductions from a Diesel Inspection and Maintenance program. Therefore, there is no technical basis to award emission credits for a heavy duty diesel inspection and maintenance program in the SIP. However, we do not want to preclude future technical changes that may make awarding such emission credits possible. If it is necessary to implement contingency measures for this area, North Carolina, in coordination with EPA, will evaluate the feasibility of this program as a contingency measure at that time. If a technical basis for emission credits is not available, other contingency measures will need to be implemented.

**VIII. What Is the Status of EPA's Adequacy Determination for the Rocky Mount Area's Proposed New $NO_X$ Subarea MVEBs for the Years 2008 and 2017?**

The Rocky Mount area's maintenance plan submission contains new $NO_X$ subarea MVEBs for the years 2008 and 2017 for Edgecombe and Nash counties. The availability of the SIP submission with the 2008 and 2017 $NO_X$ subarea MVEBs was announced for public comment on EPA's adequacy Web page on August 7, 2006, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on the adequacy of the 2008 and 2017 $NO_X$ subarea MVEBs for the Edgecombe and Nash counties closed on September 7, 2006. EPA did not receive any adverse comments or requests for the submittal.

Through this rulemaking, EPA is finding adequate and approving those MVEBs for use to determine transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets. Tables 9 and 10 below define the 2008 and 2017 $NO_X$ subarea MVEBs for both Edgecombe and Nash counties in the Rocky Mount, North Carolina area.

TABLE 9.—EDGECOMBE COUNTY 8-HOUR OZONE MAINTENANCE AREA MVEBS FOR $NO_X$

| | 2008 | | 2017 | |
|---|---|---|---|---|
| | kg/day | tpd | kg/day | tpd |
| On-Road Mobile Emissions | 2,483 | 2.73 | 1,143 | 1.27 |
| Safety Margin Allocated to MVEB | 273 | 0.30 | 240 | 0.26 |
| $NO_X$ MVEB | 2,756 | 3.03 | 1,383 | 1.53 |

TABLE 10.—NASH COUNTY 8-HOUR OZONE MAINTENANCE AREA MVEBS FOR $NO_X$

| | 2008 | | 2017 | |
|---|---|---|---|---|
| | kg/day | tpd | kg/day | tpd |
| On-Road Mobile Emissions | 8,790 | 9.70 | 3,767 | 4.16 |
| Safety Margin Allocated to MVEB | 967 | 1.07 | 791 | 0.87 |
| $NO_X$ MVEB | 9,757 | 10.77 | 4,558 | 5.03 |

A total of 1,240 kg (1.37 tpd) and 1,031kg (1.14 tpd) of the 2008 and 2017 safety margin, respectively, were added to the MVEB for the Rocky Mount area. As the tables above indicate, for Edgecombe County, this equates to an allocation of 273 kg/day (0.30 tpd) and 204 kg/day (0.26 tpd) for $NO_X$ in the years 2008 and 2017, respectively; for Nash County, this equates to 967 kg/day (1.07 tpd) and 791 kg/day (0.87 tpd) for $NO_X$ in the years 2008 and 2017, respectively. Thus, after this allocation, the available $NO_X$ safety margin for the Rocky Mount area in 2008 is 2.30 tpd and in 2017 is 10.49 tpd.

**IX. What Is the Status of EPA's Adequacy Determination for the Rocky Mount Area's Proposed Insignificance Finding for VOCs From Motor Vehicles?**

In addition to $NO_X$ subarea MVEBs, the Rocky Mount area's maintenance plan submission contains a finding of insignificance for VOCs' contribution from motor vehicles to the 8-hour ozone pollution in the Rocky Mount area. The availability of the SIP submission with the VOC insignificance finding was announced for public comment on EPA's adequacy Web page on August 7, 2006, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on the adequacy of the VOC insignificance finding for the Rocky Mount, North Carolina, area closed on September 7, 2006. EPA did not receive any adverse comments or requests for the submittal.

For the purposes of transportation conformity, EPA agrees with the State of North Carolina's insignificance finding for VOCs' contribution from motor vehicles in the Rocky Mount, North Carolina area. EPA finds that North Carolina's SIP submittal meets the criteria in the transportation conformity rule for an insignificance finding for VOCs considering the high level of biogenic emissions in the area. That is, EPA finds that the SIP submittal demonstrates that, as to VOCs, regional motor vehicle emissions are an insignificant contributor to 8-hour ozone pollution in the Rocky Mount area. This finding is based on the following: (1) The on-road VOC emissions are less than 10 percent in the future in both Edgecombe and Nash counties, and the biogenic emissions account for about 90 percent of the VOC emissions in future years; (2) figures 4.1.6–5 and 4.1.6–6, located in Appendix C.3—Mobile Source Inventory Documentation on pages 4–24 and 4–25 show on-road VOC emissions declining by about 50 percent by 2017 and vehicle miles traveled (VMT) going up by about 25 to 30 percent by 2017; and (3) the sensitivity analysis that was done, where the State ran a photochemical model for a 39-day scenario with a modeled 30 percent reduction in man-made VOC emissions, showed that 8-hour ozone levels were not affected by this reduction in VOC emissions. In the year 2009, even with anticipated growth in VMT, the mobile source inventory is less than 8 percent of the total inventory for VOC emissions, whereas biogenic emissions account for at least 84 percent of the total inventory for VOC emissions. As noted in North Carolina's submittal, the biogenic sector is the most abundant source of VOCs in North Carolina and accounts for approximately 90 percent of the total VOCs statewide. EPA agrees with North Carolina that VOC emissions are due to the overwhelming abundance of biogenic VOCs in the area and throughout North Carolina. EPA also considered the implementation of an inspection and maintenance program (I/M) in Edgecombe and Nash counties as of January 1, 2005. The total amount of VOC emission reductions achieved by this I/M program in Edgecombe and Nash counties, as a whole, is 0.51 tpd in 2008 and 0.89 tpd in 2017.

Weighing all the factors for an insignificance finding, particularly the biogenic contribution to the overall VOC inventory, EPA has determined that VOCs' contribution from motor vehicle emissions to the 8-hour ozone pollution for this area are insignificant. Based on the information described above, EPA is

finding adequate and approving the insignificance finding for VOCs' contribution from motor vehicle emissions to the 8-hour ozone pollution for the Rocky Mount, North Carolina area. EPA's insignificance finding should be considered and specifically noted in the transportation conformity documentation that is prepared for this area.

## X. Final Action on the Redesignation Request, the Maintenance Plan SIP Revision Including Approval of the 2008 and 2017 $NO_X$ MVEBs, and the VOCs Insignificance Finding

EPA is making the determination that the Rocky Mount area has attained the 8-hour ozone NAAQS. EPA is approving the redesignation of the Rocky Mount area from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating the State of North Carolina's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Rocky Mount area has attained the 8-hour ozone standard. The final approval of this redesignation request changes the official designation for the Rocky Mount, North Carolina area from nonattainment to attainment for the 8-hour ozone standard.

EPA is also approving the maintenance plan SIP revision. Approval of the maintenance plan for the Rocky Mount area is appropriate, because the State of North Carolina has demonstrated that the plan meets the requirements of section 175A as described more fully in this rulemaking. Additionally, EPA is finding adequate and approving the new 2008 and 2017 $NO_X$ MVEBs. Within 24 months from the effective date of this action, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e), as amended by new section 172(c)(2)(E) of the CAA (added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005). Further, EPA is approving the State of North Carolina's insignificance finding for VOCs' contribution from motor vehicles to Rocky Mount, North Carolina's 8-hour ozone pollution. EPA is publishing this rule without prior approval because the Agency views this as noncontroversial and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register** EPA is publishing a proposal to approve the redesignation and maintenance plan that will serve as the proposal if adverse comments are filed. This rule will be effective on January 5, 2007 unless EPA receives adverse comments by December 6, 2006. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address the public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 5, 2007 and no further action will be taken on the proposed rule.

## XI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redsignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 5, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

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

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 24, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR parts 52 and 81 is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart II—North Carolina

■ 2. Section 52.1770(e), is amended by adding a new entry at the end of the table for ''8-Hour Ozone Maintenance plan for the Rocky Mount, North Carolina area'' to read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

| Provision | State effective date | EPA approval date | **Federal Register** citation |
|---|---|---|---|
| * | * | * | * |
| 8-Hour Ozone Maintenance plan for the Rocky Mount, North Carolina area (Edgecombe and Nash Counties). | 06/19/2006 | 11/06/2006 [Insert first page of publication]. |

## PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In section 81.334, the table entitled ''North Carolina-Ozone (8-Hour Standard)'' is amended under ''Rocky Mount, NC'' by revising the entries for ''Edgecombe County'' and ''Nash County'' to read as follows:

**§ 81.334 North Carolina.**

* * * * *

NORTH CAROLINA-OZONE (8-HOUR STANDARD)

| Designated area | Designation [a] | | Category/classification | |
|---|---|---|---|---|
| | Date[1] | Type | Date[1] | Type |
| * | * | * | * | * |
| Rocky Mount, NC: | | | | |
| Edgecombe County | January 5, 2007 | Attainment. | | |
| Nash County | January 5, 2007 | Attainment. | | |
| * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E6–18584 Filed 11–3–06; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 051104293–5344–02; I.D. 102706A]**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New York

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

**ACTION:** Closure of commercial fishery.

**SUMMARY:** NMFS announces that the summer flounder commercial quota available to New York has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New York for the remainder of calendar year 2006, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise New York that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New York.

**DATES:** Effective 0001 hours, November 4, 2006, through 2400 hours, December 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281–9341.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2006 calendar year was set equal to 14,154,000 lb (6,420 mt) (70 FR 77061, December 29, 2005). The percent allocated to vessels landing summer flounder in New York is 7.64699 percent, resulting in a commercial quota of 1,082,355 lb (490,948 kg). The 2006 allocation was reduced to 935,943 lb (424,537 kg) due to research set-aside and quota overage from 2005.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New York has harvested its quota for 2006.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 4, 2006, further landings of summer flounder in New York by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2006 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, November 4, 2006, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in New York for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

### Classification

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

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

Dated: October 31, 2006.

**James P. Burgess,**

*Acting Director, Office Of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 06–9081 Filed 11–1–06; 1:59 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 71, No. 214
Monday, November 6, 2006

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2006–26250; Directorate Identifier 2006–NM–104–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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

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

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A300–600 airplanes. This proposed AD would require an inspection to determine if certain spoiler actuators having certain part numbers are installed, and eventual replacement of all affected actuators. This proposed AD results from failure of a distribution block, which was detected during fatigue qualification tests of certain spoiler actuators. We are proposing this AD to prevent failure of the distribution block, which could result in leakage of the hydraulic fluid that supplies those actuators. This failure could cause failure of one of the three spoiler actuators and the associated hydraulic circuits, which could result in loss of those hydraulic circuits and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by December 6, 2006.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26250; Directorate Identifier 2006–NM–104–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the Docket

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

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300–600 series airplanes. The DGAC advises that during fatigue qualification tests of certain spoiler actuators a failure of the distribution block was detected. This failure could lead to a leak of the hydraulic fluid that supplies the actuator, and could cause failure of one of the three spoiler actuators and the associated hydraulic circuits, which could result in loss of those hydraulic circuits. This condition, if not corrected, could result in reduced controllability of the airplane.

### Relevant Service Information

Airbus has issued Service Bulletin A300–27–6057, including Appendix 01, dated May 17, 2005. The service bulletin describes procedures for an inspection to determine if certain spoiler actuators having certain part numbers are installed, and eventual replacement of all affected actuators. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–125, dated July 20, 2005, to ensure the continued airworthiness of these airplanes in France.

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

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the

applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

## Costs of Compliance

This proposed AD would affect about 1 airplane of U.S. registry.

The proposed inspection would take about 1 hour per airplane, at an average labor rate of $80 per hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $80.

The proposed replacements, if accomplished, would take about 5 work hours per airplane, at an average labor rate of $80 per work hour. Required parts cost would be minimal. Based on these figures, the estimated cost of the proposed replacements for U.S. operators is $400.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA–2006–26250; Directorate Identifier 2006–NM–104–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by December 6, 2006.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A300–600 airplanes; certificated in any category; as identified in Airbus Service Bulletin A300–27–6057, dated May 17, 2005.

**Unsafe Condition**

(d) This AD results from failure of a distribution block, which was detected during fatigue qualification tests of certain spoiler actuators. We are issuing this AD to prevent failure of the distribution block, which could result in leakage of the hydraulic fluid that supplies those actuators. This failure could cause failure of one of the three spoiler actuators and the associated hydraulic circuits, which could result in loss of those hydraulic circuits and consequent reduced controllability of the airplane.

**Compliance**

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

**Inspection for Actuator Part Numbers and Corrective Action**

(f) Within 700 flight hours after the effective date of this AD: Inspect to determine if a spoiler actuator with part number P376A0002–04 or P376A0002–08 is installed, by doing all the applicable actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–27–6057, excluding Appendix 01, dated May 17, 2005.

(1) If no actuator with either identified part number is installed, no further action is required by this paragraph.

(2) If any actuator with any identified part number is installed and the three associated hydraulic circuits are affected (at least one actuator supplied by the yellow circuit and at least one actuator supplied by the blue circuit and at least one actuator supplied by the green circuit): Within 100 flight hours after accomplishing the inspection required by paragraph (f) of this AD, replace all affected actuators on one of the hydraulic circuits with new actuators in accordance with the service bulletin. Within 12 months after accomplishing that replacement, replace all the remaining affected actuators with new actuators in accordance with the service bulletin.

(3) If any actuator with any identified part number is installed and one or two of the associated hydraulic circuits are affected: Within 12 months after accomplishing the inspection required by paragraph (f) of this AD, replace all affected actuators with new actuators in accordance with the service bulletin.

**Parts Installation**

(g) After the effective date of this AD, no spoiler actuator with part number P376A0002–04 or P376A0002–08 may be installed on any airplane.

**No Reporting Required**

(h) Although Airbus Service Bulletin A300–27–6057, excluding Appendix 01, dated May 17, 2005, specifies to submit an inspection report to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Related Information**

(j) French airworthiness directive F–2005–125, dated July 20, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on October 30, 2006.

**Kalene C. Yanamura,**

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

[FR Doc. E6–18685 Filed 11–3–06; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R07–OAR–2006–0837; FRL–8239–2]**

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

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri to add a test method for compliance testing to the rule that controls emissions of nitrogen oxides of major sources in the St. Louis ozone nonattainment area.

**DATES:** Comments on this proposed action must be received in writing by December 6, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0837 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail*: *algoe-eakin.amy@epa.gov.*
3. *Mail*: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier.* Deliver your comments to: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

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

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: October 25, 2006.

**Martha Cuppy,**

*Acting Regional Administrator, Region 7.*

[FR Doc. E6–18566 Filed 11–3–06; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[EPA–R04–OAR–2006–0676–200622(b); FRL–8239–4]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; NC; Redesignation of the Rocky Mount 8-Hour Ozone Nonattainment Area to Attainment

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

**ACTION:** Proposed rule.

**SUMMARY:** On June 19, 2006, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources, Division of Air Quality, submitted a final request: To redesignate the Rocky Mount 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard, and to approve a North Carolina State Implementation Plan revision containing a maintenance plan for Rocky Mount, North Carolina. The Rocky Mount 8-hour ozone nonattainment area is comprised of two counties, Edgecombe and Nash. EPA is proposing to approve the 8-hour ozone redesignation request for the Rocky Mount 8-hour ozone nonattainment area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for Rocky Mount, North Carolina. This proposal is based on EPA's determination that the State of North Carolina has demonstrated that the Rocky Mount area has met the criteria for redesignation to attainment specified in the Clean Air Act, including the determination that the entire Rocky Mount 8-hour ozone nonattainment area has attained the 8-hour ozone standard. In this action, EPA is also finding adequate and proposing to approve the 2008 and 2017 motor vehicle emissions budgets (MVEBs) for nitrogen oxides (for both Edgecombe and Nash counties) that are contained in the 8-hour ozone maintenance plan for the Rocky Mount nonattainment area. North Carolina has established subarea MVEBs at the county level so each county must consider its individual subarea MVEBs for the purposes of implementing transportation conformity. Further, in this action, EPA is proposing to find adequate and to approve the insignificance determination for volatile organic compounds' contribution from motor vehicle emissions to the 8-hour ozone pollution in the Rocky Mount, North Carolina area.

**DATES:** Written comments must be received on or before December 6, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA–R04–OAR–2006–0676, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.
2. *E-mail: ward.nacosta@epa.gov* or *wood.amanetta@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2006–0676'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier.* Deliver your comments to: Nacosta C. Ward or Amanetta Wood, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through

Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Nacosta C. Ward may be reached by phone at (404) 562–9140 and via electronic mail at *ward.nacosta@epa.gov.* Amanetta Wood may be reached by phone at (404) 562–9025 and via electronic mail at *wood.amanetta@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules section of this **Federal Register.**

Dated: October 24, 2006.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E6–18582 Filed 11–3–06; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[EPA–HQ–OAR–2005–0171; FRL–8239–8]**

**RIN 2060–AM14**

## National Emission Standards for Hospital Ethylene Oxide Sterilizers

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing two primary regulatory alternatives for new and existing hospital sterilizers that emit hazardous air pollutants and are area sources within the meaning of Clean Air Act section 112(a)(2). The first alternative proposes a generally available management practice requirement for new and existing hospital sterilizers that are area sources. The second alternative proposes that there are no generally available control technologies or management practices within the meaning of Clean Air Act section 112(d)(5) for this source category. We are proposing these two different alternatives because we currently have imperfect information concerning the ability of the proposed management practice to reduce hazardous air pollutant emissions and the cost-effectiveness of such management practice.

This action is being proposed as part of EPA's obligation to regulate area sources listed for regulation pursuant to Clean Air Act section 112(c)(3).

**DATES:** *Comments.* Written comments must be received on or before January 5, 2007.

*Public Hearing.* If anyone contacts EPA by November 27, 2006 requesting to speak at a public hearing, a public hearing will be held on December 6, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0171, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket (6102T), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

*Hand Delivery:* In person or by courier, deliver comments to: Air and Radiation Docket (6102T), Environmental Protection Agency, EPA West Building, 1301 Constitution Avenue, NW., Room B–102, Washington, DC 20014. Please include a total of two copies. Such deliveries are accepted only during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0171. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2005–0171, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

**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.

*Public Hearing:* If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or at an alternate site nearby.

**FOR FURTHER INFORMATION CONTACT:** For questions about the proposal, contact Mr. David Markwordt, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711;

telephone number (919) 541–0837; fax number (919) 541–0246; e-mail address: *markwordt.david@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* Categories and entities potentially regulated by the proposed action are hospitals which sterilize with ethylene oxide. The proposed action would affect the following categories of sources:

| Category | NAICS [1] code | Example of potentially regulated entities |
|---|---|---|
| General Medical and Surgical Hospitals. | 622110 | Hospital sterilizers. |
| Specialty (Except Psychiatric and Substance Abuse) Hospitals. | 622310 | Hospital sterilizers. |

[1] North American Industrial Classification Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. If you have any questions regarding the applicability of the proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Submitting CBI.* Do not submit information which you claim to be CBI to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mr. David Markwordt, EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711, telephone number (919) 541–0837, e-mail address: *markwordt.david@epa.gov*, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Mr. David Markwordt to verify the time, date, and location of the hearing. A public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of the proposed rule is also available on the WWW. Following the Administrator's signature, a copy of the proposed rule will be posted on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's Web site provides information and technology exchange in various areas of air pollution control.

*Organization of this Document.* The information presented in this preamble is organized as follows:

I. Background
II. Summary of the Proposed Standards
A. What Source Category Would Be Affected By This Proposal?
B. Proposed Regulatory Alternative 1
C. Proposed Regulatory Alternative 2
III. Rationale for the Proposed Standards
IV. Summary of Environmental, Energy, Cost, and Economic Impacts of the Proposed Standards
V. Solicitation of Public Comments
A. Introduction and General Solicitation
B. Specific Comment and Data Solicitations
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

## I. Background

Section 112(k)(3)(B) of the Clean Air Act (CAA) requires us to identify not less than 30 hazardous air pollutants (HAP) which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and section 112(c) requires us to list sufficient area source categories or subcategories to ensure that emissions representing 90 percent of the 30 listed HAP (area source HAP) are subject to regulation under section 112(d) of the CAA. The Urban Air Toxics Strategy (Strategy), issued on July 19, 1999 (64 FR 38706) included a list of 30 area source HAP and a list of area source categories emitting the listed HAP. CAA Section 112(d) includes authority to issue new and existing source maximum achievable control technology (MACT) standards, health threshold standards, and generally available control technology (GACT) or management practice standards for area sources. We are issuing today's proposal pursuant to CAA section 112(d)(5) to address our obligation under CAA section 112(c)(3) to subject to regulation the listed area source category of hospital sterilizers.

## II. Summary of the Proposed Standards

The source category at issue in this proposal is hospital sterilizers that emit HAP and that are area sources. EPA is proposing two primary regulatory alternatives for this source category. The first alternative (Regulatory Alternative 1) proposes a management practice to reduce HAP emissions from hospital sterilizers that do not use control devices to reduce ethylene oxide emissions.

The second alternative (Regulatory Alternative 2) proposes that there are no generally available control technologies or management practices within the meaning of section 112(d)(5) for this particular source category. We are proposing these two alternatives because we currently have limited information concerning the ability of the proposed management practice to reduce HAP emissions and the cost-effectiveness of such management practice. As explained below, we believe this proposal meets the requirements of CAA sections 112(c)(3) and 112(d)(5).

### *A. What Source Category Would Be Affected by This Proposal?*

The source category that is affected by this proposed action is the hospital sterilizer area source category. This source category includes area source facilities that perform the operations necessary to sterilize medical items with ethylene oxide at hospitals.

### *B. Proposed Regulatory Alternative 1*

#### 1. What Would Be the Affected Sources and Emission Points?

The affected source to which the proposed management practice applies is the group of ethylene oxide sterilizers at a hospital and that are located at hospitals that emit less than major source quantities of HAP. If EPA finalizes Regulatory Alternative 1, you would be subject to the requirements in

the proposed subpart if you own or operate one or more of the affected sources identified above. These requirements would apply nationwide. We are also considering applying proposed Regulatory Alternative 1 to urban areas only and are taking comment on this approach. In a separate action, we are proposing various definitions related to the urban only approach (*e.g.*, definitions for ''Metropolitan Statistical Area,'' ''Urban,'' ''Urban 1 areas,'' and ''Urban 2 areas''). These proposed definitions are included in the proposed National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities; this proposal is in Docket EPA–HQ–OAR–2006–0406. If we decide to finalize the urban-only approach, we would include in this final rule definitions related to that approach.

The emission source subject to the management practice is the sterilization unit.

2. What Would Be the Emission Limits, Equipment Standards, and/or Management Practice Standards?

Under Regulatory Alternative 1, we are proposing two different alternatives with regard to uncontrolled hospital sterilizers. First, we propose to require that hospitals with uncontrolled sterilizers follow the management practice of sterilizing full loads of items having a common aeration time, except where emergency circumstances dictate the use of less than full loads to protect human health. As discussed below, we are soliciting comment on particular circumstances where an exemption to the full load requirement would be necessary for medical or other reasons. Alternatively, we propose that hospitals with uncontrolled sterilizers follow the management practice of sterilizing full loads of items having a common aeration to the extent practical. Unlike the first proposed approach, this alternative would eliminate the need for a specific list of exemptions.

As for hospitals with controlled sterilizers, we propose that these hospitals be required to certify that the control devices are operating and will continue to operate in accordance with applicable State and/or local laws or, if controls are voluntary, in accordance with manufacturers' specifications. If controls are subsequently removed, the management practice would take effect.

3. What Would Be the Testing and Initial Compliance Demonstration Requirements?

There are no performance test requirements for the proposed management practice standard.

4. What Would Be the Notification, Recordkeeping, and Reporting Requirements?

We are proposing an initial compliance notification/certification status that would require affected sources to notify EPA that they operate a sterilizer covered by the rule and certify that they will operate the sterilizer in accordance with the requirements of the rule. We are taking comment on the costs and benefits of this initial compliance notification/certification status and whether or not there should be annual compliance certifications.

For Regulatory Alternative 1, we are also proposing two options for recordkeeping. The first option does not require recordkeeping. The second option requires that affected sources maintain records on-site of the date and time of each sterilization operation. If less than a full load is sterilized at any time, the operator must, in addition to noting the date and time of the sterilization operation, identify the reason why a less-than-full load was sterilized.

We are soliciting comment on the particular circumstances where a hospital may need to run the sterilizer with less than a full load, and whether to require records of such loads and the reason they were run.

*C. Proposed Regulatory Alternative 2*

As explained further below, we alternatively propose today that there are no generally available control technologies or management practices within the meaning of section 112(d)(5) for this category of sources. We are proposing this alternative in addition to Regulatory Alternative 1 because of the possibility that the proposed management standard will not result in meaningful or cost-effective reductions in ethylene oxide. That is, given the incentives that operators have to minimize ethylene oxide emissions to reduce operating costs as well as their own exposures, it is uncertain whether the issuance of additional work practice standards would result in meaningful HAP emission reductions. Even if such reductions occurred, they could be expensive. For example, as noted above, we assume that work practice standards would reduce emissions by 2 to 9 tons per year (tpy), and that recordkeeping costs can be as high as $1.3 million per year, resulting in reductions that cost $150,000 to $650,000 per ton. Costs would be reduced significantly without recordkeeping requirements, but emission reductions would be expected to be lower in this instance. For these reasons, the Agency is alternatively proposing today to find that there are no GACT or management practices within the meaning of CAA section 112(d)(5) for this category of sources. We believe that this would be a reasonable approach given the high costs of controlling emissions of ethylene oxide from hospital sterilizers using the identified control technology and the uncertainties as to whether the proposed work practice standard will result in HAP emission reductions and whether such reductions are cost-effective. We request comment on this alternative.

## III. Rationale for the Proposed Standards

Ethylene oxide is used in hospitals to sterilize medical items, particularly heat-sensitive items that cannot be steam sterilized. Ethylene oxide can be used directly in pure gaseous form or in gaseous mixtures. The ethylene oxide sterilization process includes preparation of the sterilization chamber (temperature, evacuation, humidification, and ethylene oxide gas concentration), the sterilization cycle when the medical item is exposed to ethylene oxide, evacuation and air washes, and the aeration (or off-gas) cycle. Emissions points from hospital ethylene oxide sterilization processes include: (1) Emissions from evacuating the chamber following sterilization, (2) emissions from the chamber during aeration, and (3) emissions that occur when the sterilizer door is opened. Most hospitals have eliminated another potential source of emissions, the once-through water-sealed vacuum pump used to evacuate the ethylene oxide from the chamber, in order to meet Occupational Safety and Health Administration (OSHA) guidelines for worker exposure. Hospitals now use recirculating vacuum-sealed pumps.

There were an estimated 5,800 hospitals nationwide in the United States in 2002. Based on a nationwide and State search for permits and inventory data, we specifically compared the number of hospitals identified and the number confirmed to conduct ethylene oxide sterilization, and extrapolated to nationwide numbers. The percentage of hospitals with ethylene oxide sterilization ranges from 28 to 33 percent. Based on this range, there are approximately 1,600 to

1,900 hospitals nationwide that conduct ethylene oxide sterilization.

The predominant type of air pollution control devices are the EtO-Abator™ and the Safe-Cell technology. Both technologies reduce emissions by approximately 99 percent. The EtO-Abator™ oxidizes the ethylene oxide with a catalyst to form carbon dioxide and water vapor. The latest version of the EtO-Abator™ (sold by 3M) is sold only for use with pure ethylene oxide systems; however, earlier versions were used with gas blends. The Safe-Cell technology, which can be used with either pure ethylene oxide or ethylene oxide gas blends, is a two-stage process. In the first stage, an acid hydrolysis scrubber removes ethylene oxide from the gas stream and converts it to ethylene glycol; in the second stage, the remaining ethylene oxide is captured and destroyed on a dry bed filter impregnated with a chemical reactant.

We estimated that ethylene oxide emissions were 1,060 megagrams per year (Mg/yr) (1,170 tpy) from hospital sterilization processes nationwide in 1990. As discussed below, there have been declines in ethylene oxide usage and emissions for sterilization processes. Nationwide ethylene oxide usage was estimated to be 192 Mg/yr (212 tpy) in 2000 and 122 Mg/yr (135 tpy) in 2005. We estimate that at least half of the ethylene oxide being used by hospitals with controlled sterilizers, which would emit negligible amounts of ethylene oxide, and the other half is used in uncontrolled sterilizers. This resulted in about 40 Mg/yr (44 tpy) of ethylene oxide emissions in 2005. We estimate approximately 0.05 cases of cancer per year resulting from the release of the 40 Mg/yr of ethylene oxide to the atmosphere. Ethylene oxide emissions for hospital sterilizers therefore have decreased over 90 percent from 1990 to 2005 (from 1,060 to 40 Mg/yr reduction).

The decline in ethylene oxide usage for hospital sterilization is due mainly to: (1) New regulations and excise taxes on chlorofluorocarbons, (2) development of new sterilization processes, such as liquid peracetic acid and hydrogen peroxide plasma processes, for certain medical items, (3) increased concern over the toxicity of ethylene oxide residuals, and (4) new restrictions on reprocessing single use devices (SUD). As a corollary to the decline in EO usage and emissions, the number of hospitals that conduct ethylene oxide sterilization has been declining. Regulation of ethylene oxide sterilization at hospitals has contributed to the decline in the number of hospitals that conduct sterilization processes. In California, there were approximately 600 hospitals that operated ethylene oxide sterilizers in 1991. Since implementation of the California Air Resources Board regulation for hospital sterilizers in 1991, at least 60 percent of these hospitals are no longer conducting sterilization operations.

In 2000, the Food and Drug Administration (FDA) regulated the reprocessing of SUD, and these regulations have made it more difficult for hospitals to continue the reprocessing. Many hospitals have reacted to the 2000 FDA regulations by discontinuing the reuse of SUD or by outsourcing the sterilization processing of SUD. With the trends mentioned, hospitals in urban areas have begun to consolidate ethylene oxide sterilization processes, and one hospital with a large sterilizer may conduct sterilization processes for its neighbor or affiliated hospitals or those in close proximity. As a result of the many SUD reuse issues, when hospitals are outsourcing and using reprocessed devices, ethylene oxide usage by contract sterilizers is increasing, and when hospitals are not reprocessing SUD, ethylene oxide usage by medical device manufacturers has increased as they manufacture more SUD. (Sterilization processes by commercial sterilizers, which include commercial contract sterilizers and medical device manufacturers, are subject to MACT controls under 40 CFR part 63, subpart O.)

Emissions from controlled hospital sterilizers are negligible, and we are not aware of any practical emission reduction strategies to further reduce emissions after control. The ethylene oxide emissions from hospitals average less than 300 pounds per year. The capital costs of add-on controls for these facilities range from $23,000 to $130,000 per hospital and the annualized costs of add-on controls range from $10,000 to $46,000 per year. These costs do not include any potential monitoring, recordkeeping, and reporting (MRR) costs that would be necessary to ensure continuous compliance if controls were required. Total nationwide annualized cost to control all uncontrolled facilities would be approximately $8.5 million. The cost to reduce a ton of ethylene oxide emissions is over $200,000 per year.

As a first step in our analysis, we considered the option of applying a MACT standard to hospital sterilizers under CAA section 112(d)(2). Hospitals that are currently controlling their ethylene oxide sterilizers generally are doing so to comply with existing State or local requirements. More than half of the hospital sterilizers have add-on controls. Due to this widespread use of controls on hospital sterilizers, the MACT floor level of control would be add-on controls if we were to develop this area source rule based on CAA section 112(d)(2). We propose to reject the application of MACT and the requirement to control all presently uncontrolled hospital sterilizers based on the small amount of ethylene oxide emissions from uncontrolled hospital sterilizers and the poor cost-effectiveness associated with requiring add-on controls on the currently uncontrolled sources. The average hospital emits less than 300 pounds per year of ethylene oxide. The cost-effectiveness of applying MACT is over $200,000 per ton of ethylene oxide reduced, excluding any potential MRR costs, which we think is excessive for control of these emissions.

Consequently, the Administrator is exercising his discretion to promulgate standards or requirements under CAA section 112(d)(5) which provide for the use of management practices to reduce emissions of HAP from uncontrolled sterilizers.

The FDA regulates the hospital sterilizer as a medical device; these requirements help ensure sterility of the sterilized product. The FDA requires the manufacturer follow the Association for the Advancement of Medical Instrumentation (AAMI) standards for sterilizers. The FDA does not directly regulate the hospital use of the sterilizer unit. However, the amount of ethylene oxide used per sterilizer cycle is factory set by the manufacturers to comply with the AAMI standards, *i.e.*, for a given sterilizer cycle, one uses the same amount of ethylene oxide whether the sterilizer is full or not. Because of this, hospital sterilizer operators have little discretion in the operation of the sterilizer other than to minimize the use of the sterilizer by only running full loads. Under Regulatory Alternative 1, we are therefore proposing the management practice that requires the sterilization of full loads to minimize the number of times the sterilizer is operated. As explained above, we are considering two different approaches for framing the standard under Regulatory Alternative 1.

This management practice is consistent with the American National Standards Institute, Inc. (ANSI) and the AAMI jointly developed American National Standard ANSI/AAMI ST41:1999. The ANSI/AAMI ST41:1999 standard is recognized by the FDA as a consensus standard. The ANSI/AAMI standard requires the operator sterilize full loads of items having a common aeration time, to the extent practical.

The rationale provided in the standard states the following:

As compared to sterilizing the same volume in partial loads, sterilizing full loads of items having a common aeration time is cost-effective and reduces the potential for occupational exposure and for environmental release of ethylene oxide. This practice also reduces the temptation for workers to attempt to retrieve items with short aeration times from cabinets in which other items might not be fully aerated and thus helps avoid unnecessary exposure to ethylene oxide.''

It is possible that not all hospitals sterilize every load consistent with this standard. We believe that the management practice should increase the awareness of pollution prevention and that it has the potential to reduce emissions from uncontrolled hospital sterilizers. For purposes of Regulatory Alternative 1, we assume that the cost of implementing the management practice is low. We believe the cost of performing the management practice may be off-set by the reduced purchasing costs of ethylene oxide and other operating costs resulting from fewer loads. We also believe the implementation of the management practice can be done relatively quickly due to the expected low effort to set up the recordkeeping necessary for the practice. For these reasons, we are proposing Regulatory Alternative 1, which would require compliance with the management practice requirements within 1 year after the effective date of the final rule.

Under Regulatory Alternative 1, we are proposing that the management practice apply to uncontrolled hospital sterilizers. Hospitals controlling their sterilizers with add-on emission control devices would be required to certify either compliance with all State or local requirements applicable to the controls or, if controls are voluntary, certify that they are operating the controls in accordance with the manufacturer's specifications. If controls are subsequently removed, the management practice would take effect. Facilities complying with the management practice will be required to maintain records on-site of the date and time of sterilization and whether a full load was sterilized, and the reason for not running a full load. We estimated the costs to keep records at $1.3 million per year for the uncontrolled facilities. We are assuming the controlled facilities will certify compliance with either State or local requirements, or they are operating the controls consistent with the manufacturer's specifications. The cost estimates noted above are only estimates, however. We are taking comment on the costs and benefits of this recordkeeping requirement and on whether this rule should apply nationally or only to hospitals in urban areas. We are considering applying today's proposal only to urban areas as defined in the proposed National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities in Docket EPA–HQ–OAR–2006–0406.

Based on the information and assumptions noted above, we are proposing two options for Regulatory Alternative 1. First, we propose that full loads of items having a common aeration time be sterilized, except where emergency circumstances dictate the use of less than full loads to protect human health. With regard to this proposed option, we specifically solicit comment on whether there are other exemptions to the full load requirement that are appropriate. Alternatively, we propose that operators be required to sterilize full loads of items having a common aeration time to the extent practical. Under this alternative approach, there is no need for a specified list of exemptions for specific circumstances, as is the case with the first proposed approach. Rather, the operator must fully load the sterilizer to the extent practical.

Both options recognize that hospital sterilizers have strong economic incentives to operate sterilizers with a full load because doing so reduces the quantity of ethylene oxide needed to run their operation and, accordingly, reduces costs. This alternative approach is consistent with the ANSI/AAMI standard described above. Indeed, as noted by the AAMI and FDA, operation at full loads reduces operating costs by reducing the consumption of ethylene oxide, minimizing wear and tear on machines, and reducing associated labor costs. We solicit comment on these two alternative approaches.

Under Regulatory Alternative 2, we are proposing that there are no GACT or management practices within the meaning of section 112(d)(5) of the CAA for this source category. We are currently not aware of any control technology or management practice other than those discussed in this proposal that would reduce ethylene oxide emissions from hospital sterilizers. We have already identified that there is a high cost of controlling emissions of ethylene oxide from hospital sterilizers using the identified control technology, such that we currently do not believe that there is any GACT. We also have limited information to conclude either that the proposed management practice reduces emissions of ethylene oxide or that the proposed practice is cost-effective. We are therefore co-proposing Regulatory Alternative 2.

We are soliciting comment on whether, for this source category, it is reasonable to conclude that no such generally available means of reducing emissions is available. In this regard, we specifically solicit comment on whether there is any other control technology or management practice that is not described in this proposal, but that may provide a cost-effective means of reducing ethylene oxide emissions from hospital sterilizers. To the extent a commenter identifies such an alternative means of emission reduction, we request information relating to the nature of the emission reduction and the cost of obtaining such reduction.

Section 502(a) of the CAA provides that EPA may exempt one or more area sources from the requirements of title V if EPA finds that compliance with such requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on such area sources. EPA must determine whether to exempt an area source from title V at the time we issue the relevant CAA section 112 standard (40 CFR 70.3(b)(2)). If we pursue Regulatory Alternative 1 in the final rule, we are proposing today to exempt hospital sterilizer area sources from the requirements of title V. Hospital sterilizer area sources would not be required to obtain title V permits solely as a function of being the subject of today's proposed national emission standards for hazardous air pollutants (NESHAP); however, if they were otherwise required to obtain title V permits, such requirement(s) would not be affected by today's proposed exemption.

Consistent with the statute, EPA has found that compliance with title V permitting is ''unnecessarily burdensome'' for hospital sterilizer area sources. EPA's inquiry into whether this criterion was satisfied was based primarily upon consideration of the following four factors: (1) Whether title V would result in significant improvements to the compliance requirements that we are proposing for this area source category; (2) whether title V permitting would impose a significant burden on hospital sterilizer area sources; (3) whether the costs of title V permitting for hospital sterilizer area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources; and (4) whether there are

implementation and enforcement programs in place that are sufficient for assuring compliance with this NESHAP without relying on title V permits.

Additionally, EPA also considered whether exempting hospital sterilizer area sources would adversely affect public health, welfare, or the environment. We first determined the extent to which these factors were present for this area source category. We then determined whether those factors collectively demonstrated that compliance with title V requirements would be unnecessarily burdensome for hospital sterilizer area sources.

In our consideration of these factors, we believe the addition of title V permitting would not result in significant improvements to the compliance requirements that we are proposing for this area source category. Under Regulatory Alternative 1, we are unaware of any additional compliance procedures, in or outside the title V program, which would improve the assurance of significantly more gains in compliance and emission reductions. We have not identified any adverse effect on public health, welfare, or the environment by the proposed title V exemption.

We also believe that title V permitting may impose a significant burden on facilities within this source category, some of which are small businesses. For many facilities, the cost of obtaining a title V permit may far exceed the cost of complying with this proposed rule without significant gains in compliance. Based on the above analysis, we conclude that title V permitting would be ''unnecessarily burdensome'' for hospital sterilizer area sources. We are therefore proposing that this area source category be exempt from title V permitting requirements if we pursue Regulatory Alternative 1.

We have prepared regulatory text for proposed Regulatory Alternative 1. The proposed regulatory text implements the first option described above for Regulatory Alternative 1 and includes proposed recordkeeping requirements. We have included regulatory text for this proposed approach because it is the approach that would involve the most extensive regulatory text. If we finalize the second option described above for Regulatory Alternative 1 (*i.e.*, following the ANSI/AAMI standard), we will modify the regulatory text appropriately.

## IV. Summary of Environmental, Energy, Cost, and Economic Impacts of the Proposed Standards

We estimate that in 2002 there were, at most, 1,900 hospital area sources, of which approximately 630 do not presently have add-on controls. The management practice that we are proposing today as Regulatory Alternative 1 is estimated to reduce the 40 Mg/yr emitted from uncontrolled sterilizers from 2 to 9 Mg/yr per year based on a range of assumptions for the extent to which hospital sterilizers are presently not being run with full loads. We estimate cancer incidence would be reduced from approximately 0.05 to 0.044 cases of cancer per year. We further believe that if we pursue Regulatory Alternative 1 in the final rule, there will be minimal effect on other air quality or non-air quality environmental impacts and will be negligible energy or economic impacts. Annualized costs to comply with the proposed standards are estimated to be less than $2 million per year. There will be no environmental, energy, cost, or economic impacts associated with Regulatory Alternative 2.

## V. Solicitation of Public Comments

### *A. Introduction and General Solicitation*

We request comments on all aspects of the proposed action. All significant comments received during the public comment period will be considered in the development and selection of the final rulemaking.

### *B. Specific Comment and Data Solicitations*

1. Management practice costs and benefits—We are requesting comment on our estimate of the costs to comply with the management practice and the associated MRR requirements. As stated earlier, we are proposing one time initial compliance notification/certification. We are requesting comment on the costs and benefits of the proposed initial compliance notification/certification status and recordkeeping and on the costs and benefits of hospitals also annually certifying their compliance with the proposed rule. We are requesting comment on the two proposed options for recordkeeping. The first option does not require records to minimize the burden compared to the emission reduction benefit. The second option requires recordkeeping to ensure compliance. We solicit comments on approaches other than recordkeeping which may ensure compliance at a smaller cost. Finally, we are requesting comment on whether this rule should apply nationally or only to hospitals in urban areas.

2. Full loads—The ANSI/AAMI ST41:1999 standards rationale for load configuration states the following:

''Overloading impedes proper air removal, humidification of the load, and sterilant penetration and evacuation. Proper loading ensures that the sterilized items will not touch the operator's hands during transfer from the sterilizer to the aerator.''

We do not want the proposed requirements to impede the sterilization cycle or in any way compromise the process of sterilization. We are requesting comment on our definition of full load and for specific cases where it would not be practical or appropriate to require full loads. We are also soliciting comment on our alternative proposal of requiring hospitals with uncontrolled sterilizers to follow the management practice of sterilizing full loads of items having a common aeration, to the extent practical.

3. Emission estimate for the management practice—We currently have insufficient information concerning the ability of the proposed management practice to reduce HAP emissions. Our emissions reduction estimates attributed to the management practice are based on assumptions concerning the current practice at hospitals. The basis of our emissions estimate is the assumption that 10 to 50 percent of the sterilization is performed on half loads and that the amount of ethylene oxide used is fixed per cycle. The emission estimate also makes the assumption that all loads could be full. We are requesting comments on the extent to which hospitals presently sterilize less than full loads, to what extent these less than full loads could be eliminated, and any additional information that may assist in estimating emissions. We are requesting comment on whether this management practice is an effective means of reducing emissions from these sources and, if not, whether it would be appropriate to set no standard on the grounds that no technology or management practice are generally available to reduce emissions from these sources.

## VI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been

documented in the docket for this action.

*B. Paperwork Reduction Act*

The information requirements in the proposed NESHAP for Hospital Ethylene Oxide Sterilization Area Sources have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2245.01.

The proposed information collection requirements are based on the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A), some of which are incorporated into the proposed NESHAP. The ICR document includes the burden estimates for all applicable General Provisions. These recordkeeping and reporting requirements are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

Proposed Regulatory Alternative 2 does not impose any new information collection burden. Proposed Regulatory Alternative 1 does propose information collection requirements. Specifically, the annual burden for the information collection averaged over the first 3 years of this ICR is estimated to total 23,694 labor hours per year at a cost of $1.6 million for the 1,900 existing hospital sterilizer area sources. No capital/startup costs or operation and maintenance costs are associated with the proposed requirements. No costs or burden hours are estimated for new area sources because no new sources are estimated during the 3-year period of the ICR. We have no indication there will be any new sources in the next 3 years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this action, which includes this ICR, under Docket ID number EPA–HQ–OAR–2005–0171. Submit any comments related to the ICR for the proposed rules to EPA and OMB. See ''Addresses'' section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 6, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by December 6, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*C. Regulatory Flexibility Act*

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

For the purposes of assessing the impacts of today's proposed area source NESHAP on small entities, a small entity is defined as: (1) A small business that is a hospital as defined by NAICS codes 622110 and 622310 whose parent company has less than $31.5 million in gross revenue (based on Small Business Administration (SBA) size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Proposed Regulatory Alternative 1 proposes to require the use of a work practice to minimize the operation of the ethylene oxide sterilization unit and will, therefore, have minimal nationwide costs, *i.e.*, less than $2 million per year. We have determined that less than 3 percent of the hospitals are small businesses as defined by the SBA. We have also determined that none of these small businesses are significantly impacted by this proposal for none of them will incur annualized compliance costs of 0.1 percent of sales or greater. There are no costs associated with proposed Regulatory Alternative 2.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the

UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As discussed previously in this preamble, if we finalize Regulatory Alternative 1, the estimated expenditures for the private sector in any 1 year are less than $2 million. There are no costs associated with proposed Regulatory Alternative 2. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the proposed rule does not significantly or uniquely affect small governments. The proposed rule would not result in expenditures by them of $100 million or more in any 1 year or any disproportionate impacts on them. Therefore, the proposed rule is not subject to section 203 of the UMRA.

*E. Executive Order 13132: Federalism*

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

The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. To the extent the proposed rule proposes requirements, it does so only with respect to owners and operators of specified area sources and not State and local governments. Thus, Executive Order 13132 does not apply to the proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. To the extent the proposed rule proposes requirements, it does so only with respect to owners and operators of specified area sources and not Tribal governments. Thus, Executive Order 13175 does not apply to the proposed rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed rule is not subject to the Executive Order. It is based on control technology and not on health or safety risks.

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

The proposed rule is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the proposed rule is not likely to have any adverse energy effects because energy requirements would likely be less than existing levels. No additional pollution controls or other equipment that would consume energy are required by the proposed rules.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The proposed rule does not include technical standards.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 31, 2006.

**Stephen L. Johnson,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—[AMENDED]

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

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

## Subpart A—[Amended]

2. Part 63 is amended by adding subpart WWWWW to read as follows:

**Subpart WWWWW—National Emission Standards for Hospital Ethylene Oxide Sterilization**

**Applicability and Compliance Dates**

Sec.
63.10382 Am I subject to this subpart?
63.10384 What are my compliance dates?

**Standards**

63.10390 What management practice standards must I meet?

**Initial Compliance Requirements**

63.10400 How do I demonstrate initial compliance?
63.10402 By what date must I demonstrate initial compliance?

**Monitoring—Continuous Compliance Requirements**

63.10420 How do I demonstrate continuous compliance with the management practice requirements?

**Notifications, Reports, and Records**

63.10430 What notifications must I submit and when?
63.10432 What records must I keep?
63.10434 In what form and for how long must I keep my records?

**Other Requirements and Information**

63.10440 What parts of the General Provisions apply to me?
63.10442 Who implements and enforces this subpart?
63.10446 Do title V permitting requirements apply to area sources subject to this subpart?
63.10448 What definitions apply to this subpart?

**Tables to Subpart WWWWW of Part 63**

Table 1 to Subpart WWWWW of Part 63—Applicability of General Provisions to Subpart WWWWW

## Subpart WWWWW—National Emission Standards for Hospital Ethylene Oxide Sterilization

### Applicability and Compliance Dates

#### § 63.10382 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an ethylene oxide sterilization facility at a hospital that is an area source of hazardous air pollutant (HAP) emissions. Your hospital facility is an area source of HAP if it is a stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of less than 9.07 megagrams (10 tons) per year and any combination of HAP at a rate of less than 22.68 megagrams (25 tons) per year.

(b) The affected source subject to this subpart is each new or existing sterilization facility.

(1) An affected source is existing if you commenced construction or reconstruction of the affected source before November 6, 2006.

(2) An affected source is new if you commenced construction or reconstruction of the affected source on or after November 6, 2006.

#### § 63.10384 What are my compliance dates?

(a) *Existing source.* If you have an existing affected source, you must comply with applicable requirements in this subpart no later than [1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(b) *New source.* If you have a new or reconstructed affected source for which the initial startup date is on or before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with applicable requirements in this subpart by [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) *New source.* If you have a new or reconstructed affected source for which the initial startup date is after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with applicable requirements in this subpart upon initial startup.

### Standards

#### § 63.10390 What management practice standards must I meet?

(a) You must sterilize full loads of items having a common aeration time, except under the following conditions: emergency circumstances dictate the use of less than full loads to protect human health.

(b) You are exempt from the management practice standards in paragraph (a) of this section if your sterilization unit is equipped with an add-on air pollution control device and you submit a certification in accordance with § 63.10400.

### Initial Compliance Requirements

#### § 63.10400 How do I demonstrate initial compliance?

(a) *Uncontrolled sources.* You must demonstrate initial compliance with the management practice standards in § 63.10390(a) by submitting an initial Notification of Compliance Status certifying that you are sterilizing with full loads of items having a common aeration time.

(b) *Controlled sources subject to State and local regulation.* You must demonstrate initial compliance with § 63.10390(b) by submitting an initial Notification of Compliance Status certifying that you are operating the sterilization unit in accordance with your State or local regulation and following control device manufacturer's recommended procedures.

(c) *Controlled sources not subject to State and local regulation.* You must demonstrate initial compliance with § 63.10390(b) by submitting an initial Notification of Compliance Status certifying that you are venting the ethylene oxide emissions from each sterilization unit to an add-on air pollution control device. You must certify that you are operating the control device during all sterilization processes and in accordance with manufacturer's recommended procedures.

#### § 63.10402 By what date must I demonstrate initial compliance?

You must demonstrate initial compliance with § 63.10390 upon startup or no later than 180 calendar days after your compliance date, whichever is later.

### Monitoring—Continuous Compliance Requirements

#### § 63.10420 How do I demonstrate continuous compliance with the management practice requirements?

For each sterilization unit not equipped with an add-on air pollution control device, you must demonstrate continuous compliance with the management practice standards in § 63.10390(a) by checking and recording the date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and if not, which allowable reason.

### Notifications, Reports, and Records

#### § 63.10430 What notifications must I submit and when?

(a) You must submit the initial Notification of Compliance Status to the authority provided for in § 63.9(a)(4). In addition to submitting your initial Notification of Compliance Status to the State or Region Office, you must also submit a copy of the initial Notification of Compliance Status to EPA's Office of Air Quality Planning and Standards. Send your notification via e-mail to *CCG-ONG@EPA.GOV* or via U.S. mail or other mail delivery service to U.S. EPA, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Attn: Hospital Sterilizers Project Leader, Research Triangle Park, NC 27711.

(b) You must submit an initial Notification of Compliance Status for the initial compliance demonstration in § 63.10400(a), (b), or (c) before 5 p.m. on the 60th calendar day following the compliance demonstration, consistent with § 63.10402. Your Notification of Compliance Status must include the information required in paragraphs

(b)(1) through (5) of this section and the applicable certification in § 63.10400.

(1) The name and address of the owner or operator.

(2) The address (*i.e.*, physical location) of the affected source.

(3) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date.

(4) A brief description of the nature, size, design, and method of operation of the source and an identification of the types of emission points within the affected source subject to the relevant standard and types of hazardous air pollutants emitted.

(5) A statement that the affected source is an area source.

#### § 63.10432 What records must I keep?

You must keep the records specified in paragraphs (a) and (b) of this section.

(a) *All sources.* A copy of the initial Notification of Compliance Status that you submitted to comply with this subpart.

(b) *Uncontolled sources.* Records of checks needed to document continuous compliance with the management practice standards required by § 63.10420.

#### § 63.10434 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

### Other Requirements and Information

#### § 63.10440 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in 40 CFR 63.1 through 63.16 apply to you.

#### § 63.10442 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that Agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies include approval of alternatives to the applicability requirements under 40 CFR 63.10382, the compliance date requirements in 40 CFR 63.10384, and the management practice standards as defined in 40 CFR 63.10390.

#### § 63.10446 Do title V permitting requirements apply to area sources subject to this subpart?

You are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

#### § 63.10448 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in 40 CFR 63.2, and in this section as follows:

*Aeration process* means any time when ethylene oxide is removed from the aeration unit through the aeration unit vent or from the combination sterilization unit through the sterilization unit vent, while aeration or off-gassing is occurring.

*Aeration unit* means any vessel that is used to facilitate off-gassing of ethylene oxide.

*Air pollution control device* means a catalytic oxidizer, acid-water scrubber, or any other air pollution control equipment that reduces the quantity of ethylene oxide from the effluent gas stream from sterilization and aeration processes.

*Combination sterilization unit* means any enclosed vessel in which both the sterilization process and the aeration process occur within the same vessel, *i.e.*, the vessel is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing and is followed by off-gassing of ethylene oxide.

*Common aeration time* means that items require the same length of time to off-gas ethylene oxide.

*Controlled source* means a sterilization facility using ethylene oxide in sterilization units with an add-on air pollution control device used to reduce the quantity of ethylene oxide emissions.

*Full load* means the maximum number of items that does not impede proper air removal, humidification of the load, or sterilant penetration and evacuation in the sterilization unit.

*Hospital* means a facility that provides medical care and treatment, including diagnostic and major surgery facilities, for patients who are acutely ill or chronically ill on an inpatient basis under supervision of licensed physicians and under nursing care offered 24 hours per day. Doctor's offices, clinics, or other facilities whose primary purpose is to provide medical services to humans or animals on an outpatient basis are excluded.

*State or local regulation* means a regulation at the State or local level that requires a hospital to reduce the quantity of ethylene oxide emissions from ethylene oxide sterilization units.

*Sterilization facility* means the group of ethylene oxide sterilization units at a hospital using ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing.

*Sterilization process* means any time when ethylene oxide is removed from the sterilization unit or combination sterilization unit through the sterilization unit vent.

*Sterilization unit* means any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilizing.

*Uncontrolled source* means a sterilization facility using ethylene oxide in sterilization units with no add-on air pollution control device used to reduce the quantity of ethylene oxide emissions.

### Tables to Subpart WWWWW of Part 63

As required in § 63.10440, you must comply with the requirements of the General Provisions (40 CFR part 63, subpart A) shown in the following table.

TABLE 1.—TO SUBPART WWWWW OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART WWWWW

| Citation | Subject | Applies to subpart WWWWW | Explanation |
|---|---|---|---|
| § 63.1(a)(1)–(4), (a)(6), (a)(10)–(12), (b)(1). | Applicability | Yes | |
| § 63.1(a)(5), (7)–(9) | [Reserved] | | |
| § 63.1(b)(2) | [Reserved] | | |
| § 63.1(c)(1)–(2) | Applicability of this part after a relevant standard has been set. | Yes | States have the option to exclude area sources affected by this rule—Area Source Permitting. |
| § 63.1(c)(3)–(4) | [Reserved] | | |
| § 63.1(c)(5) | Subject to notification requirements | No | |
| § 63.1(d) | [Reserved] | | |
| § 63.1(e) | Emission limitation by permit | Yes | |
| § 63.2 | Definitions | Yes | |
| § 63.3 | Units and abbreviations | Yes | |
| § 63.4 | Prohibited activities | Yes | |
| § 63.5 | Construction/Reconstruction | No | |
| § 63.6(a), (b)(1)–(5), b(7) | Compliance with standards and maintenance requirements. | Yes | |
| § 63.6(b)(6) | [Reserved] | | |
| § 63.6(c)(1) | Compliance dates for existing sources | No | Subpart WWWWW requires compliance 1 year after the effective date. |
| § 63.6(c)(2)–(c)(5) | Compliance dates for CAA section 112(f) standards and for area sources that become major. | No | |
| § 63.6(d) | [Reserved] | | |
| § 63.6(e)–(h) | Alternative nonopacity emission standard | No | |
| § 63.6(i)–(j) | Compliance extension | Yes | |
| § 63.7 | Performance testing requirements | No | |
| § 63.8 | Monitoring requirements | No | |
| § 63.9(a) | Applicability and initial notifications addressees | Yes | |
| § 63.9(b) | Initial notifications | No | |
| § 63.9(c) | Request for extension of compliance | Yes | |
| § 63.9(d)–(j) | Other notifications | No | |
| § 63.10(a)(1)–(2) | Recordkeeping and reporting requirements, applicability. | No | |
| § 63.10(a)(3)–(4) | General information | Yes | |
| § 63.10(a)(5)–(7) | Recordkeeping and reporting requirements, reporting schedules. | No | |
| § 63.10(b)(1) | Retention time | Yes | |
| § 63.10(b)(2)–(f) | Recordkeeping and reporting requirements | No | |
| § 63.11 | Control device requirements | No | |
| § 63.12 | State authority and delegations | Yes | |
| §§ 63.13–63.16 | Addresses, Incorporations by Reference, availability of information, performance track provisions. | Yes | |

[FR Doc. E6–18644 Filed 11–3–06; 8:45 am]
BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 27

**[WT Docket Nos. 06–169, 96–86; DA 06–2116]**

### Upper 700 MHz Guard Band Licenses; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of reply comment period.

**SUMMARY:** In this document, the Wireless Telecommunications Bureau (WTB) of the Federal Communications Commission (Commission) extends the reply comment deadline in response to the Notice of Proposed Rulemaking (NPRM) in WT Docket Nos. 06–169 and 96–86. The deadline to file reply comments is extended from November 6, 2006 to November 13, 2006. This action is taken to provide interested parties sufficient time within which to respond meaningfully to the relevant issues raised in the NPRM.

**DATES:** The agency must receive reply comments on or before November 13, 2006.

**ADDRESSES:** Interested parties may submit reply comments, identified by WT Docket Nos. 06–169 and 96–86, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Appropriate addresses for submitting reply comments may be found in the **SUPPLEMENTARY INFORMATION** section of this document.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov*

or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting reply comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Paul Moon, Wireless Telecommunications Bureau, at 202–418–1793, or via email at *Paul.Moon@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Wireless Telecommunications Bureau's Order (*Order*), DA 06–2116, in WT Docket Nos. 06–169 and 96–86, released October 25, 2006, which extends the reply comments filing deadline in the 700 MHz Guard Bands proceeding. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

**Synopsis of the *Order***

1. On September 8, 2006, the Commission released the *NPRM* in WT Docket Nos. 06–169 and 96–86; FCC 06–133, published at 71 FR 55149, September 21, 2006, seeking public comment regarding, *inter alia*, proposals on possible changes to the Part 27 service rules applicable to existing and prospective Upper 700 MHz Guard Bands licensees as well as on proposals to modify the existing Upper 700 MHz band plan with respect to the Guard Bands. Deadlines for the filing of comments and reply comments were established as October 23, 2006, and November 6, 2006, respectively.

2. On October 20, 2006, the State of Maryland, Commonwealth of Virginia, Loudoun County, Virginia, and the Region 20 Regional Planning Committee each filed a request for extension of time to submit comments in response to the *NPRM.* The parties argue that the *NPRM* raised complex issues, and assert that any change to the existing 700 MHz Public Safety band plan will affect their plans for public safety communications. The parties state that they require additional time to more thoroughly analyze the complex issues raised, and request extensions of time ranging from ''no less than 30 days'' to 60 days in which to file comments.

3. Motions for extension of time will not be granted routinely. In addition, the Commission's rules require that motions for extensions of time shall be filed 7 days before the filing date. In an emergency situation, the Commission may consider a late-filed motion for a brief extension of time related to the duration of the emergency. Pursuant to the Commission's rules, extension requests were due by October 16, 2006, in this matter. The parties, however, did not submit motions for extension of time until October 20, 2006, nor did they provide sufficient information upon which the Commission may grant emergency relief. The Commission therefore concludes that it is unable to extend the comments deadline of October 23, 2006.

4. However, in order to provide all interested parties with a full and fair opportunity to participate in this proceeding, the Commission finds that it is in the public interest to extend the reply comment deadline by 7 days until November 13, 2006. While the Commission finds that it is appropriate to provide additional time in order to build a more thorough and complete record, it is also cognizant of the concerns raised by the public safety community that the Commission address the issues raised in this proceeding in a prompt and timely manner. Accordingly, by extending the reply comments deadline by 7 days, the Commission strikes a balance between providing commenters with adequate time in which to respond to the *NPRM*, and ensuring that this proceeding is resolved expeditiously. In this regard, it should be noted that the Commission does not anticipate granting further extensions to the reply comments deadline.

5. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file reply comments on or before November 13, 2006. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

**Ordering Clause**

6. Pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 154(j),

and §§ 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR 0.131, 0.331, and 1.46, the deadline for filing reply comments in response to the NPRM, published on September 21, 2006, in WT Docket Nos. 06–169 and 96–86, is extended to November 13, 2006.

Federal Communications Commission.

**Catherine W. Seidel,**

*Acting Chief, Wireless Telecommunications Bureau.*

[FR Doc. 06–9102 Filed 11–3–06; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 71, No. 214

Monday, November 6, 2006

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

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Notice of Meeting

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Thursday, November 9, 2006. The meeting will be held in the Athens Room of Hotel Monaco, 700 F St., NW., Washington, DC at 2 p.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome.
II. Swearing-in Ceremony.
III. ACHP Award for Federal Preserve America Achievement and Chairman's Award Presentation.
IV. Preserve America Program Status Report.
  A. Preserve America Summit.
  B. Preserve America Communities Update.
  C. Preserve America Grants.
  D. Report on the 2006 History Teacher of the Year Award.
V. ACHP Strategic Plan Discussion and Adoption.
VI. Report of the Preservation Initiatives Committee.
  A. Heritage Tourism Issues.
  B. Legislation.
VII. Report of the Federal Agency Programs Committee.
  A. Monitoring Plan for Department of Defense Program Comments.
  B. Guidance for Program Comments.
  C. Agency Program Issues.
  D. New FAP Committee Meeting Format.
VIII. Report of the Communications, Education, and Outreach Committee.
  A. Newspapers in Education Update.
  B. 2007 Preserve America Presidential Award Initiative.
  C. Outreach Strategy for Preserve America Communities.
IX. Report of the Native American Advisory Group.
X. Report of the Affordable Housing and Historic Preservation Task Force.
XI. Report of the Archeology Task Force.
XII. Chairman's Report.
  A. ACHP Reauthorization Legislation.
  B. ACHP Budget—FY 2007 and FY 2008.
XIII. Executive Director's Report.
XIV. New Business.
XV. Adjourn.

**Note:** The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #809, Washington, DC 20004.

**Ralston Cox,**

*Acting Executive Director.*

[FR Doc. 06–9077 Filed 11–3–06; 8:45 am]

BILLING CODE 4310–KG–M

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2006–0037]**

### Codex Alimentarius Commission: Meeting of the Codex Committee on Food Hygiene

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on November 9, 2006. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the Thirty-eighth Session of the Codex Committee on Food Hygiene (CCFH) of the Codex Alimentarius Commission (Codex), which will be held in Houston, Texas, from December 4–9, 2006. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 38th Session of CCFH and to address items on the agenda.

**DATES:** The public meeting is scheduled for Thursday, November 9, 2006 from 1 p.m. to 4 p.m.

**ADDRESSES:** The public meeting will be held in the rear of the Cafeteria, South Agriculture Building, United States Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250. Documents related to the 38th Session of the CCFH will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

The U.S. Delegate to the CCFH, Dr. Robert Buchanan of FDA, invites U.S. interested parties to submit their comments electronically to the following e-mail address (*Rebecca.Buckner@fda.hhs.gov*).

**Registration:**

There is no need to pre-register for this meeting. To gain admittance to this meeting, individuals must present a

photo ID for identification. When arriving for the meeting, please enter the South Building through the First Wing entrance on Independence Avenue.

**FOR FURTHER INFORMATION CONTACT:**

*For Further Information About the 38th Session of the CCFH Contact:* Rebecca Buckner, Alternate to the U.S. Delegate to the CCFH, FDA, Center for Food Safety and Applied Nutrition, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1486, Fax: (301) 436–2668. E-mail: *Rebecca.Buckner@fda.hhs.gov.*

*For Further Information About the Public Meeting Contact:* Amjad Ali, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

**SUPPLEMENTARY INFORMATION:**

## Background

The Codex Alimentarius (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Committee on Food Hygiene was established to elaborate codes, standards and related texts for food hygiene. The Committee is hosted by the United States.

## Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 38th Session of the Committee will be discussed during the public meeting:

- Matters referred to the Committee from the other Codex bodies.
- Draft Principles and Guidelines for the Conduct of Microbiological Risk Management and its Annexes.
- Draft Revision of the Code of Hygienic Practice for Egg Products and its Annex.
- Draft Guidelines on the Application of General Principles of Food Hygiene to the Control of *Listeria monocytogenes* in Ready-to-Eat Foods.
- Proposed Draft Code of Hygienic Practice for Powdered Formulae for Infants and Young Children.
- Proposed Draft Guidelines for the Validation of Food Hygiene Control Measures.
- Management of the Work of the Codex Committee on Food Hygiene.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

## Public Meeting

At the November 9, 2006 public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 38th Session of CCFH, Dr. Robert Buchanan (see **ADDRESSES**). Written comments should state that they relate to activities of the 38th Session of the CCFH.

## Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2006_Notices_Index/*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, allied health professionals, and other individuals who have asked to be included. The update is available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password-protect their account.

Done at Washington, DC on November 1, 2006.

**F. Edward Scarbrough,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. E6–18689 Filed 11–3–06; 8:45 am]

BILLING CODE 3410–DM–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–122–840)**

### Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Initiation of Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada

**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 carbon and certain alloy steel wire rod from Canada for the period October 1, 2004, to September 30, 2005 (''the POR''). We preliminarily determine that sales of subject merchandise by Ivaco Rolling Mills 2004 L.P. and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., (the respondents collectively refer to themselves as ''Ivaco'') have been made below normal value (''NV''). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the publication of this notice.

In response to Ivaco's January 12, 2006, response to the Department's original Section A questionnaire, notifying the Department that the assets of Ivaco, Inc. and all of its divisions (*e.g.*, Sivaco Ontario, and Sivaco Quebec) had been purchased, the Department is self–initiating a changed circumstances review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada.

**EFFECTIVE DATE:** November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Damian Felton or Brandon Farlander, at (202) 482–0133 or (202) 482–0182, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 29, 2002, the Department published in the **Federal Register** an antidumping duty order on carbon and certain alloy steel wire rod (''wire rod'') from Canada. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 65944 (October 29, 2002) (''Order''). On October 3, 2005, the Department issued a notice of opportunity to request an administrative review of this order for the October 1, 2004 through September 30, 2005 POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 57558 (October 3, 2005). On October 31, 2005, in accordance with 19 CFR 351.213(b), Ivaco requested an administrative review. On December 1, 2005, the Department published the notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005). In its January 12, 2006 response to Section A of the Department's original questionnaire, Ivaco notified the Department that the assets of Ivaco, Inc. and all of its divisions (*e.g.*, Sivaco Ontario, and Sivaco Quebec) had been purchased on December 1, 2004. We received responses to the remaining section of our questionnaire on February 21, 2006.

**Scope of the Order**

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (''HTSUS'') definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. Grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

Grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3015, 7213.91.3090, 7213.91.3092, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6010, 7227.90.6051, 7227.90.6053, 7227.90.6058, 7227.90.6059, and 7227.90.6080 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Initiation of Changed Circumstances Review**

Pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.216, we will conduct a changed circumstances review upon receipt of information

concerning, or a request from an interested party for a review of, an antidumping duty finding or order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Ivaco stating the change in ownership and change in the respondent entities' legal names demonstrates changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(d).

The respondents named in our initiation notice were Ivaco Rolling Mills L.P. (aka Ivaco Rolling Mills 2004 L.P.), and Sivaco Ontario Processing (aka Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P.).[1] In the most recently completed review, the responding entities were Ivaco Rolling Mills L.P. (the producer) and Ivaco Inc., which through its division Sivaco Ontario, purchased wire rod from Ivaco Rolling Mills L.P. and sold wire rod to unaffiliated customers after further processing. *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006).

As noted above in the ''Background'' section of this notice, Ivaco notified the Department that the assets of Ivaco, Inc. and all of its divisions were purchased on December 1, 2004. Subsequent to the purchase, Ivaco Rolling Mills L.P. was renamed and is now known as Ivaco Rolling Mills 2004 L.P., and Sivaco Ontario and Sivaco Quebec[2] were reorganized into divisions of Sivaco Wire Group 2004 L.P. Ivaco, Inc. is now known as Heico 2004 Member Inc. (''Heico 2004''). Heico 2004 functions as a headquarters managing the operations of Ivaco Rolling Mills 2004 L.P. and Sivaco Wire Group 2004 L.P. Heico 2004, Ivaco Rolling Mills 2004 L.P., and Sivaco Wire group 2004 L.P. are commonly owned.

The Department is self–initiating a changed circumstances review to determine whether Ivaco Rolling Mills 2004 L.P. (referred to as ''IRM'' throughout the remainder of this notice) and Sivaco Wire Group 2004 L.P., including its divisions, Sivaco Ontario and Sivaco Quebec, are successors to Ivaco Rolling Mills L.P. and Ivaco Inc. We will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. As per section 351.221(b)(4), interested parties will have an opportunity to comment. The Department will issue its final results of review no later than 270 days after publication of this notice of initiation. All written comments must be submitted to the Department and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

During the course of this changed circumstances review, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise subject to this changed circumstances review, will continue unless and until it is modified pursuant to the final results of this changed circumstances review or other administrative review.

## Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, export price (''EP'') or constructed export price (''CEP''), as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first 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.

Ivaco made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Ivaco to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by Ivaco to the U.S. customer from unaffiliated processors or distribution warehouses after importation into the United States.

For EP sales, we made additions to the starting price (gross unit price), where appropriate, for freight revenue (reimbursement for freight charges paid by Ivaco) and for billing errors (debit–note price adjustments made by Ivaco), and deductions, where appropriate, for billing adjustments (including credit–note price adjustments made by Ivaco), early payment discounts and rebates, and movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, warehousing expenses, and brokerage fees.

For CEP sales, we made the same adjustments to the starting price as for the EP transactions described above. Consistent with our treatment of these expenses in the most recent review, we recategorized freight from one unaffiliated processor in the United Sates to another unaffiliated processor in the United Sates as further manufacturing costs.[3] In addition, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, credit expenses), imputed inventory carrying costs, and further manufacturing. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See* Memorandum from Damian Felton, International Trade Compliance Analyst, to Brandon Farlander, Program Manager, entitled, ''Analysis Memorandum for Ivaco,'' dated October 31, 2006 (''Ivaco Analysis Memorandum'').

## Normal Value

### *A. Selection of Comparison Markets*

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is not a particular market situation that prevents a proper comparison with sales to the United States. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 70 FR 72107 (December 1, 2005).

[2] Sivaco Quebec purchases green wire rod from Ivaco Rolling Mills 2004 L.P. and draws the wire rod into wire and wire products that are not within the scope of this order for sale to customers in Canada and the United States. *See* Ivaco's January 12, 2006, response to Section A of the Department's questionnaire.

[3] *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006); *see also Final Results of Stainless Steel Sheet and Strip in Coils from France*, 70 FR 7240 (February 11, 2005).

merchandise to the United States. See section 773(a)(1)(C) of the Act.

We found that Ivaco had a viable home market for steel wire rod. As such, Ivaco submitted home market sales data for purposes of the calculation of NV. In deriving NV, we made adjustments as detailed in the ''Calculation of Normal Value Based on Comparison Market Prices'' section below.

*B. Cost of Production Analysis*

Because we disregarded below–cost sales in the most recently completed segment of the proceeding, we have reasonable grounds to believe or suspect that home market sales of the foreign like product by the respondents were made at prices below the cost of production (''COP'') during the POR.[4] *See* section 773(b) of the Act. Therefore, we have required Ivaco to file a Section D response for the Department's Questionnaire.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP, by model, based on the sum of materials, fabrication, and general and administrative (''G&A'') expenses.

2. Test of Comparison Market Sales Prices

We compared the weighted–average COPs for the respondent to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (i.e., a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model–specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregard below–cost sales where (1) 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted–average COPs for the POR, we determine 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. We found that Ivaco made sales below cost and we disregarded such sales where appropriate.

*C. Calculation of Normal Value Based on Comparison–Market Prices*

We determined NV for Ivaco as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments for differences in circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act.

Specifically, we made COS adjustments for Ivaco's EP transactions by deducting direct selling expenses incurred for home market sales (credit expenses and warranty expenses) and adding U.S. direct selling expenses (credit expenses and warranty expenses). *See* section 773(a)(6)(C)(iii) of the Act. *See also* 19 CFR 351.410(c). Where we compared Ivaco's U.S. sales to home market sales of merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

*D. Arm's–Length Sales*

The respondent reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, 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. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). Ivaco's sales to affiliated parties that were determined not to be at arm's length were disregarded in our comparison to U.S. sales.

*E. Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison–market sales, NV may be based on constructed value (''CV''). Accordingly, for those models of steel wire rod for which we could not determine the NV based on comparison–market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (''SG&A''), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For CEP and EP comparisons, we deducted direct selling expenses incurred for home market sales (credit expenses and warranty expenses). *See* section 773(a)(6)(C)(iii) of the Act. *See also* 19 CFR 351.410(c). For EP sales, we added U.S. direct selling expenses (credit expenses and warranty expenses) to the NV.

*F. Level of Trade/Constructed Export Price Offset*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market made at the same level of trade as the U.S. sales. If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the level of trade of the export transaction, we make a level–of-trade adjustment in accordance with section 773(a)(7)(A) of the Act.

Ivaco reported two channels of distribution in the home market. The channels of distribution are: (1) direct sales by IRM and (2) direct sales by Sivaco Ontario. To determine whether the two channels constitute separate levels of trade in the home market, we examined the stages in the marketing process and selling functions along the chains of distribution between Ivaco and its customers. Based on this examination, we preliminarily determine that Ivaco sold merchandise at two levels of trade in the home market during the POR. One level of trade is for sales made by Ivaco's steel

[4] *See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 69 FR 68309 (November 24, 2004); *see also Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Rod from Canada*, 71 FR 3822 (January 24, 2006).

wire rod manufacturing facility, IRM; the second level of trade is for sales made by Sivaco Ontario, Ivaco's customer service center, which is a steel wire rod processing and drawing facility. Sales by Sivaco Ontario have different, more complex, distribution patterns, involving substantially greater selling activities. Therefore, based upon our analysis of the marketing process for these sales, we preliminarily determine that sales by Sivaco Ontario are at a more advanced stage than sales by IRM.

Ivaco's selling functions in the home market include inventory maintenance services, delivery services, handling services, freight services, sales administration services, bid assistance, technical services, and extension of credit. With regard to inventory maintenance, Sivaco Ontario maintains a significant general inventory, which results in a significantly longer inventory turnover rate than that experienced by IRM. Thereby, Sivaco Ontario assumes the inventory services that would normally be performed by the customer. IRM does not provide these additional services. As stated by the Department in *Pipe and Tube from Turkey*, ''inventory maintenance is a principal selling function'' and ''the additional responsibilities of maintaining merchandise in inventory also give rise to related selling functions that are performed.''[5]

Due to its provision of these inventory services, Sivaco Ontario ships more often than IRM and also offers its customers just–in-time (''JIT'') delivery services. In contrast, IRM produces and ships rod based on a quarterly rolling schedule. In addition, Sivaco Ontario provides more handling and freight services than IRM in that it offers smaller, more frequent shipments with more varied freight services. For example, IRM sells rod in either full truck load or rail car quantities, while Sivaco Ontario will arrange shipment for less than truck–load quantities. IRM is able to produce significant quantities of wire rod on a rolling basis that are demanded by large volume companies, which is reflected in its delivery and freight services as well as the limited customer services provided. Sivaco Ontario, however, offers customers wire rod and wire products based on inventory already in stock, which enables the company to offer a short lead time in providing different quantities and a variety of processed wire rod products to its customers.

With regard to sales administration services, Sivaco Ontario has a smaller average shipment size than IRM, resulting in a higher proportional sales administrative service cost than IRM. In addition to its short–lead-time delivery capabilities, Sivaco Ontario also offers variable customer service options. These additional factors allow Sivaco Ontario to establish customer relations with companies that require smaller volumes of merchandise, inventory flexibility and have limited end use or processing schedules for the purchased product. Furthermore, Sivaco Ontario offers the following services to its customers, which IRM does not: (1) bid assistance to customers, (2) assistance with product specification and material processing review, and (3) a wider range of technical assistance, including helping customers solve usage problems and choose the best type of rod for their applications and machinery.[6]

The above differences between IRM and Sivaco Ontario in their marketing process and selling functions allow Ivaco to develop customer relationships on two distinct levels. Based upon these differences, we concluded that two levels of trade exist in the home market, an IRM level of trade (level one) and a Sivaco Ontario level of trade (level two). Although IRM and Sivaco Ontario may have certain customers in common, the Department does not find the number of common customers to be significant.

In the U.S. market, Ivaco reported two EP channels of distribution. The channels of distribution are: (1) direct sales by IRM to U.S. customers and (2) direct sales by Sivaco Ontario to U.S. customers. To determine whether separate levels of trade exist for EP sales to the U.S. market, we examined the selling functions, the chain of distribution, and the customer categories reported in the United States.

Specifically, we have found that direct sales by IRM to U.S. customers involve all the same selling functions as IRM's sales in the home market. Further, direct sales by Sivaco Ontario in the United States include all the same selling functions as those found for its home market sales. Finally, the customer categories submitted by Ivaco for IRM and Sivaco Ontario in the U.S. market match the similar customer categories reported for the home market.

Based upon this, we preliminarily determine that EP sales by IRM are made at level of trade one, the same as IRM's home market sales. EP sales by Sivaco Ontario are made at level of trade two, also the same level of trade as Sivaco Ontario's home market sales.

To the extent possible, we have compared U.S. EP transactions and home market sales at the same level of trade without making a level–of-trade adjustment. When we were unable to find sales of the foreign like product in the home market at the same level of trade as the U.S. sale, we examined whether a level–of-trade adjustment was appropriate. Based on our analysis of sales made at the two levels of trade in the home market, we found that there were consistent price differences between models sold at different levels of trade. Therefore, we made a level–of-trade adjustment for EP sales for which we were not able to find sales of the foreign like product in the home market at the same level of trade as the U.S. sale.

In addition, Ivaco has two CEP channels of distribution: (1) sales of goods manufactured by IRM using unaffiliated U.S. processor and/or warehoused in inventory locations in the United States and (2) sales of goods manufactured by IRM through locations in the United States. For CEP sales, we examined the relevant selling functions after deducting the costs of further manufacturing and U.S. selling expenses and associated profit. As a result, there are virtually no selling activities associated with Ivaco's CEP sales in either channel of distribution. Therefore, we preliminarily find a single level of trade with respect to Ivaco's CEP sales, and, moreover, that the CEP level of trade is not comparable to either level of trade in the home market. As the available data do not provide an appropriate basis for making a level of trade adjustment, we matched, where possible, to the closest home market level of trade, level one (direct sales by IRM), and granted a CEP offset pursuant to 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the home market not exceeding the amount of the deductions made from the U.S. price in accordance with section 772(d)(1)(D) of the Act.

**Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the following weighted–average margin exists for the period October 1, 2004, through September 30, 2005:

[5] *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 63 FR 35190, 35193 (June 29, 1998) (*Pipe and Tube from Turkey*).

[6] *See* Submission from Ivaco to the Department, Re: Section A Response (January 12, 2006) at pages A-37 - A-45.

| Producer | Weighted–Average Margin (Percentage) |
|---|---|
| Ivaco ..... | 2.75 |

In accordance with 19 CFR 351.224(b), the Department will disclose calculations performed within 5 days of publication of this notice. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after submission of case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

**Assessment**

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total volume of the examined sales for that importer. Where the assessment rate is above *de minimis*, pursuant to 19 CFR 356.8(a), the Department intends to issue appropriate assessment instructions directly to CBP on or after 41 days following the publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: 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 companies included in these final results of reviews for which the reviewed companies did not know that the merchandise it sold to the 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 all–others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

**Cash Deposit Requirements**

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of steel wire rod from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for Ivaco will be the rates established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, 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 less–than-fair–value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 8.11 percent, the ''All Others'' rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) f the Act.

Dated: October 31, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–18664 Filed 11–3–06; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–570–848**

### Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Amended Final Results and Amended Order Pursuant to Final Court Decision

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

**SUMMARY:** On April 3, 2006, the Court of International Trade (''CIT'') affirmed the Department's remand determination and entered judgment in *Hontex Enterprises Inc., d/b/a Louisiana Packing Co. v. United States*, Ct. No. 02–00223, Slip Op. 06–42 (Ct. Int'l Trade April 3, 2006) (''*Hontex Judgment*''), which challenged certain aspects of the Department of Commerce's (''the Department'') *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 20948 (April 19, 2000) (''*Final Results*'') and accompanying *Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China From Edward C. Yang to Joseph A. Spetrini* (''*Decision Memo*''), dated April 19, 2000. As explained below, in accordance with the order contained in the CIT's April 3, 2006, *Hontex Judgment*, the Department is amending the *Final Results* to treat Huaiyin Foreign Trade Corporation (5) (''HFTC5'') and Ningbo Nanlian Frozen Foods Company, Ltd. (''Ningbo Nanlian'') as unaffiliated, non–collapsed entities.

**EFFECTIVE DATE:** November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Scot T. Fullerton or Christopher D. Riker, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4003, Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–3441, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 19, 2000, the Department completed its *Final Results*, in which it

collapsed Ningbo Nanlian and HFTC5 in the 1997–1998 administrative review. *See Final Results*, and accompanying Decision Memo at Comment 20. On February 13, 2003, and on May 21, 2004, the CIT issued orders remanding the case to the Department and ordering the Department to further explain why its findings warranted the collapsing of HFTC5 and Ningbo Nanlian. *See Hontex Enterprises, Inc., d/b/a/ Louisiana Packing Co. v. United States*, 248 F. Supp. 2d 1323 (CIT 2003), and *Hontex Enterprises Inc. d/b/a Louisiana Packing Company v. United States of America*, 342 F. Supp. 2d 1225 (CIT 2004). The Department submitted its remand redeterminations on August 12, 2003, and October 18, 2004 (''*Remand Results II*''), respectively.

On August 31, 2005, the CIT issued its ruling on the Department's *Remand Results II*, again remanding the case to the Department. *See Hontex Enterprises, Inc., d/b/a/ Louisiana Packing Co., v. United States*, Slip Op. 05–116, Court No. 00–00223 (Ct. Int'l Trade August 31, 2005). Specifically, the CIT remanded the case for the Department to: (1) (a) find that Mr. Edward Lee, the owner of Louisiana Packing Co. (Louisiana Packing), an importer of crawfish tail meat from the People's Republic of China (PRC) and one of the joint venture owners of Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian), did not control another respondent, Huaiyin Foreign Trade Corporation (5) (HFTC5), within the meaning of 19 U.S.C. § 1677(33)(F) and (G), and (b) find that HFTC5 and Ningbo Nanlian were not affiliated, and (c) find that HFTC5 and Ningbo Nanlian should not be collapsed and given a single antidumping margin, and (d) find that Ningbo Nanlian is entitled to a separate company–specific antidumping margin and calculate that margin using the verified information on the record; or (2) (a) reopen the record in order to gather additional evidence of Mr. Lee's control relationship with HFTC5 during the period of review, (b) place such additional information on the record, and (c) conduct an analysis that takes into account any such new evidence, including the temporal aspect of any such new evidence. *See CPA Remand II*.

The Department submitted the *Final Results of Remand* to the CIT on December 9, 2005. In its *Final Results of Remand*, in accordance with the CIT's August 31, 2005, order, the Department found (1) that Mr. Lee did not control HFTC5 within the meaning of 19 U.S.C. § 1677(33)(F) and (G), (2) that HFTC5 and Ningbo Nanlian were not affiliated, (3) that HFTC5 and Ningbo Nanlian should not be collapsed and given a single antidumping margin, and (4) that Ningbo Nanlian is entitled to a separate company–specific antidumping margin.

On April 3, 2006, the CIT sustained the final remand determination made by the Department. *See Hontex Judgment*. The Department filed its appeal with the United States Court of Appeals for the Federal Circuit (''CAFC'') on May 31, 2006. The CAFC granted the Department's motion to dismiss the appeal and dismissed the case on September 21, 2006.

**Amendment to the Final Determination**

Because there is now a final and conclusive court decision, effective as of the publication date of this notice, we are amending the *97/98 Final Results* and revising the weighted–average dumping margins for both companies, for purposes of the 97/98 period of review:

| Manufacturer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Ningbo Nanlian Frozen Foods Company, Ltd. | 2.16 |
| Huaiyin Foreign Trade Corporation (5) ..... | 201.63 |

We have calculated Ningbo Nanlian's company–specific antidumping margin as 2.16 percent. *See* the Memorandum to the File from Maureen A. Flannery, ''Analysis for the Draft Results of Determination Pursuant to Court Remand for Freshwater Crawfish Tail Meat from the People's Republic of China: Ningbo Nanlian Frozen Foods Co., Ltd.,'' dated November 22, 2005. There have been no changes to this analysis for these amended final results. Additionally, we are determining HFTC5's margin based on its own performance in the administrative review. Therefore, HFTC5's antidumping duty margin will remain 201.63 percent. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of the final results of this review.

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

Dated: October 30, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–18686 Filed 11–3–06; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–588–837**

## Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Reconsideration of Sunset Review

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

**SUMMARY:** On April 13, 2006, the Department of Commerce (''the Department'') published the notice of initiation of the reconsideration of the sunset review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Japan. On the basis of the notice of intent to participate, as well as adequate substantive responses and rebuttal comments filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order, following the requirements of section 751(c) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.218(e)(2)(i). As a result of this reconsideration of the sunset review, the Department preliminarily finds that revocation of the order on LNPP from Japan after the original sunset review period of 1996–2001 would have likely led to the continuation or recurrence of dumping at the levels listed below in the section entitled ''Preliminary Results of Review.''

**EFFECTIVE DATE:** November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger, Kate Johnson, or Brandon Farlander, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC, 20230; telephone: 202–482–4136, 202–482–4929, or 202–482–0182, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 25, 2002, the Department revoked the antidumping duty order on LNPP from Japan under a five-year sunset review pursuant to section 751(c)(3)(A) of the Act, because the only domestic interested party in the sunset review, Goss Graphics Corporation (now known as Goss International Corporation (''Goss'')), withdrew its participation, and, thus, its interest in the review. *See Large Newspaper Printing Presses and Components*

*Thereof, Whether Assembled or Unassembled, from Japan (A–588–837) and Germany (A–428–821): Notice of Final Results of Five-year Sunset Reviews and Revocation of Antidumping Duty Orders*, 67 FR 8522 (February 25, 2002) (''*2002 Sunset Review*'').

As discussed in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Review* (71 FR 11590 (March 8, 2006)) (''*CCR Final Results*''), the Department noted that the results of the *2002 Sunset Review* are unreliable because the misconduct of Tokyo Kikai Seisakusho, Ltd. and TKS (U.S.A.), Inc. (''TKS'') during the 1997–1998 administrative review of the LNPP antidumping duty order, which ultimately led to its company–specific revocation from the underlying order, substantially tainted the integrity of the proceeding, and may have significantly undermined the integrity of the sunset review results, including the parties' decisions whether or not to participate in the sunset review. TKS' misconduct before the Department was the subject of a federal district court decision and was confirmed by the 8th Circuit Court of Appeals. *See id*. As a result, the Department rescinded TKS' company–specific revocation and stated its intent to reconsider the *2002 Sunset Review*, which revoked the order in its entirety.

On April 13, 2006, the Department published its notice of initiation of the reconsideration of the sunset review of the antidumping duty order on LNPP from Japan, in accordance with section 751(c) of the Act. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Reconsideration of Sunset Review*, 71 FR 19164 (April 13, 2006) (''*Notice of Initiation*'').

The Department received a Notice of Intent to Participate from the domestic interested party, Goss, within the deadline specified in 19 CFR 351.218(d)(1)(i). Goss claimed interested party status under section 771(9)(C) of the Act, as a producer of the domestic like product.

The Department received a complete substantive response to the *Notice of Initiation* from Goss within the 30-day deadline specified in the Department's regulations under 19 CFR 351.218(d)(3)(i). The Department received complete substantive responses from respondent interested parties, Mitsubishi Heavy Industries, Ltd. (''MHI''), and TKS within the deadline specified in 19 CFR 351.218(d)(3)(i). Rebuttal comments were filed by Goss, MHI and TKS on May 26, 2006.

On June 8, 2006, the Department determined that respondent interested parties accounted for more than 50 percent of exports of the subject merchandise and, therefore, submitted adequate substantive responses to the Department's *Notice of Initiation*. *See* Memorandum to Irene Darzenta Tzafolias, Acting Director, AD/CVD Operations, Office 2; Re: Adequacy Determination in the Reconsideration of Sunset Review on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan. In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order.[1]

On June 28, 2006, MHI requested that the Department reconsider its adequacy determination issued on June 8, 2006, because it claimed that Goss was not a domestic interested party. On July 18, 2006, the Department requested additional information from Goss with respect to its status as a domestic producer during the POR and subsequently through November 30, 2001, which includes the period during which the original sunset review would have been conducted. Goss responded to the Department's request on August 1, 2006. MHI and TKS submitted comments on Goss' submission on August 31, 2006. Goss responded to those comments on October 2, 2006, and MHI submitted additional comments on October 6, 2006.

**Scope of the Order**

The products covered by the scope of the order are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non–subject elements before or after importation, is included in the scope of the order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the scope, the following definitions apply irrespective of any different definition that may be found in customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): (1) the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

[1] The *2002 Sunset Review* was conducted on an expedited basis because only the domestic interested party, Goss, submitted a response. Nevertheless, in reconsidering the *2002 Sunset Review*, the Department has determined that it is appropriate to conduct a new review applying the standard sunset review procedures and allowing all interested parties an opportunity to comment.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start–up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of the order. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's–length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Also excluded from the scope, in accordance with the Department's determination in a previous changed circumstances review of the antidumping duty order which resulted in the partial revocation of the order with respect to certain merchandise, are elements and components of LNPP systems, and additions thereto, which feature a 22–inch cut–off, 50–inch web width and a rated speed no greater than 75,000 copies per hour. *See Large Newspaper Printing Presses Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order, In Part*, 64 FR 72315 (December 27, 1999). In addition to the specifications set out in this paragraph, all of which must be met in order for the product to be excluded from the scope of the order, the product must also meet all of the specifications detailed in the five numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not excluded from the scope of the order.

1. *Printing Unit*: A printing unit which is a color keyless blanket–to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:
   - Each tower consisting of four levels, one or more of which must be populated.
   - Plate cylinders which contain slot lock–ups and blanket cylinders which contain reel rod lock–ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in–line with bearers of other cylinders.
   - Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non–anilox and non–porous metering roller.
   - The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
   - The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.
2. *Folder*: A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut–off length of 22 inches. The upper section consists of three–high double formers (total of 6) with six sets of nipping rollers.
3. *RTP*: A component which is of the two–arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back–to-back configuration (left and right hand load pairs).
4. *Conveyance and Access Apparatus*: Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.
5. *Computerized Control System*: A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

Further, the scope covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by the scope are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised for the preliminary results of this reconsideration of the sunset review are addressed in the ''Issues and Decision Memorandum for the Reconsideration of Sunset Review of the Antidumping Duty Order on Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results,'' to David M. Spooner, Assistant Secretary for Import Administration, (''Decision Memo''), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to have prevailed if the antidumping duty order had not been revoked. Parties can find a discussion of the issues raised in this reconsideration of the sunset review and the corresponding recommendations for these preliminary results in this public memo, which is on file in room B–099 of the main Department Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

**Preliminary Results of Review**

The Department preliminarily determines that, for purposes of this reconsideration of the sunset review, had the antidumping duty order not been revoked in the *2002 Sunset Review*, revocation of the antidumping duty order on LNPP from Japan would have likely led to continuation or recurrence of dumping at the following weighted–average margins:

| Manufacturers/Producers/Exporters | Weighted–Average Margin (Percent) |
|---|---|
| Mitsubishi Heavy Industries, Ltd. | 59.67 |
| Tokyo Kikai Seisakusho, Ltd. | 51.97 |
| All Others | 55.05 |

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1). The Department will issue a notice of final results of this reconsideration of the sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than March 9, 2007.

This reconsideration of sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: October 30, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–18670 Filed 11–3–06; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

### Certain Preserved Mushrooms From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (''the Department'') has preliminarily determined that sales by the respondents in this review, covering the period February 1, 2005, through January 31, 2006, have been made at prices less than normal value (''NV''). If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

**DATES:** Effective Date: September 12, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Terre Keaton, 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) 482–1766 and (202) 482–1280, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC (64 FR 8308).

On February 1, 2006, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') covering the period February 1, 2005, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (February 1, 2006).

On February 28, 2006, in accordance with 19 CFR 351.213(b), the petitioner [1] requested a review of 13 companies (including Guangxi Eastwing and Primera Harvest which submitted their own requests for review).[2] In addition, Raoping CXF Foods (''Raoping CXF'') (*i.e.*, Guangxi Eastwing's supplier) requested its own review.

On April 5, 2006, the Department published in the **Federal Register** a notice of initiation of this administrative review covering the companies listed in the requests received from the interested parties. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 17077 (April 5, 2006) (''*Initiation Notice*'').

Prior to the notice of initiation, the Department issued quantity and value (''Q&V'') questionnaires to the firms for which a review had been requested.[3] This questionnaire requested the quantity and value for the identified companies that produced and/or exported certain preserved mushrooms from the PRC.[4]

After the notice of initiation, the Department again requested Q&V information and provided additional opportunity for all companies covered by the review to respond to this request. In response, four companies responded that they exported subject merchandise to the United States during the POR: (1) COFCO; (2) Guangxi Hengxian; (3) Primera Harvest; and (4) Guangxi Eastwing. The following five companies filed no-shipment claims: (1) Blue Field; (2) Gerber; (3) Jiufa; (4) Raoping CXF; [5] and (5) Raoping Yucun. The two remaining companies, Green Fresh and Guangxi Yulin, either did not submit a properly filed Q&V response or did not respond.[6]

Because it was not practicable for the Department to individually examine all of the companies covered by the review, the Department limited its examination for these preliminary results to the largest producers/exporters that could reasonably be examined, accounting for the greatest possible export volume,

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

[2] These companies are: (1) Blue Field (Sichuan) Food Industrial Co., Ltd. (''Blue Field'');

(2) China National Cereals, Oils & Foodstuffs Import & Export Corporation (''China National''); (3) China Processed Food Import & Export Company (''COFCO''); (4) COFCO (Zhangzhou) Food Industrial Co., Ltd. (''COFCO Zhangzhou''); (5) Gerber Food (Yunnan) Co., Ltd. (''Gerber''); (6) Green Fresh Foods (Zhangzhou) Co., Ltd. (''Green Fresh''); (7) Guangxi Hengxian Pro-Light Foods, Inc. (''Guangxi Hengxian''); (8) Guangxi Eastwing Trading Co., Ltd. (''Guangxi Eastwing''); (9) Guangxi Yulin Oriental Food Co., Ltd. (''Guangxi Yulin''); (10) Primera Harvest (Xiangfan) Co., Ltd. (''Primera Harvest''); (11) Raoping Yucun Canned Foods Factory (''Raoping Yucun''); (12) Shandong Jiufa Edible Fungus Co., Ltd. (''Jiufa''); and (13) Xiamen Jiahua Import & Export Trading Co., Ltd. (''Xiamen Jiahua'').

[3] In two prior administrative reviews of this antidumping duty order, the Department collapsed COFCO with COFCO Zhangzhou, Xiamen Jiahua, Fujian Zishan Group, Co., Ltd. (''Fujian Zishan''), and Fujian Yu Xing Fruits & Vegetable Foodstuff Co., Ltd. (''Yu Xing''). *See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635, 54637 (September 9, 2004) and accompanying Issues and Decision Memorandum at Comment 1 (*''PRC Mushrooms 4th AR''*); and *Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review,* 70 FR 10965, 10971 (March 7, 2005) as affirmed in *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review,* 70 FR 54361 (September 14, 2005) (*''PRC Mushrooms 5th AR''*). During the POR, COFCO was the only one of the COFCO affiliated companies to export subject merchandise to the United States.

[4] The Department inadvertently did not issue a Q&V questionnaire to Raoping CXF prior to initiating this review.

[5] Raoping CXF subsequently withdrew its review request on April 26, 2006.

[6] With respect to Green Fresh, we issued the initial Q&V questionnaire on March 9, 2006, and follow-up letters on April 20 and 25, and May 4, 2006, to this company informing it that its Q&V response was not properly filed in accordance with the Department's regulations, but Green Fresh failed to correct its filing deficiencies (*see* Memorandum to the File dated May 23, 2006, for further discussion on this matter). With respect to Guangxi Yulin, we issued the initial Q&V questionnaire on March 9, 2006, and re-issued the Q&V questionnaire to it on April 6, and May 5, 2006, but received no response (*see* Memorandum to the File dated May 23, 2006, for further discussion on this matter).

pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (''the Act''). Therefore, the Department selected COFCO and Guangxi Hengxian as the mandatory respondents in this review and designated Guangxi Eastwing and Primera Harvest as Section A Respondents. *See* Memorandum From Irene Darzenta Tzafolias, Acting Office Director, to Stephen Claeys, Deputy Assistant Secretary, entitled *2005–2006 Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China: Selection of Respondents*, dated June 8, 2006. Accordingly, on June 9, 2006, we issued the full antidumping duty questionnaire to COFCO and Guangxi Hengxian and only the section A questionnaire to Guangxi Eastwing and Primera Harvest.

On May 10, 2006, the Department requested documentation from CBP for specific entries of subject merchandise from the PRC into the United States during the POR in order to examine Gerber's no-shipment claim. On June 16, 2006, the Department received the requested entry documentation from CBP. As a result of reviewing the CBP entry documentation, the Department issued Gerber a letter on June 21, 2006, asking questions regarding its claim that it made no shipments of subject merchandise to the United States during the POR. Specifically, the Department asked Gerber if it had any affiliates in Hong Kong through which it shipped subject merchandise to the United States during the POR. In response to the Department's June 21, 2006, letter, Gerber stated in its July 11, 2006, submission that it had no affiliates in Hong Kong through which subject merchandise was exported to or imported into the United States during the POR. As a result of conducting further independent research on this matter, the Department issued Gerber a second letter on July 31, 2006, which contained documentation indicating that Gerber indeed had an undisclosed affiliate registered in Hong Kong during the POR. Combined with the fact that this same Hong Kong affiliate also made shipments of subject merchandise to the United States during the POR, the Department's July 31, 2006, letter asked Gerber to explain why it did not mention this Hong Kong affiliate and why it did not disclose that its affiliate was involved in sales of subject merchandise to the United States during the POR. Gerber did not submit a response to the Department's July 31, 2006, letter by the specified deadline (*i.e.*, August 14, 2006). Therefore, the Department issued Gerber another letter on August 15, 2006, which stated that the Department intended to resort to adverse facts available as a result of Gerber's failure to respond to the Department's letter of July 31, 2006. Gerber did not respond to the Department's August 15 letter (*see* September 6, 2006, Memorandum to the File, entitled *Efforts to Provide Gerber Food (Yunnan) Co., Ltd. With the Department's July 31, 2006, Supplemental Questionnaire*).

On August 17, 2006, in accordance with section 751(a)(3)(A) of the Act, the Department rescinded this review with respect to Blue Field, Raoping CXF, Raoping Yucun, and Shandong Jiufa because these companies did not have shipments of subject merchandise to the United States during the POR, or withdrew their request for a review in a timely manner. *See Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 48911 (August 22, 2006).

The Department is conducting this administrative review in accordance with section 751 of the Act.

**Mandatory Respondents**

On June 9, 2006, the Department issued the full antidumping duty questionnaire to COFCO and Guangxi Hengxian. On July 21, 2006, COFCO submitted its section A questionnaire response (''section A response''). On August 2, 2006, COFCO submitted its sections C and D questionnaire response (''sections C and D response''). Guangxi Hengxian did not submit a questionnaire response.[7] The Department issued Guangxi Hengxian a letter on August 7, 2006, which stated that the Department intends to resort to adverse facts available as a result of Guangxi Hengxian's failure to respond to the Department's June 8, 2006, antidumping duty questionnaire. Guangxi Hengxian did not respond to the Department's August 7 letter. *See* September 6, 2006, Memorandum to the File, entitled *Efforts to Provide Guangxi Hengxian Pro-Light Foods, Inc. With the Department's June 9, 2006, Antidumping Duty Questionnaire.*

On August 2, 2006, the Department issued COFCO a section A supplemental questionnaire and it submitted its response on August 30, 2006 (''supplemental section A response''). On August 10, 2006, the Department issued COFCO a sections C and D supplemental questionnaire and it submitted its response on September 7, 2006. On September 14, 2006, the Department issued COFCO another sections C and D supplemental questionnaire and COFCO submitted its response on September 25, 2006.

**Section A Respondents**

On June 8, 2006, the Department issued the section A questionnaire to Guangxi Eastwing and Primera Harvest. Guangxi Eastwing and Primera Harvest submitted their section A questionnaire responses on June 13, and July 7, 2006, respectively.

On July 20 and 24, 2006, the Department issued Primera Harvest and Guangxi Eastwing a section A supplemental questionnaire, respectively. Both companies submitted their supplemental responses on August 3, 2006. On August 23, 2006, the Department issued Primera Harvest a second section A supplemental questionnaire, to which it responded on September 7, 2006.

**Surrogate Country and Factors**

On May 4, 2006, the Department identified five countries, including India, that are comparable to the PRC in terms of overall economic development to use in this review. On July 13, 2006, the Department solicited comments on surrogate country selection from interested parties. The Department received no comments from the interested parties. *See* the ''Normal Value'' section below for further detail.

On September 15, 2006,[8] the Department received surrogate-value information from COFCO. For a detailed discussion of the Department's selection of surrogate values and financial ratios, *see* ''Factor Valuation'' section below. *See also Memorandum from the Team to the File, Re: 2005–2006 Antidumping Duty Administrative Review of Certain Preserved Mushrooms from the People's Republic of China—Factors Valuation For the Preliminary Results (''Factor Valuation Memo'')*, dated October 31, 2006, which is on file in CRU.

**Scope of the Order**

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus*

[7] The original deadline for the mandatory respondents to submit their response to all sections of the Department's June 8, 2006, antidumping duty questionnaire was July 17, 2006. However, the Department subsequently extended the section A response deadline until July 21, 2006, and the sections C and D response deadline until August 2, 2006.

[8] September 5, 2006, was the deadline for submitting surrogate value information for consideration in the preliminary results as specified in the Department's July 13, 2006, letter.

*bisporus* and *Agaricus bitorquis*. ''Certain Preserved Mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[9]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Adverse Facts Available**

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that if the Department ''finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department, ''in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See also* Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316 at 870 (1994).

*Green Fresh, Guangxi Hengxian, Guangxi Yulin, and Gerber*

(A) Facts Available

As stated above, Green Fresh, Guangxi Hengxian, Guangxi Yulin, and Gerber each withheld information requested by the Department by not submitting a response to the Department's questionnaires.

Green Fresh and Guangxi Yulin failed to properly respond to the Department's requests for Q&V information. The information requested in the Department's Q&V questionnaire was critical and necessary for selecting mandatory respondents in the review. Specifically, Green Fresh failed to submit a properly filed Q&V response despite being provided numerous opportunities to do so. Guangxi Yulin did not attempt to file a Q&V response at all.

Guangxi Hengxian did not submit a response to the Department's antidumping duty questionnaire. Because Guangxi Hengxian was selected as a mandatory respondent for this review, the information requested in the Department's antidumping duty questionnaire is critical and necessary to calculate Guangxi Hengxian's margin.

As stated above in the ''Background'' section, Gerber did not respond to the Department's supplemental questionnaire which further attempted to examine Gerber's claim that it made no shipments of subject merchandise to the United States during the POR. Specifically, based on documentation obtained from CBP, the Department had reason to believe that Gerber exported subject merchandise to the United States through one of its affiliates located in Hong Kong. As a result of this discovery, the Department provided Gerber with an opportunity to explain whether Gerber used its previously undisclosed Hong Kong-based affiliate to make sales of subject merchandise to the U.S. market during the POR. Gerber failed to respond to the Department's second request for information. Gerber withheld requested information from the Department and impeded this proceeding because of its failure to participate in the instant review.

Therefore, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for Green Fresh, Guangxi Hengxian, Guangxi Yulin, and Gerber pursuant to section 776(a)(2) of the Act because they failed to provide information requested by the Department. *See Stainless Steel Sheet and Strip in Coils From Japan: Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 18369 (April 11, 2005), (''because this company refused to participate in this administrative review, we find that, * * * the use of total facts available is appropriate''); *see Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan,* 68 FR 71072 (December 22, 2003), (''Since UC and DNP withheld information requested by the Department, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for these parties''). Because each of the above-mentioned respondents failed to respond to the Department's questionnaires, the Department could not determine whether Gerber, Green Fresh, Guangxi Hengxian, or Guangxi Yulin is eligible for a separate rate. Accordingly, we are not granting these companies a separate rate and are applying the PRC-wide rate to all four companies.

(B) Adverse Inference

In applying facts otherwise available, section 776(b) of the Act states that if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department, the Department, in reaching the applicable determination under section 776(b) of the Act, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In the instant proceeding, we find it appropriate to apply an adverse inference in selecting from among the facts otherwise available for Gerber, Green Fresh, Guangxi Hengxian, and Guangxi Yulin, which are part of the PRC-wide entity. By failing to submit a response to the Department's questionnaires, all four above-mentioned companies have failed to cooperate to the best of their ability in this proceeding. Accordingly, we find

[9] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat* v. *United States*, 39C F.3d 1378 (Fed. Cir. 2005).

that an adverse inference is warranted. By applying AFA, we ensure that the companies that fail to cooperate will not obtain a more favorable result than those companies that complied fully with the Department's requests in this review.

*The PRC Entity*

As mentioned, four exporters named in the notice of initiation did not respond to the Department's request for information. The PRC-wide rate applies to all entries of subject merchandise except for entries from PRC exporters that have their own calculated rate. Companies that have not demonstrated their entitlement to a separate rate are appropriately considered to be part of the PRC-wide entity. Therefore, we determine it is necessary to review the PRC-wide entity because these four PRC exporters are subject to the instant proceeding. Pursuant to section 776(a)(1) of the Act, the Department determines that it must use facts otherwise available for the PRC-wide entity because necessary information is not available on the record of this proceeding due to the failure of the PRC-wide entity, including the four PRC exporters mentioned, to provide responses to the Department's requests for information in this proceeding. Because the PRC-wide entity did not respond to requests for information in the form or manner requested, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC-wide entity. In addition, pursuant to section 776(b) of the Act, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. As noted above, the PRC-wide entity failed to respond to the Department's requests for information, despite repeated requests that it do so. Thus, because the PRC-wide entity refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC-wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review. An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. It is the Department's practice to assign the highest rate from any segment of the proceeding as total AFA when a respondent fails to cooperate to the best of its ability. *See Honey from the People's Republic of China; Final Results and Final Rescission In Part of Antidumping Duty Administrative Review,* 70 FR 38873 (July 6, 2005). Specifically, as AFA, we have assigned to the PRC-entity 198.63 percent, which is the current PRC-wide rate. *See* the ''Corroboration'' section below for a discussion of the probative value of the PRC-wide 198.63 percent rate.

**Corroboration of AFA Rate for PRC-Wide Entity, Including Gerber, Green Fresh, Guangxi Hengxian and Guangxi Yulin**

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, the information it applies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the PRC-wide rate, which is the highest rate from any segment of this administrative proceeding, and is the highest rate from the petition in the less-than-fair-value (''LTFV'') investigation. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China,* 64 FR 8308, 8310 (February 19, 1999). This AFA rate has not changed since the original LTFV determination.

For purposes of corroboration, the Department will consider whether the AFA rate is both reliable and relevant. The AFA rate we are applying for the current review was found to be reliable in reviews subsequent to the LTFV investigation, including the two most recently completed reviews. *See Certain Preserved Mushrooms from the People's Republic of China: Partial Rescission and Preliminary Results of Sixth Administrative Review,* 71 FR 11183, 11186 (March 6, 2006) and affirmed in *Certain Preserved Mushrooms From the People's Republic of China: Final Results and Final Partial Rescission of Sixth Administrative Review*, 71 FR 40477, 40478 (July 17, 2006) (''*PRC Mushrooms 6th AR*''); and *PRC Mushrooms 5th AR,* 70 FR at 10969 (to corroborate the AFA margin of 198.63 percent, in the 5th review the Department compared the AFA margin to calculated margins for certain respondents and found that 198.63 percent was within the range of margins for individual sales of identical and/or similar products). Furthermore, no information has been presented in the current review that calls into question the reliability of the currently-applied PRC-wide rate.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review,* 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data submitted by the respondents in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

Based on our analysis as described above, we find that the margin of 198.63 percent is reliable and has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 198.63 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (that it have probative value). Consequently, we have assigned this AFA rate to exports of the subject merchandise from all companies subject to the PRC-wide rate, including Gerber, Green Fresh, Guangxi Hengxian, and Guangxi Yulin.

**Affiliation—COFCO**

To the extent that section 771(33) of the Act does not conflict with the Department's application of separate rates and enforcement of the non-market economy (''NME'') provision, section

773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.[10] For the reasons discussed below, we find that this condition has not prevented us from examining whether certain exporters and/or producers are affiliated with COFCO in this administrative review.

In prior administrative reviews involving COFCO, the Department has found COFCO to be affiliated with Yu Xing as a result of its direct ownership and control in Yu Xing and affiliated with Fujian Zishan through its parent company, China National, and Xiamen Jiahua. Moreover, the Department has also found in prior reviews that COFCO is affiliated with another preserved mushroom producer, COFCO Zhangzhou. *See PRC Mushrooms 5th AR,* 70 FR at 10969.

COFCO claims that it is no longer affiliated with Fujian Zishan because Xiamen Jiahua sold all of its ownership shares in Fujian Zishan at the beginning of this POR (*see* page A–5 of COFCO's section A response). The Department has examined whether COFCO and the entities noted above are still affiliated for purposes of determining whether they should be collapsed in this review. For further discussion on this matter, *see* Memorandum From James P. Maeder, Jr., Office Director, to Stephen Claeys, Deputy Assistant Secretary, entitled *Certain Preserved Mushrooms from the People's Republic of China: Whether To Continue To Collapse COFCO with Some or All of its Affiliated Companies,* dated October 31, 2006 (*''Affiliation/Collapsing Memo''*).

Based on our analysis, we preliminarily find that during this POR, COFCO, China National, COFCO Zhangzhou, Xiamen Jiahua, and Yu Xing were affiliated through the common control of COFCO's parent company, pursuant to sections 771(33)(F) and (G) of the Act. However, with respect to Fujian Zishan, we find that during the POR, Fujian Zishan was no longer affiliated with the above-mentioned companies based on the facts discussed above. *See Affiliation/Collapsing Memo* for further discussion.

**Collapsing—COFCO**

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. We also note that the rationale for collapsing, to prevent manipulation of price and/or production (*see* 19 CFR 351.401(f)), applies to both producers and exporters, if the facts indicate that they are able to manipulate price or production as a result of control over the production and sales activities of affiliates whose operations are intertwined.

To the extent that this provision does not conflict with the Department's application of separate rates and enforcement of the NME provision, section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving a NME country if the facts of the case warrant such treatment. Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and in the context of a NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Hontex Enterprises,* Inc. v. *United States,* 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, if there is evidence of significant potential for manipulation between or among affiliates which produce and/or export similar or identical merchandise, whether or not all such merchandise is exported to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in a NME context in order to determine whether all or some of those affiliates should be treated as one entity (*see Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, Preliminary Determination of Sales at Less Than Fair Value,* 66 FR 22183 (May 3, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001) (''*Certain Hot-Rolled Carbon Steel Flat Products*''); and *Anshan Iron & Steel Co.* v. *United States,* Slip. Op. 03–83 at 32–33 (CIT 2003) (''*Anshan*'')).

We find that the first and second collapsing criteria are met with respect to COFCO's affiliated producers COFCO Zhangzhou and Yu Xing because these producers have production facilities for producing similar or identical products, such that no retooling at any of the three facilities is required in order to restructure manufacturing priorities. *See* factors of production data submitted by each company in COFCO's section D response. We find that the third collapsing criterion is also met with respect to COFCO Zhangzhou and Yu Xing because COFCO and China National, which wholly owns COFCO, have significant ownership in and control over the operations of COFCO Zhangzhou and Yu Xing. They also have shared management and intertwined operations. Therefore, we find that there is a significant potential for manipulation of price or production between these two affiliated producers of the subject merchandise. We also note that during the POR COFCO and Zhangzhou and Yu Xing were legally merged into a single company. *See Affiliation/Collapsing Memo* for further discussion.

In addition, based on the reasons mentioned in the *Affiliation/Collapsing Memo* and the guidance of 19 CFR 351.401(f), we have preliminarily collapsed COFCO, China National, Xiamen Jiahua and COFCO Zhangzhou/YuXing because there is a significant potential for manipulation of sales decisions between these parties that are exporters of the subject merchandise or have the ability to export. Xiamen Jiahua, a preserved mushroom exporter, is also owned, in part, by China National which wholly owns COFCO. Yu Xing, which is treated as a single entity with the producer COFCO Zhangzhou, also has export rights and has directly exported since obtaining those export rights. Consequently, we have considered COFCO and the four affiliates mentioned above as a single entity for purposes of determining whether or not the collapsed entity as a whole is entitled to a separate rate. With respect to Fujian Zishan, as mentioned we find this company to be no longer affiliated with COFCO and it is, therefore, not part of the collapsed entity.[11] This decision is specific to the facts presented in this review and is based on several considerations, including the structure of the collapsed entity, the level of control between and among affiliates, and the level of participation by each affiliate in the proceeding. Given the unique relationships which arise in NMEs between individual companies and the government, a separate rate will be granted to the collapsed entity only if

[10] *See PRC Mushrooms 5th AR,* 70 FR at 10969.

[11] Accordingly, Fujian Zishan is not subject to this review and the Department has not conducted a separate rates analysis on this company. Fujian Zishan, therefore, is not entitled to a separate rate in this review.

the facts, taken as a whole, support such a finding (*see* ''Separate Rates'' section below for further discussion).

**Separate-Rates Determination**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to governmental control and, thus, should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate). One respondent in this review, Primera Harvest, is wholly owned by a company located outside the PRC. Therefore, an additional separate-rates analysis is not necessary to determine whether Primera Harvest's export activities are independent from government control. (*See e.g.*, *Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 54021 (September 13, 2006), which cites to *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong)).

The other Section A respondent, Guangxi Eastwing is a limited liability company, whereas the mandatory respondent, COFCO, is owned by its affiliate China National, which is owned by ''all of the people.'' COFCO also owns, in part, two preserved mushroom producers, COFCO Zhangzhou and Yu Xing. As discussed above in the ''Collapsing'' section of this notice, we have preliminarily considered COFCO, China National, Yu Xing, COFCO Zhangzhou, and Xiamen Jiahua a collapsed entity.

Thus, a separate-rates analysis is necessary to determine whether the export activities of Guangxi Eastwing and COFCO's collapsed entity are independent from government control. To establish whether a respondent is sufficiently independent from governmental control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*) at Comment 1, and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

*1. Absence of De Jure Control*

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

The COFCO collapsed entity and Guangxi Eastwing have placed on the administrative record the following documents to demonstrate absence of *de jure* control: The 1994 ''Foreign Trade Law of the People's Republic of China;'' the ''Company Law of the PRC,'' effective as of July 1, 1994; and ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988. In other cases involving products from the PRC, respondents have submitted the following additional documents to demonstrate absence of *de jure* control, and the Department has placed these additional documents on the record as well: The ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''the Industrial Enterprises Law''); and the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''). (*See* October 31, 2006, memorandum to the file which places the above-referenced laws on the record of this proceeding segment.)

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of joint ventures and companies owned by ''all of the people'' absent proof on the record to the contrary. *See, e.g.*, *Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*''), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 29571 (June 5, 1995).

*2. Absence of De Facto Control*

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide,* 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to the approval of, a governmental agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87 and *Furfuryl Alcohol,* 60 FR 22545.

The affiliates in COFCO's collapsed entity (where applicable) and Guangxi Eastwing have asserted the following: (1) Each establishes its own export prices; (2) each negotiates contracts without guidance from any governmental entities or organizations; (3) each makes its own personnel decisions; and (4) each retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each respondent's questionnaire responses indicate that each respondent's pricing practices during the POR does not suggest coordination among exporters. As a result, there is a sufficient basis to preliminarily determine that each respondent listed above (including the COFCO collapsed entity as a whole) has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Moreover, with respect to the affiliates included in the COFCO collapsed entity, we have assigned to all of them the same antidumping rate in these preliminary results for the above-mentioned reasons.

**Fair-Value Comparisons**

To determine whether the respondents' sales of subject merchandise were made at less than NV, we compared the export price (EP) to NV, as described in the ''Export Price''

and ''Normal Value'' sections of this notice, below.

**Export Price**

In accordance with section 772(a) of the Act, the Department calculated EPs for sales by COFCO to the United States because the subject merchandise was sold directly to unaffiliated customers in the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) prior to importation, and constructed export-price methodology was not otherwise indicated. In accordance with 19 CFR 351.401(c), we made deductions from the net sales price for foreign inland freight and foreign brokerage and handling. Each of these services was provided by a NME vendor and, thus, as explained in the ''Normal Value'' section below, we based the deductions for these movement charges on values from a surrogate country.

For the reasons stated in the ''Normal Value'' section below, we selected India as the primary surrogate country. To value brokerage and handling, the Department used an average of the publicly summarized data from the following two sources which we have placed on the record of this review: (1) Data reported in the U.S. sales listing in the February 28, 2005, submission from Essar Steel Ltd. (''Essar Steel'') in the antidumping duty administrative review of Certain Hot-Rolled Carbon Steel Flat Products from India, A–533–820 (covering December 2003–November 2004), and (2) data reported in Pidilite Industries' March 9, 2004, public version response submitted in the antidumping duty investigation of Carbazole Violet Pigment 23 from India, A–533–838 (covering the period November 2002–September 2003). We identify the source used to value foreign inland freight in the ''Normal Value'' section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for these values using the wholesale price indices (''WPI'') for India as published in the *International Financial Statistics Online Service* maintained by the Statistics Department of the International Monetary Fund at the Web site *http://www.imfstatistics.org* (''IFS'').

COFCO claims that its affiliated producer, Yu Xing, did not incur an expense for the glass jars and caps used to export subject merchandise to the United States during the POR because its U.S. customers provided these items to Yu Xing free-of-charge. In response to the Department's supplemental questionnaire, COFCO provided documentation which sufficiently supported its claim that (1) its U.S. customers contracted with PRC glass jar and cap producers and that these producers had indeed delivered these items to Yu Xing in a certain quantity on a certain date, free-of-charge; and (2) that these free-of-charge glass jars and caps were used in the required quantities for certain subject merchandise sold to its applicable U.S. customers during the POR.

Therefore, for the reasons mentioned above, the Department has adjusted the U.S. price of certain preserved mushroom transactions reported by COFCO by assigning Indian surrogate values to the glass jar and caps used in those preserved mushroom transactions to reflect its U.S. customers' expenditures for these items. This preliminary decision on this matter is consistent with the Department's decision in *PRC Mushrooms 5th AR*, 70 FR at 10973.

**Normal Value**

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production (''FOP'') methodology if the subject merchandise is exported from an NME country and available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology the Department uses to calculate the NV of merchandise exported from NME countries. The Department has treated the PRC as a NME country in every proceeding involving the PRC. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

In accordance with section 773(c)(3) of the Act, the FOPs which COFCO's suppliers used in producing certain preserved mushrooms include, but are not limited to, the following inputs: (1) Hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in one or more market-economy countries that are at a level of economic development comparable to that of the PRC and are significant producers of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. See *Memorandum from Ron Lorentzen, Director, Office of Policy, to Irene Darzenta Tzafolias, Acting Office Director, Office 2*, dated May 4, 2006, regarding potential surrogate countries, which is available in the CRU—Public File.

Section 773(c)(3) of the Act states that ''the factors of production utilized in producing merchandise include, but are not limited to, the quantities of raw materials employed.'' Therefore, the Department is required under the Act to value all inputs (including inputs which the respondent claims were provided to it purportedly free of charge). As explained in the ''Export Price'' section above, COFCO sufficiently supported its claim that each of its applicable U.S. customers provided its affiliated supplier, Yu Xing, the glass jars and caps, which were used for the preserved mushrooms sold to those same U.S. customers free-of-charge. For this reason, we have adjusted, where applicable, COFCO's reported U.S. prices to include the value of glass jars and caps for certain sales of preserved mushrooms in these preliminary results. In addition to making the above-referenced adjustment to COFCO's U.S. prices reported for sales of the subject merchandise which contained glass jars and caps, section 773(c)(3) of the Act requires the Department to value each factor of production used to produce the subject merchandise. Accordingly, for these preliminary results, the Department has valued the glass jars and caps usage amounts reported by COFCO for specific preserved mushrooms by using an Indian surrogate value for each input (*see Factor Valuation Memo*).

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. If we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, as applicable, except labor, using the WPI for the appropriate surrogate country as published in the *IFS*. We valued the FOPs as follows:

(1) Except for rice straw, cow manure, and steam coal, we valued all reported material inputs using Indian import data from the World Trade Atlas (''WTA'')

for February 2005 through January 2006, in accordance with the Department's established practice in this case (*see e.g., PRC Mushrooms 6th AR*, 71 FR at 40477, and accompanying *Issues and Decision Memorandum* at Comments 1 through 6).

(2) We valued rice straw using data from the 2005–2006 financial statement of Flex Foods Limited (''Flex Foods''), an Indian producer of the subject merchandise.

(3) We valued cow manure using data from the 2004–2005 financial statement of Agro Dutch Industries Limited (''Agro Dutch''), an Indian producer of the subject merchandise.

(4) We valued electricity using rates from *Energy Prices and Taxes: Second Quarter 2003 (Energy Prices)*, published by the International Energy Agency. We valued water using data from the Maharashtra Industrial Development Corporation. We valued steam coal using the *Teri Energy Data Directory & Yearbook* (2004).

(5) We valued labor, consistent with 19 CFR 351.408(c)(3), using the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, and posted to Import Administration's Web site at *http://ia.ita.doc.gov/wages*. The source of this wage rate data is the Yearbook of Labour Statistics 2003, International Labour Office, (Geneva: 2003), Chapter 5B: Wages in Manufacturing (*http://laborsta.ilo.org*). The years of the reported wage rates range from 1998 to 2003. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.

(6) We derived ratios for factory overhead, selling, general and administrative (''SG&A'') expenses, and profit using the 2004–2005 and 2005–2006 financial statements of Agro Dutch and Flex Foods. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses, SG&A expenses as a percentage of the total cost of manufacturing, and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

(7) We used truck rates published at *http://www.infreight.com* to value freight services provided to transport (a) the finished product to the port; and (b) direct materials, packing materials, and coal from the suppliers of the inputs to the producers.

For further discussion of the surrogate values we used for these preliminary results of review, *see Memorandum From Terre Keaton Regarding Factors-of-Production Valuation for Preliminary Results* (October 31, 2006), which is on file in the CRU—Public File.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following margins exist for the period February 1, 2005, through January 31, 2006:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| China Processed Food Import & Export Company (which includes its affiliates China National Cereals, Oils & Foodstuffs Import & Export Corporation, COFCO (Zhangzhou) Food Industrial Co., Ltd., Xiamen Jiahua Import & Export Trading Co., Ltd., and Fujian Yu Xing Fruit & Vegetable Foodstuff Development Co.)[12] | 195.85 |
| Primera Harvest Co., Ltd | 195.85 |
| Guangxi Eastwing Co., Ltd | 195.85 |
| PRC-Wide Rate (which applies to the following companies that failed to qualify for a separate rate in this review: Gerber, Green Fresh, Guangxi Hengxian and Guangxi Yulin) | 198.63 |

As stated above in the ''Separate-Rates Determination'' section of this notice, Guangxi Eastwing and Primera Harvest both qualify for a separate rate in this review. Moreover, as stated above in the ''Background'' section of this notice, we limited this review by selecting the largest exporters. As section A respondents, Guangxi Eastwing and Primera Harvest will be assigned the weighted-average dumping margin based on the calculated margins of mandatory respondents which are not *de minimis* or based on AFA, in accordance with Department practice. *See e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160, 9174 (February 28, 1997). Accordingly, we have assigned these two respondents the dumping margin assigned to the COFCO collapsed entity.

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties within five days of the date of publication of this notice the calculations it performed for the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results.

**Assessment Rates**

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. For the COFCO collapsed entity, we have calculated customer-specific antidumping duty assessment amounts for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. We calculated these assessment amounts because there is no information on the record which identifies entered values or the importers of record for the COFCO collapsed entity's reported U.S. sales transactions. For Guangxi Eastwing and Primera Harvest (*i.e.*, respondents which are being assigned the margin calculated for the COFCO

[12] For this review, we consider COFCO, COFCO Zhangzhou, Xiamen, Jiahua, and Yu Xing to constitute a single entity.

collapsed entity), we will instruct CBP to assess antidumping duties on these company's entries equal to the margin these companies receive in the final results, regardless of the importer or customer.

The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment amounts, calculated as described above, on each of the applicable entries during the review period.

**Cash Deposit Requirements**

The following deposit requirements will apply to all shipments of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; and (4) the cash deposit rate for any non-PRC exporter of subject merchandise from the PRC 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 Interested Parties**

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

We are issuing and publishing the preliminary results determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–18662 Filed 11–3–06; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–813]**

### Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** In response to timely requests by Agro Dutch Industries, Ltd. (Agro Dutch) and the petitioner,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to Agro Dutch. The period of review (POR) is February 1, 2005, through January 31, 2006.

We preliminarily determine that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

**DATES:** *Effective Date:* November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Terre Keaton Stefanova or David J. Goldberger 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) 482–1280 or (202) 482–4136, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from India. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Administrative Order: Certain Preserved Mushrooms from India*, 64 FR 8311 (February 19, 1999).

In response to timely requests by a manufacturer/exporter, Agro Dutch, and the petitioner, the Department published a notice of initiation of an administrative review with respect to the following companies: Agro Dutch and Himalya International, Ltd. (Himalya), 71 FR 17077 (April 5, 2006). The POR is February 1, 2005, through January 31, 2006.

On April 5, 2006, the Department issued antidumping duty questionnaires to the above-mentioned companies. We received responses to these questionnaires in May 2006.

On July 10, 2006, the petitioner withdrew its request for review with respect to Himalya. Accordingly, we published a *Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 42801 (July 28, 2006), with respect to this company.

We issued supplemental questionnaires to Agro Dutch in July and September 2006, and received responses in July, August and October 2006.

**Scope of the Order**

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

**Fair Value Comparisons**

To determine whether sales of certain preserved mushrooms by the respondent to the United States were made below NV, we compared export price (EP), as appropriate, to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared Agro Dutch's U.S. sales to sales made in the third-country market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, container solution, and label type.

**Export Price**

We used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by Agro Dutch to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States.

Agro Dutch reported its U.S. sales on a CIF or ex-dock duty paid basis. We made deductions from the starting price, where appropriate, for international freight, foreign inland freight, transportation insurance, foreign and U.S. brokerage and handling, and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Agro Dutch claimed a freight expense offset for some of the freight expenses associated with its export shipments to the United States and Israel, the third-country market upon which we based NV. Based on the information submitted for the record of this review and consistent with our findings in the previous administrative review, we did not make this adjustment because it is not contemplated by the Act or the Department's regulations. *See Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 67440, 67441 (November 7, 2005). These findings were upheld in the final results (*see Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006)).

**Normal Value**

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Agro Dutch's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

We determined that the home market was not viable for Agro Dutch because Agro Dutch's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales of the subject merchandise. However, we determined that the third-country market of Israel was viable, in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, pursuant to section 773(a)(1)(C) of the Act, we used third-country sales as a basis for NV for Agro Dutch.

**Level of Trade**

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *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, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process from the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''), including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices) [2], we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F. 3d 1301, 1314–15 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, and where the difference affects price comparability, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

We obtained information from Agro Dutch regarding the marketing stages involved in sales to the reported comparison market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Agro Dutch sold to importers/distributors through one channel of distribution in both the U.S.

[2] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible.

and Israeli markets. As described in its questionnaire response, Agro Dutch performs limited selling activities for its U.S. and third-country sales. Furthermore, any selling activities performed (*e.g.*, sales negotiation and transportation arrangement) do not vary by channel of distribution, type of customer, or market. Therefore, Agro Dutch's sales channels are at the same LOT. Accordingly, all sales comparisons are at the same LOT for Agro Dutch and an adjustment pursuant to section 773(a)(7)(A) of the Act is not warranted.

**Cost of Production Analysis**

In the most recently completed administrative review as of April 5, 2006, when the questionnaire was issued (*i.e.*, the 2004–2005 review), we found that Agro Dutch had made sales below the cost of production. *See Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Agro Dutch made sales in the third country at prices below the cost of producing the merchandise in the current review period. Accordingly, we instructed Agro Dutch to respond to the section D (Cost of Production) questionnaire.

*A. Calculation of Cost of Production*

We calculated the cost of production (COP) on a product-specific basis, based on the sum of Agro Dutch's respective costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expense, and all expenses incidental to placing the foreign like product in a condition packed and ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on the COP information submitted by Agro Dutch, except for the direct material cost. We adjusted the can costs portion of the direct material cost to reconcile the work-in-process inventory amount reported in the response to the work-in-process inventory amount in the audited financial statements. Because the reported general and administrative expense and interest expense amounts were based on an amount that included the unadjusted direct material costs, we recalculated these expenses to incorporate the adjustment to the can costs. For further details regarding this adjustment, see ''Cost of Production and Constructed Value Calculation Adjustment for the Preliminary Results—Agro Dutch Industries Limited.'' Memorandum from Michael Harrison, Senior Accountant, to Neal M. Halper, Director of Accounting.

On a product-specific basis, we compared Agro Dutch's weighted-average COP to the prices of third-country market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of interest revenue, where appropriate) were exclusive of any applicable billing adjustments, movement charges, discounts, direct and indirect selling expenses and packing. In determining whether to disregard third-country sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time in substantial quantities; and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

*B. Results of COP Test*

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that they represented ''substantial quantities'' within an extended period of time, and were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

The results of our cost test for Agro Dutch indicated that, for one or more products, more than 20 percent of home market or third country sales within an extended period of time were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. *See* section 773(b)(2) of the Act. Therefore, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

**Price-to-Price Comparisons**

We based NV on the price at which the foreign like product is first sold for consumption in the third country market, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as EP, where possible, as defined by section 773(a)(1)(B)(ii) of the Act.

Third country prices were based on FOB, CIF, and CFR Indian port prices. We reduced the starting price for billing adjustments and movement expenses, and increased the starting price for interest revenue, where appropriate, in accordance with section 773(a)(6)(B) of the Act and 19 CFR 351.401(c) and (e).

We disregarded Agro Dutch's claimed freight expense offset for certain third country sales granted under the Indian government program discussed in the ''Export Price'' section above, because this type of adjustment to NV is not contemplated by section 773(a)(6) of the Act or the Department's regulations.

We also reduced the starting price for packing costs incurred in the comparison market, in accordance with section 773(a)(6)(B)(i) of the Act, and increased NV to account for U.S. packing expenses, in accordance with section 773(a)(6)(A) of the Act. We made circumstance-of-sale adjustments for credit expenses and bank fees, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

**Currency Conversion**

We made currency conversions in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the weighted-average dumping margin for the period February 1, 2005, through January 31, 2006, is as follows:

| Manufacturer/exporter | Percent margin |
|---|---|
| Agro Dutch Industries, Ltd | 0.61 |

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is

requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

**Assessment Rates**

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

With respect to Agro Dutch, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: 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 companies included in these final results of reviews for which the reviewed companies did not know that the merchandise it sold to the 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 all-others rate if there is no rate for the intermediary involved in the transaction. See Assessment Policy Notice for a full discussion of this clarification.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, 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 less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the ''All Others'' rate made effective by the LTFV investigation (*see Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India*, 64 FR 8311 (February 19, 1999)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

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

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: October 31, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6–18669 Filed 11–3–06; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 102706B]**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Scoping Process

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

**ACTION:** Notice; intent to prepare a supplemental environmental impact statement (SEIS) and hold scoping meetings; request for comments.

**SUMMARY:** The New England Fishery Management Council (Council) announces its intent to prepare, in cooperation with NMFS, a supplemental environmental impact statement (SEIS) to assess the potential effects on the human environment of alternative measures for managing the Northeast (NE) multispecies fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. This notice announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to management of the multispecies fishery. The Council will use the scoping process and the SEIS to develop Amendment 16 to the NE Multispecies Fishery Management Plan (FMP).

**DATES:** The Council will discuss and take scoping comments at public meetings in November and December 2006 (see **SUPPLEMENTARY INFORMATION**). Written scoping comments must be received on or before 5 p.m., local time, December 29, 2006.

**ADDRESSES:** The Council will take scoping comments at public meetings in Ellsworth, Maine; Portland, Maine; Portsmouth, New Hampshire; Gloucester, Massachusetts; Fairhaven, Massachusetts; South Kingstown, Rhode Island; Riverhead, New York; and New York City, New York. For specific locations and times, see **SUPPLEMENTARY INFORMATION**. Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. Comments may also be sent via facsimile (fax) to (978) 465–3116 or via e-mail to *comments@nefmc.org*. Include in the subject line the following identifier: ''Groundfish Amendment 16 Scoping Comments.'' The scoping document is/will be accessible electronically via the Internet at *http://www.nefmc.org*.

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

**SUPPLEMENTARY INFORMATION:**

## Background

The NE Multispecies FMP manages cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), white hake (*Urophycis tenuis*), pollock (*Pollachius virens*), Acadian redfish (*Sebastes fasciatus*), yellowtail flounder (*Limanda ferrugineus*), winter flounder (*Psuedopleuronectes americanus*), witch flounder (*Glyptocephalus cynoglossus*), American plaice (*Hippoglossoides platessoides*), windowpane flounder (*Scopthalmus aquosos*), Atlantic halibut (*Hippoglossus hippoglossus*), and ocean pout (*Macrozoarces americanus*). These species are managed as 19 individual stocks. The Council has managed these species as a unit under the FMP since 1985. Management measures include limited and open access permit categories, limits on fishing time through days-at-sea (DAS) allocations, gear requirements, closed areas, and retention limits. These measures have been adopted through a series of amendments and adjustments to the original FMP. The most recent amendment (Amendment 13, implemented on May 1, 2004) established rebuilding programs for 12 stocks. For most of these overfished stocks, the goal is to rebuild to a biomass that will support maximum sustainable yield by 2014.

## Purpose of Action

Amendment 13 established a requirement and a process for a mid-point review of rebuilding progress and adjustments to management measures as necessary to continue rebuilding. As part of this process, each groundfish stock will be assessed in 2008. Stock size and fishing mortality rates will be estimated, and status determination criteria will be reviewed. This information will be used to determine adjustments to Amendment 13 measures that are necessary to continue rebuilding and achieve optimum yield from the fishery. Amendment 16 to the FMP would implement any revisions to management measures necessary to continue the rebuilding programs adopted by Amendment 13. Amendment 16 and its accompanying SEIS will be focused on the adjustments that are necessary to comply with the mid-term adjustment procedures of the FMP, to meet the fishing mortality rate objectives of the FMP, and to ensure that all groundfish stocks rebuild.

In addition to considering adjustments to the current effort control management system as modified by Amendment 13 and subsequent frameworks, the Council may consider other management systems that may replace or supplement the existing effort controls. Members of the public are encouraged to submit proposals for alternative management schemes during the scoping process. The Council will evaluate proposals received and may develop them into alternatives that will be considered in Amendment 16. To guide in the development of proposals, the Council will specify in the scoping document the types of issues that must be addressed for a proposal to warrant further consideration. A workshop will be held at a Groundfish Oversight Committee meeting on November 3, 2006, to develop advice on these standards. The Council will use the information from the workshop to establish the standards at the Council meeting on November 14 - 16, 2006. This information should be available shortly after the Council meeting. Proposals should be as fully developed as possible when submitted in order to facilitate a prompt review and decision on whether to include the proposal in the amendment. Because of the limited time available for the development of this amendment, the Council may not consider alternative management schemes that are suggested outside of the scoping process.

The Northeast Fisheries Science Center is planning to assess stocks of wolffish (*Anarhichas lupus*) and cusk (Brosme brosme) in 2007. The Council will consider the results of those assessments when developing this action and may adopt measures necessary to manage those stocks.

## Measures Under Consideration

The Council may consider several types of management measures to continue the multispecies rebuilding program including, but not limited to:

- Changes to the current DAS management system, such as modifications to DAS allocation and use, changes to gear requirements, modified possession limits, additions or changes to seasonal and year-round closed areas, or changes to special management programs;
- Recreational fishery measures such as seasons, bag limits, or area closures;
- Total allowable catch management systems;
- Area management systems;
- Individual quota systems, including individual transferable quota systems; and
- Sector management systems.

The types of measures under consideration include those described in Amendment 13 as well as alternative management systems that may be suggested during this scoping process. Information on specific topics for which the Council is soliciting comment is in the scoping document, which will be available on the Council web site (*http://www.nefmc.org*) on or about November 15.

## Scoping Process

It is the Council's and NMFS's intent to encourage all persons affected by or otherwise interested in the management of NE multispecies to participate in the process to determine the scope and significance of issues to be analyzed in the SEIS and amendment. All such persons are encouraged to submit written comments (see **ADDRESSES**) or comment at one of the scoping meetings. Persons submitting written comments may wish to address the specific measures introduced in the previous section. The scope of the SEIS consists of the range of actions, alternatives, and impacts to be considered. Alternatives may include the following: not amending the FMP (taking no action); developing an amendment that contains management measures such as those discussed in this notice; or other reasonable courses of action. Impacts may be direct, indirect, or cumulative.

This scoping process also will identify and eliminate from further detailed analysis issues that are not significant. After the scoping process is

completed, the Council will proceed with the development of Amendment 16 and the Council will prepare an SEIS to analyze the impacts of the range of alternatives considered in the amendment.

To ensure that the fishery continues to meet the Amendment 13 rebuilding objectives, any revisions to management measures included in Amendment 16 need to be implemented by May 1, 2009. In order to incorporate the latest catch and survey data into the proposed adjustment, the assessment of groundfish stocks scheduled for 2008 (the Groundfish Assessment and Review Meeting, or GARM) cannot be conducted until August 2008. Therefore, because of the lengthy process involved with evaluating the impacts of any changes to the FMP, the Council and NMFS propose to start the environmental review process as early as possible. As such, it will be necessary to develop and publish a draft SEIS for Amendment 16 using the best available data prior to the August 2008 GARM. The intent is to fully evaluate an adequate range of alternatives in the draft SEIS to project the full range of likely impacts resulting from any proposed adjustments to management measures. The Council will then hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the draft SEIS. Once the GARM has evaluated the status of groundfish stocks in August 2008, that information will be incorporated into the final SEIS to further refine the precision of the impact analysis presented in the draft SEIS.

## Scoping Hearing Schedule

The Council will discuss and take scoping comments at the followingpublic meetings:

1. Monday, November 27, 2006, from 5 – 8 p.m.; Holiday Inn, US Route 1&3, Ellsworth, ME 04605; telephone:(207) 667–9341.
2. Tuesday, November 28, 2006, from 5 – 8 p.m.; Eastland Park Hotel, 157 High Street, Portland, ME 04101; telephone: (207) 775–5411.
3. Wednesday, November 29, 2006, from 5 – 8 p.m.; Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH; telephone:(603) 431–6774.
4. Thursday, November 30, 2006, from 5 – 8 p.m.; Massachusetts Department of Marine Fisheries Annisquam River Station, 30 Emerson Avenue, Gloucester, MA 01950; (978) 282–0308.
5. Tuesday, December 5, 2006, from 5 – 8 p.m.; Best Western East End, 1830 Route 25, Riverhead, NY 11901; telephone: (631) 369–2200.
6. Wednesday, December 6, 2006, from 5 – 8 p.m.; Holiday Inn South Kingstown, 3009 Tower Hill Road, So. Kingstown, RI 02674; telephone: (401) 789–1051.
7. Thursday, December 7, 2006, from 5 – 8 p.m.; Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.
8. Wednesday, December 12, 2006, from 7 – 9 p.m.; Skyline Hotel,725 10th Avenue, New York, NY 10019; telephone: (212) 586–3400.

## Special Accommodations

These meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: October 30, 2006.

**James P. Burgess,**

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

[FR Doc. E6–18682 Filed 11–3–06; 8:45 am]

**BILLING CODE 3510–22–S**

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 103006C]**

## Marine Mammals; File No. 373–1868

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

**ACTION:** Notice; receipt of application for permit.

**SUMMARY:** Notice is hereby given that the Point Reyes Bird Observatory (PRBO) Conservation Science (Dr. William J. Sydeman, Responsible Party), 3820 Cypress Drive, # 11 Petaluma, CA 94954 has applied in due form for a permit for scientific research on pinnipeds in California.

**DATES:** Written, telefaxed, or e-mail comments on the new applications, amendment requests must be received on or before December 6, 2006.

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

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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the relevant document identifier: File No. 373–1868.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Dr. Tammy Adams, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The PRBO proposes to study and monitor population trends, health, and ecology of pinnipeds in California, specifically at the Farallon Islands, Point Reyes Peninsula, Ano Nuevo Island, San Francisco Bay, and in Sonoma County near the Russian River. Harbor seals (*Phoca vitulina richardii*) and northern elephant seals (*Mirounga angustirostris*) are the primary species of study; researchers will also remotely survey California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern fur seals (*Callorhinus ursinus*) and their responses to changes in the environment. By monitoring these species, managers will be alerted to changes in the condition of pinniped populations and of the coastal marine ecosystems of central California. Research and monitoring activities will include (1) capture and handling of harbor seals and northern elephant seals in order to dye-mark, attach flipper tags and scientific instruments, and collect tissue samples, (2) surveys and photo-documentation of all species in order to quantify numbers by sex and age class annually and seasonally, and (3) incidental Level B disturbances related to research activities. An estimated

maximum of 300 harbor seals and 3,050 elephant seals will be captured or handled per year over a five year period, and an estimated 300 elephant seals, 5,150 harbor seals, 600 California sea lions, and five northern fur seals will be incidentally disturbed during pinniped research operations.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 31, 2006.

**P. Michael Payne,**

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

[FR Doc. E6–18683 Filed 11–3–06; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 100406A]**

## Taking of Marine Mammals Incidental to Specified Activities; Harbor Redevelopment Project, Moss Landing Harbor, California

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the Moss Landing Harbor District (MLHD), to take small numbers of Pacific harbor seals and California sea lions, by harassment, incidental to the harbor redevelopment project in Moss Landing Harbor, California.

**DATES:** This authorization is effective from November 1, 2006 until October 31, 2007.

**ADDRESSES:** A copy of the application, IHA, and supporting documents for this action may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, NMFS, (301) 713–2289, ext 137, or Monica DeAngelis, NMFS, (562) 980–3232.

**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 small numbers 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.

An authorization shall be granted if NMFS finds that the taking will be small, 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 April 24, 2006, NMFS received a request from the Terrestrial and Aquatic Biological Resources, on behalf of MLHD, to take small numbers of Pacific harbor seals (*Phoca vitulina richardsi*) and California sea lions (*Zalophus californianus*) incidental to the North Harbor Redevelopment Project in Moss Landing Harbor, Monterey County, California.

The project includes construction of a 100–ft (30.5–m) long by 90–ft (27.4–m) wide boat ramp, a 5,000–square foot (464.5–m$^2$) public wharf with pedestrian promenade and seating areas, and installation of a 171–ft long (52.1–m) by 10–ft (3.1–m) wide floating dock. The total proposed project site is 4.5 acres (18,211.5 m$^2$). The construction phase of the redevelopment would involve driving a total of 72 piles: 9 for the boat ramp, 53 for the public wharf and promenade, and 10 for the floating dock. Installation of the pilings would most likely be from a land-based driver, however, a barge may be used for installation. The pilings will be concrete, 16–inch square for the wharf and the boat launch ramp boarding floats, and 20–inch square for the dock.

An impact hammer is required for installation of the piles. The energy output levels of the impact hammer are approximately 48 – 94 kiloJoules (kJ) (or 35,381 – 69,458 foot-pound force (ft-lbs)), depending on the setting. The hammer would be operating at the rate of 36 – 52 blows per minute. The underwater noise level is measured at approximately between 165 – 175 dB re 1 microPa rms at 10 m (32.8 ft), and 155 – 170 dB re 1 microPa rms at 20 m (65.6 ft). It takes approximately 5 – 20 minutes drive time to install each pile, depending on the substrate encountered. Therefore, the maximum time required to install all piles would be 24 hours. The pile driving is estimated to be completed within 2 – 3 months. The proposed project would start in fall 2006.

### Comments and Responses

A notice of receipt and request for 30–day public comment on the application and the proposed authorization was published in the Federal Resister on September 8, 2006 (71 FR 53086). No comments were received during the 30–day public comment period. NMFS requested the review of the Marine Mammal Commission (the Commission) for the IHA application and proposed authorization. The Commission concurred with NMFS' determination that the proposed activities are unlikely to have a significant impact on the affected marine mammal populations.

**Description of the Marine Mammals Potentially Affected by the Activity**

The affected species of marine mammals that may occur near the proposed project site are Pacific harbor seals and California sea lions. General information on these marine mammal species can be found in Caretta *et al.* (2006), which is available at the following URL: *http://www.nmfs.noaa.gov/pr/pdfs/sars/po2005.pdf*. None of the marine mammals species found in the proposed project areas is listed under the Endangered Species Act (ESA) or designated as depleted under the MMPA. Additional information on the abundance and occurrence of these species within or close to the proposed project area is presented below.

*Pacific harbor seal*

Pacific harbor seals are mainly seen on the sand bar at the North area of the harbor (North Harbor), which is about 575 ft (175.3 m) west from the proposed project area, across a Federal navigation channel. They are also seen along the boat dock area, and swimming to and from the ocean. The North Harbor sand bar is not a typical Pacific harbor seal pupping area. The closest known seal pupping area is over 0.5 mile (0.8 km) east of the proposed project area at Seal Bend in Elkhorn Slough (NMFS, 2004).

The number of Pacific harbor seals varies seasonally and with the time of day. They are most abundant during the day with approximately 20 - 100 individuals at the North Harbor sand bar, but leave the sand bar in the evening to feed in Monterey Bay. The number of seals are most abundant during the pupping and molting season from May to August.

*California sea lion*

California sea lions have been seen on the North Harbor docks, but their occurrence within the proposed project area is rare. Usually there are fewer than 2 individuals in the vicinity of Moss Landing Harbor (L. McIntyre, MLHD, 2006). Most of the sea lions in the Monterey Bay area are males of varying age classes that arrive in early fall from their southern breeding ground (Monterey Bay Aquarium, 1999). Many individuals remain over the course of the winter until the following spring, with just a few sea lions staying through the summer. There are no breeding areas for the California sea lion located in the Monterey Bay area, and most individuals migrate to offshore breeding sites in southern California and Mexico (NMFS, 2004).

**Potential Effects on Marine Mammals and Their Habitat**

Construction of the boat ramp, public wharf and promenade, and floating docks has the potential to result in Level B behavioral harassment of Pacific harbor seals and California sea lions that may be swimming, foraging, or resting in the project vicinity while pile driving is being conducted. The impact to these marine mammals is expected to be disturbance by the presence of workers, construction noise, and possibly construction vessel traffic if pile driving is to be conducted from a barge. Disturbances could alter seal and sea lion behaviors and cause the animals to temporarily disperse from the area, or to flush and possibly return at a later time or could result in temporary use of an alternate haul out site in Monterey Bay.

Noise from pile driving is expected to be much louder than all other noises from the construction. However, the impact hammer being selected has energy levels at 48–94 kJ (35,381–69,458 ft-lbs). These energy levels are significantly less than either of the two pile drivers being used on the San Francisco-Oakland Bay Bridge (SF–OBB) (see 68 FR 64595, November 14, 2003), which are 500 kJ and 1,700 kJ. As a result, airborne and underwater impact zones for marine mammals (and other aquatic life) will be significantly smaller than at SF–OBB.

Based on underwater noise levels measured in 2004 during a separate project at Pier 40 in San Francisco, the hammer's impulses were recorded approximately between 165–175 dB re 1 microPa rms at 10 m (32.8 ft), and 155–170 dB re 1 microPa rms at 20 m (65.6 ft) from the pile. These levels are significantly below 190 dB re 1 microPa rms, the level NMFS uses to estimate Level A harassment of pinnipeds and the onset of temporary threshold shift (TTS) in pinniped hearing (see 68 FR 64595, November 14, 2003).

A self-monitoring program was also conducted by a contractor in July 2006 to obtain airborne noise levels from pile driving. Time-averaged acoustic values in air ranged from 80 to 90 dB re 20 microPa, with peak discrete values approaching 100 dB re 20 microPa at 250 feet (76 m) from the sound source (Sea Engineering Inc., 2006). Studies have shown that when exposed to sound levels between 98.9 and 101 dB (re 20 microPa) from rocket launch, harbor seals responded by fleeing into the water but many returned to land within several hours (Stewart, 1993). Ringed seals (*Phoca hispida*) exhibited little or no reaction to pipe-driving noise measured at 112 and 96 dB re 20 microPa and 90 dB re 20 microPa$^2$s (Blackwell *et al.*, 2004).

**Mitigation**

The following mitigation measures are required under the IHA that has been issued to MLHD for construction activities, including pile driving, associated with the harbor redevelopment project at Moss Landing Harbor. NMFS believes that the implementation of these mitigation measures will reduce impacts to marine mammals to the lowest level practicable.

*Time and Duration*

The pile driving of the construction will be completed before December 2006 to avoid the migrating gray whales (*Eschrichtius robustus*). Construction activities, including pile driving, will only take place during daylight hours between 7 am to 5 pm, when marine mammal monitoring prior to and during the pile driving can be effectively implemented.

*Establishment of Safety Zones*

Before any pile driving, a clearly marked 250–ft (76 m) radius safety zone for Pacific harbor seals and California sea lions will be established. The safety zone would be marked by buoys for easy monitoring. At these distances, underwater sound pressure levels (SPLs) are expected to be significantly reduced from 165 - 175 dB re 1 microPa rms measured at 10 m (32.8 ft), and airborne noise levels are expected to be about 80 - 90 dB re 20 microPa. These SPLs are not believed to cause Level A harassment or onset of TTS (Level B harassment). A 500–ft radius safety zone was proposed in the proposed IHA (71 FR 53086), however, acoustic monitoring data show that it is overly conservative and would be difficult to monitor such a large area. Based on in-water and in-air acoustic monitoring data, NMFS believes that a 250–ft radius safety zone is sufficient to prevent Level A harassment and onset of TTS.

Marine mammal observers (MMOs) on a boat will survey the safety zone to ensure that no marine mammals are seen within the zone before pile driving begins. If marine mammals are found within the safety zone, pile driving will be delayed until they move out of the area. If a marine mammal is seen above the water and then dives below, pile driving will wait 15 minutes and if no marine mammals are seen by the observer in that time it will be assumed that the animal has moved beyond the safety zone. This 15–minute criterion is based on scientific evidence that harbor seals in San Francisco Bay dive for a

mean time of 0.50 minutes to 3.33 minutes (Harvey and Torok, 1994).

Once pile driving begins and an animal is seen or believed to entered the 250 ft (76 m) radius safety zone, the contractor must suspend pile driving and wait till the animal leaves the safety zone, or 15 minutes after the last sighting of the animal, before pile driving starts.

*Soft Start*

Although marine mammals will be protected from Level A harassment by establishment of a safety zone of 250–ft (76 m) radius, mitigation may not be 100 percent effective at all times in locating marine mammals. In order to provide additional protection to marine mammals near the project area by allowing marine mammals to vacate the area, thus further reducing the incidence of Level B harassment from startling marine mammals with a sudden intensive sound, MLHD will implement a ''soft start'' practice when startup pile driving. By implementing the ''soft start'' practice, pile driving would be initiated at an energy level less than full capacity (i.e., approximately 40–60 percent energy levels) for at least 5 minutes before gradually escalate to full capacity. This would ensure that, although not expected, any pinnipeds that are undetected during safety zone monitoring will not be injured.

*Compliance with Equipment Noise Standards*

To mitigate noise levels and, therefore, impacts to Pacific harbor seals and California sea lions, all construction equipment will comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency, and all construction equipment will have noise control devices no less effective than those provided on the original equipment.

**Monitoring and Reporting**

MLHD must implement a monitoring plan that would collect data for each distinct marine mammal species observed during pile driving at the Moss Landing Harbor construction site. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile driving will be recorded.

Monitoring will be conducted by qualified NMFS-approved biologists. Binoculars and range finders will be provided to MMOs for accurately identifying species and determining distances.

Monitoring will begin prior to the first day of the pile driving to establish baseline data, and occur during the entire period when pile driving is underway, and continue for 30 minutes after the pile driving. Post construction monitoring will also be conducted for a period of one day upon completion of pile driving to identify any change of pinniped behaviors.

Before the startup of the pile driving, MMOs would visually survey the area to confirm the safety zone is clear of any marine mammals. Pile driving will not begin until the safety zone is clear of marine mammals. Monitoring would continue by the observers on a boat during the entire period of pile driving. However, as described in the Mitigation section, once pile driving begins, operations will continue uninterrupted until that pile is installed. However, if driving of a pile is completed and a marine mammal is sighted within the designated safety zone prior to commencement of the next pile driving, the observer(s) must notify the pile driver (or other authorized individual) immediately and follow the mitigation requirements as outlined previously (see Mitigation).

MLHD will submit a final report to NMFS 90 days after completion of the project. The final report will include data collected for each distinct marine mammal species observed in the vicinity of the construction area during pile driving. Marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes due to the pile driving would also be included in the final report.

**ESA**

Based on a review conducted by NMFS biologists, no ESA-listed species are expected to occur in the proposed action area. NMFS has determined that no species listed under the ESA are likely to be affected and, therefore, a section 7 consultation is not warranted.

**National Environmental Policy Act (NEPA)**

NMFS prepared an Environmental Assessment (EA) on the issuance of an IHA for the taking of marine mammals incidental to demolition of the Sandholdt Road Bridge and construction of a new bridge in Moss Landing, California, in 2004 and made a Finding of No Significant Impact (FONSI) on December 21, 2004. The proposed action discussed in this document is not substantially different from the action analyzed in the 2004 EA, and a reference search has indicated that no significant new scientific information or analyses have been developed in the past 2 years that would warrant new NEPA documentation. Therefore, a new EA is not warranted for the proposed project.

**Determinations**

For the reasons discussed in this document and identified supporting documents, NMFS has determined that the impact of pile driving associated with Moss Landing Harbor redevelopment project would result, at worst, in the Level B harassment of small numbers of Pacific harbor seals and California sea lions in the vicinity of the proposed project area. While behavioral modifications, including temporarily vacating the area during the pile driving, may be made by these species to avoid the resultant visual and acoustic disturbance, the availability of alternate areas near Monterey Bay and haul-out sites (including pupping sites) and feeding areas within the Bay has led NMFS to determine that this action will have a negligible impact on small numbers of Pacific harbor seal and California sea lion populations near the proposed project area.

In addition, no take by Level A harassment (injury) or death is anticipated and harassment takes should be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document.

**Authorization**

NMFS has issued an IHA to MLHD for the potential harassment of small numbers of harbor seals and California sea lions incidental to Moss Landing Harbor redevelopment project in Moss Landing, California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 31, 2006.

**James H. Lecky,**

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

[FR Doc. E6–18690 Filed 11–3–06; 8:45 am]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 101706F ]**

### National Marine Fisheries Service; Notice of Availability of the Interim Final Ten Year Plan for the NOAA Aquaculture Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of the Interim Final Ten Year Plan for the NOAA Aquaculture Program.

**SUMMARY:** The National Oceanic and Atmospheric Administration and the National Marine Fisheries Service announce the availability of the Interim Final Ten Year Plan forthe NOAA Aquaculture Program (Plan). The Plan addresses NOAA's involvement in marine aquaculture in the United States over the next ten years. It includes Program Goals and Strategies, Outcomes, Benefits, Budget and Staffing Requirements, and Challenges. The Plan was prepared by NOAA at the request of the Marine Fisheries Advisory Committee (MAFAC) which advises the Secretary of Commerce on all living marine resource matters that are the responsibility of the Department of Commerce. At its July 25–27, 2006 meeting, the MAFAC reviewed the Plan and recommended that it be formally adopted by NOAA. Before taking this step, NOAA is providing the public an opportunity to comment on the Plan .

**DATES:** NOAA invites electronic and written comments on the Plan. All comments should be submitted by the close of business November 30, 2006 to ensure consideration.Comments submitted after that date will be considered to the extent possible.

**ADDRESSES:** The Plan and information about the NOAA Aquaculture Program are available on the NOAA Worldwide Web site at: *http://www.aquaculture.noaa.gov*. Electronic comments should be submitted to *NOAA.Aquaculture@noaa.gov*.Requests for hard copies of the Plan and/or submission of written comments should be directed to the NOAA Aquaculture Program, 1315 East-West Highway, room 13117, Silver Spring, MD 20910; by fax at (301) 713–9108; or by phone at (301) 713–9079.

**FOR FURTHER INFORMATION CONTACT:** Bruce Morehead or Kate Naughten, NOAA Aquaculture Program, NOAA/National Marine Fisheries Service,1315 East-West Highway, room 13117, Silver Spring, MD 20910, (301) 713–9079 or email at:*bruce.morehead@noaa.gov* or *kate.naughten@noaa.gov*.

Dated: November 1, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. E6–18701 Filed 11–3–06; 8:45 am]

BILLING CODE 3510–22–S

## 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 December 6, 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 31, 2006.

**Angela C. Arrington,**

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

### Office of Special Education and Rehabilitative Services

*Type of Review:* Revision.

*Title:* Annual State Application Under Part C of the IDEA as Amended in 2004.

*Frequency:* Annually.

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

*Reporting and Recordkeeping Hour Burden:*

Responses: 56.

Burden Hours: 560.

*Abstract:* The Individuals with Disabilities Education Improvement Act of 2004, signed on December 3, 2004, became Public Law 108–446. In order to be eligible for a grant under 20 U.S.C. 1433, a State shall provide assurance to the Secretary that the State has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and has in effect a statewide system that meets the requirements of 20 U.S.C. 1435. Information Collection 1820–0550 is being revised so that a State can provide assurances that it either has or does not have in effect policies, procedures, methods, descriptions, and assurances that meet the application requirements of part C of the Act as found in Public Law 108–446.

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 3172. 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. E6–18660 Filed 11–3–06; 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 December 6, 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 31, 2006.

**Angela C. Arrington,**

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

### Office of Special Education and Rehabilitative Services

*Type of Review:* New.

*Title:* Focus Group Input from Individuals with Disabilities and Targeted Individuals.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 120.

*Burden Hours:* 480.

*Abstract:* Results will identify research gaps, develop research priorities, and promotes coordinated plans, programs and activities across Interagency Committee on Disability Research (ICDR) agencies. Respondents will be persons with disabilities and other targeted individuals such as caregivers.

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 3164. 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. E6–18661 Filed 11–3–06; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Safe and Drug-Free Schools and Communities Advisory Committee

**AGENCY:** Office of Safe and Drug-Free Schools (ED).

**ACTION:** Notice of open teleconference meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of an upcoming open meeting of The Safe and Drug-Free Schools and Communities Advisory Committee. The notice also describes the functions of the Committee. 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 their opportunity to attend.

**DATES:** November 20, 2006.

*Time:* 2 p.m. est.

**ADDRESSES:** The Committee will meet by telephone conference call.

**FOR FURTHER INFORMATION CONTACT:** Catherine Davis, Executive Director, The Safe and Drug-Free Schools and Communities Advisory Committee, Room 1E110B, 400 Maryland Avenue, SW., Washington, DC telephone: (202) 205–4169, e-mail: *OSDFSC@ed.gov*.

**SUPPLEMENTARY INFORMATION:** The Committee was established to provide advice to the Secretary on Federal, State and local programs designed to create safe and drug-free schools, and on issues related to crisis planning. The agenda for the November 20th meeting will include follow-up discussions on the October 23–24, 2006 hearing, and focusing on preparation of an interim report recently requested by the Secretary of Education. The October hearing focused on issues relating to the Unsafe School Choice Option and Identification of Persistently Dangerous Schools.

There will not be an opportunity for public comment during this meeting, however the public may listen to the conference call by calling 800–473–8796, and asking for the Teleconference Chairperson: Deborah Price. Individuals who will need accommodations for a disability in order to listen to the meeting may access a TYY line by calling 800–473–8796, and asking for the Teleconference Chairperson: Deborah Price.

*Request for Written Comments:* We invite the public to submit written comments relevant to the focus of the Advisory Committee. We would like to receive written comments from members of the public no later than April 30, 2007.

*Addresses:* Submit all comments to the Advisory Committee using one of the following methods: (1) *Internet.* We encourage the public to submit comments through the Internet to the following address: *OSDFSC@ed.gov* (2) *Mail.* The public may also submit your comments via mail to Catherine Davis, Office of Safe and Drug Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

Records are kept of all Committee proceedings and are available for public inspection at the staff office for the Committee from the hours of 9 a.m. to 5 p.m. est.

**Ray Simon,**

*Deputy Secretary, U.S. Department of Education.*

[FR Doc. 06–9082 Filed 11–3–06; 8:45 am]

BILLING CODE 4000–01–M

## NUCLEAR REGULATORY COMMISSION

## DEPARTMENT OF ENERGY

### Notice of Public Meeting

**AGENCY:** Nuclear Regulatory Commission (NRC) and Department of Energy (DOE).

**ACTION:** Notice of public meeting.

**SUMMARY:** The NRC and DOE announce their intent to conduct a public meeting to discuss interactions during the review of non-high-level waste determinations under the National Defense Authorization Act (NDAA) for Fiscal Year 2005. The meeting date, time and location are listed below:

*Date:* Thursday, November 16, 2006.

*Time:* 9 a.m. to 11 a.m.

*Location:* L'Enfant Plaza Hotel, Meeting Rooms—Monet 1 and 2, 480 L'Enfant Plaza, Washington, DC 20024, phone: 202–484–1000.

*Agenda:* 9–9:15: Introductions and Opening Remarks. 9:15–10:45: Discussion of NDAA consultation. 10:45–11: Opportunity for Public Comment.

### Background

On October 9, 2004, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) was passed by Congress and was signed by the President on October 28, 2004. Section 3116 of the NDAA allows the U.S. Department of Energy (DOE) to determine that certain waste stemming from reprocessing of spent nuclear fuel is not high-level-waste (HLW). The NDAA is applicable only in the States of South Carolina and Idaho and does not apply to waste transported out of these States. The NDAA requires that: (1) DOE consult with NRC on its waste determinations in South Carolina and Idaho, and (2) NRC, in coordination with the State, monitor disposal actions taken by DOE for the purpose of assessing compliance with NRC regulations in 10 CFR part 61, subpart C. If the NRC determines that any disposal actions taken by DOE are not in compliance, the NDAA requires NRC to inform DOE, the affected State, and congressional subcommittees. The NRC and DOE are holding a public meeting to discuss the efficiency and effectiveness of the consultation process.

As noted on the agenda, time will be set aside during this meeting for observers who wish to make comments. After the meeting, a publicly available summary of this meeting will be made available on the NRC's Agencywide Documents Access and Management System at *http://www.nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For questions related to this meeting, please contact Anna Bradford at (301) 415–5228 or *ahb1@nrc.gov,* or Karen Guervara at (301) 903–3339 or *karen.guevara@em.doe.gov*.

Dated at Rockville, Maryland, this 31st day of October 2006.

For the Nuclear Regulatory Commission.

**Scott Flanders,**

*Deputy Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

Dated at Washington, DC, this 31st day of October 2006.

For the Department of Energy.

**Frank Marcinowski,**

*Deputy Assistant Secretary, Office of Regulatory Compliance.*

[FR Doc. 06–9080 Filed 11–3–06; 8:45 am]

BILLING CODE 7590–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OECA–2006–0440; FRL–8240–3]**

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request: Federal Emissions Guidelines for Existing Municipal Solid Waste Landfills (Renewal); EPA ICR Number 1893.04, OMB Control Number 2060–0430; Correction

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

**ACTION:** Notice; correction.

**SUMMARY:** The Environmental Protection Agency published a document in the **Federal Register** of October 19, 2006, concerning request for comments on an Information Collection Request for Federal Emissions Guidelines for Existing Municipal Solid Waste Landfills, EPA ICR Number 1893.04, OMB Control Number 2060–0430. The document contained an incorrect EPA Docket ID Number.

**FOR FURTHER INFORMATION CONTACT:** Zofia Kosim, (202) 564–8733.

### Correction

In the **Federal Register** of October 19, 2006, in FR Doc. E6–17448, on page 61768, at the bottom of the third column, correct the title to read: Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request: Federal Emissions Guidelines for Existing Municipal Solid Waste Landfills (Renewal); EPA ICR Number 1893.04, OMB Control Number 2060–0430.

In the **Federal Register** of October 19, 2006, in FR Doc. E6–17448, on page 61769, at the top of the first column, correct the first paragraph of the ''**ADDRESSES**'' caption to read:

**ADDRESSES:** Submit your comments, referencing docket ID number EPA–HQ–OECA–2006–0440, to (1) EPA online using *www.regulations.gov* (our preferred method) or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

In the **Federal Register** of October 19, 2006, in FR Doc. E6–17448, on page 61769, at the top of the second column, correct the second paragraph of the ''**SUPPLEMENTARY INFORMATION**'' caption to read:

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OECA–2006–0440, which is available for online viewing at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

In the **Federal Register** of October 19, 2006, in FR Doc. E6–17448, on page 61769, in the middle of the second column, correct the forth paragraph of the ''**SUPPLEMENTARY INFORMATION**'' caption to read:

*Title:* Federal Emissions Guidelines for Existing Municipal Solid Waste Landfills (Renewal).

Dated: October 30, 2006.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. E6–18657 Filed 11–3–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2006–0525; FRL–8240–2]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Fuels and Fuel Additives: Health-Effects Research Protocols (Renewal); EPA ICR No. 1696.05, OMB Control No. 2060–0297

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before December 6, 2006.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0525, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**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 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 status, locations and telephone numbers.

**FOR FURTHER INFORMATION CONTACT:** James W. Caldwell, Office of Transportation and Air Quality, Mailcode: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9303; *fax number:* (202) 343–2802; *e-mail address: caldwell.jim@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 17, 2006 (71 FR 40513), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2006–0525, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket and Information Center is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

*Title:* Fuels and Fuel Additives: Health-Effects Research Protocols (Renewal).

*ICR Numbers:* EPA ICR No. 1696.05, OMB Control No. 2060–0297.

*ICR Status:* This ICR is scheduled to expire on November 30, 2006. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is the subject of this ICR. The information collection requirements for Subparts A through D, and the supplemental notification requirements of Subpart F (indicating how the manufacturer will satisfy the health-effects data requirements) are covered by a separate ICR (EPA ICR No. 0309.11, OMB Control No. 2060–0150). The health-effects data will be used to determine if there are any products which have evaporative or combustion emissions that may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, gasoline and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen and/or sulfur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a ''baseline'' group. Oxygenates, such as ethanol, when used in gasoline as an oxygen level of at least 1.5 weight percent, define separate ''nonbaseline'' groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and/or sulfur fall into separate atypical groups. There are similar grouping requirements for diesel fuel and diesel fuel additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline gasoline, baseline diesel fuel,

baseline fuel additives, and the prominent nonbaseline oxygenated additives for gasoline. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data for gasoline and diesel fuel were submitted by API and others in 1997. Tier 1 data have been submitted for biodiesel, water/diesel emulsions, and several atypical additives. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Tier 2 data have been submitted for baseline diesel, biodiesel, and water/diesel emulsions. Alternative Tier 2 testing can be required in lieu of standard Tier 2 testing if EPA concludes that such testing would be more appropriate. The EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements were established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. Alternative Tier 2 requirements have also been established for the manganese additive MMT manufactured by the Afton Chemical Corporation (formerly the Ethyl Corporation). Tier 3 provides for follow-up research, at EPA's discretion, when remaining uncertainties as to the significance of observed health effects, welfare effects, and/or emissions exposures from a fuel or fuel/additive mixture interfere with EPA's ability to make reasonable estimates of the potential risks posed by emissions from a fuel or additive. To date, EPA has not imposed any Tier 3 requirements. Under Section 211 of the Clean Air Act, (1) submission of the health-effects information is necessary for a manufacturer to obtain registration of a motor-vehicle gasoline, diesel fuel, or fuel additive, and thus be allowed to introduce that product into commerce, and (2) the information shall not be considered confidential.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7,538 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Manufacturers of Fuels and Fuel Additives.

*Estimated Number of Respondents:* 4.

*Frequency of Response:* On Occasion.

*Estimated Total Annual Hour Burden:* 30,150.

*Estimated Total Annual Cost:* $3.2 million, includes $757,000 annualized capital and O&M costs.

*Changes in the Estimates:* There is a decrease of 30,550 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is the result of reduced activity as the two alternative Tier 2 testing programs near completion.

Dated: October 30, 2006.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. E6–18658 Filed 11–3–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8240–4]**

## Notice of an Expert Panel Workshop on the State-of-the-Science Approaches for Observational Exposure Measurement Studies

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

**ACTION:** Notice of meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that Eastern Research Group, Inc. (ERG), an EPA contractor, will convene a panel of experts and organize and conduct a meeting to gather information on the most up-to-date methods, approaches, and ethical standards for designing and implementing observational exposure measurement studies. EPA expects to use the information from the workshop in the preparation of a document on the state-of-the-science approaches for observational exposure measurement studies. The meeting will include sessions for discussion by the panel and time will be set aside for public comment. The meeting is open to the public to attend as observers.

Observers who wish to make oral comments during the comment periods may sign up on the Eastern Research Group, Inc.'s online registration page. Time slots for comments will be limited to 5-minutes and observers will be scheduled to speak in the order in which they register. The public may also use a separate process to send written comments regarding the planned document electronically to the project Web site at *http://www.epa.gov/nerl/sots/* or by e-mail to the EPA technical contact at *Fortmann.roy@epa.gov.* The charge to the panel and background materials are available primarily via the Internet on the National Exposure Research Laboratory's (NERL's) home page under the Featured Links at *http://www.epa.gov/nerl/sots/.*

**DATES:** The workshop will begin on November 28, 2006, at 8:30 a.m. and end at 4 p.m. on November 29, 2006 (Eastern Time). The oral public comment sessions will begin on November 28, 2006, at approximately 10 a.m. and on November 29, 2006 at approximately 1 p.m.

**ADDRESSES:** The workshop will be held at the Hilton Durham at 3800 Hillsborough Rd., Durham, NC 27705. The EPA contractor, Eastern Research Group, Inc., is organizing, convening, and conducting the workshop. Members of the public may attend the workshop as observers. To attend the workshop, register by November 21, 2006, by accessing the online registration page at *https://www2.ergweb.com/projects/conferences/exposure/register-exposure.htm*, via telephone by calling Eastern Research Group, Inc. at 781–674–7374, or sending an e-mail to *meetings@erg.com* (subject line: Observational Studies). Registration will also be available at the site of the meeting, as space allows. There will be time set aside each day to present brief (no longer than five minutes) oral comments from the public. Please let Eastern Research Group, Inc. know if you wish to make comments during the observer comment period. Space is limited, and registrations will be accepted on a first-come, first-served basis. Observers may also submit written comments regarding the planned document electronically to the project Web site at *http://www.epa.gov/nerl/sots/* or by e-mail to the EPA technical contact at *Fortmann.roy@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding registration and logistics for the workshop should be directed to Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02421–3136; telephone: 781–674–7374; facsimile: 781–674–2906; e-mail

*meetings@erg.com*, subject line: Observational Studies. If you need technical information about the planned document, please contact Roy Fortmann, National Exposure Research Laboratory (NERL); telephone: 919–541–1021; facsimile: 919–541–0905; e-mail *Fortmann.roy@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Information About the Workshop and Planned Document

Observational exposure measurement studies are performed by researchers both within and outside of EPA to measure people's contact with chemicals in their everyday environments during their normal daily activities. These studies involve measurements of chemicals in environmental media (*e.g.*, air, water, food, soil, and dust); collection of information about the voluntary study participants, their homes, their work environments, and their activities; and analysis of voluntary human samples such as blood or urine to determine the amounts of contact. These observational studies do not involve any additional contact with the chemicals being studied by the people who volunteer to participate in the studies. EPA's observational studies generally collect information that is critical to meeting the goal of improving public health. In these studies, EPA identifies the chemicals that people are coming in contact with; the concentrations of those chemicals; the most important sources of chemicals in people's lives; and when, where, how often, and why people come into contact with chemicals in the environment. The information collected in observational studies can be used to better understand potential risks and health effects from chemicals in the environment and to develop risk mitigation strategies and methods.

EPA strives to follow the most up-to-date approaches in designing and performing observational studies. These approaches are developed by experts in both academia and various Federal agencies. The approaches evolve over time to meet changing and more stringent ethical standards and study requirements. EPA wants to ensure that the observational studies conducted by the Agency for measuring people's contact with environmental chemicals continue to be based on the most up-to-date sound science and the highest ethical standards. Therefore, there is a need to evaluate the latest approaches and ensure that EPA is using the state-of-the-science approaches. In this project, EPA intends to review and evaluate the latest methods, techniques, ethical standards, and approaches for design and implementation of observational exposure measurement studies and compile a set of state-of-the-science approaches in a single document. Examples of study elements for which state-of-the-science approaches will be evaluated and compiled in the document include identification of community groups and interactions with communities during the scoping and planning of studies, participant recruitment methods, informed consent procedures, identification and reporting unanticipated results, communication of study results, etc. EPA expects that the final document will be used by EPA researchers and others in the scientific community to design and perform observational exposure measurement studies.

Researchers in NERL intend to work with the public and experts from outside of the Agency to evaluate and compile the state-of-the-science approaches. The Workshop announced in this Notice is expected to bring together experts in the areas of human exposure science, community research, ethics, children's health, and other relevant disciplines to discuss and compile information that EPA can use to develop a draft document. EPA has asked the Panel to provide recommendations on the content of the document, sources of information for the document, and an evaluation of the state-of-the-science for approaches for specific elements of the design and implementation of observational exposure measurement studies. Using information gathered at the Workshop, EPA plans to develop a draft document, tentatively titled ''State-of-the-Science Approaches for Observational Exposure Measurement Studies.'' When completed, EPA expects to release the draft document as an external review document for public comment. EPA also expects to hire a contractor to conduct an independent external scientific peer review of the draft document. Availability of the document for public comment and the schedule and location of the independent external peer review will be announced in the **Federal Register**.

Dated: October 31, 2006.

**Lawrence W. Reiter,**

*Director, National Exposure Research Laboratory.*

[FR Doc. E6–18655 Filed 11–3–06; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8235–3]**

## Notice of Availability of Final NPDES General Permit for Small Municipal Separate Storm Sewer Systems in the Commonwealth of Puerto Rico and Federal Facilities in the Commonwealth of Puerto Rico

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

**ACTION:** Notice of Final NPDES General Permits—PRR040000 and PRR04000F.

**SUMMARY:** The Director of the Caribbean Environmental Protection Division (CEPD), Environmental Protection Agency-Region 2, is issuing notice for a final National Pollutant Discharge Elimination System (NPDES) general permit and accompanying response to comments for discharges from small municipal separate storm sewer systems (Small MS4) within urbanized areas to waters of the Commonwealth of Puerto Rico. This NPDES general permit establishes Notice of Intent (NOI) requirements, standards, prohibitions and management practices for discharges of storm water from municipal separate storm sewer systems within urbanized areas owned by the Commonwealth of Puerto Rico, or political subdivisions of the Commonwealth of Puerto Rico (including ''municipios''), as well as the United States, and other systems located within an urbanized area that fall within the definition of an MS4. These include, for example, State departments of transportation (DOTs), public universities, penitentiaries, military installations and similar institutions with separate storm sewers drainage area. Owners and/or operators of small MS4s that discharge storm water will be required to submit a NOI to EPA–CEPD to be covered by the general permit and will receive a written notification from EPA–CEPD of permit coverage and authorization to discharge under the general permit. The eligibility requirements are discussed in the permit. The municipality must meet the eligibility requirements of the permit prior to submission of the NOI. This general permit does not cover new sources as defined under 40 CFR 122.2. Publication of this final general permit and response to comments complies with the requirements of 40 Code of Federal Regulations (CFR) 124.10.

**DATES:** The effective date of this permit is November 6, 2006. The permit will expire on November 7, 2011.

*Public Meeting Information:* EPA—Region 2 has participated in several

conference meetings to provide information about the Storm Water Phase II program and its requirements. On September 28, 2006, CEPD offered a full day workshop on Small MS4 requirements and conditions from today's general permit. The workshop included a overview presentation on the storm water program, the conditions of the general permit under Phase 2, the six minimum requirement that the Small MS4 must meet, tools/resources and a question and answer session.

*Notification Requirements:* General permits for storm water discharges associated with Small MS4s within an urbanized area require the submittal of a Notices of Intent (NOI) prior to the authorization of such discharges. Today's general permit establishes NOI requirements to be covered under this permit and must be sent to EPA-Region 2, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico 00907–4127; Attn: Sergio Bosques. Municipios, including State departments of transportation (DOTs), public universities, penitentiaries, military installations and similar institutions, must submit an NOI and other required information by February 5, 2007. A discharger is not precluded from submitting an NOI at a later date. However, EPA may bring appropriate enforcement actions. The NOI is found in Appendix C of today's general permit and contains the following information:

(1) Activities by the applicant that require obtaining an NPDES permit.

(*Suggestion:* This item can be addressed by a statement such as: ''The Applicant Name operates a municipal separate storm sewer system located in (city name)''.)

(2) Name, mailing address, and location of the facility for which the application is submitted.

(*Suggestion:* In the context of the MS4 permitting program, this item should list the name(s), title(s), affiliation(s), mailing address(es), and telephone number(s) of the operator(s) of the MS4(s).)

(3) Standard Industrial Classification (SIC) Code that reflects the service provided by the facility.

(*Suggestion:* Generally speaking, the SIC code established by the Federal Office of Management and Budget for public administration/general Federal, State or local government activities is 9199. For additional information on SIC codes, check the Occupational Safety and Health Administration's Web site at: *http://www.osha.gov/cgi-bin/sic/sicser5*.)

(4) The operator name(s), address(es), telephone number(s), ownership status, and status as a Federal, State, local, tribal or other public entity.

(*Suggestion:* This item should identify the names and titles of the primary administrative and/or technical staff contacts for the municipal operator(s), if different from item #2.)

(5) A listing of any permits or construction approvals received or applied for under any of the following programs: Resource Conservation or Recovery Act; Underground Injection Control under the Safe Drinking Water Act; NPDES program under the Clean Water Act; Prevention of Significant Deterioration program under the Clean Air Act; Nonattainment program under the Clean Air Act; the National Emission Standards for Hazardous Air Pollutants preconstruction approval under the Clean Air Act, Ocean Dumping Permits under the Marine Protection Research and Sanctuaries Act; Dredge or fill permits under section 404 of the Clean Water Act; or other relevant environmental permits, including State permits.

(6) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(*Suggestion:* A map of the storm sewer system(s), showing the location of all outfalls and names and location of all waters of the United States that receive discharges from those outfalls, is most appropriate for fulfilling this requirement. If a map of such detail is not available, please include any reasonably available version of such a map and a schedule of when such a map will be available. (See *40 CFR 122.34(b)(3)(ii)(A)* for a description of the mapping requirement.))

(7) A brief description of the nature of the business.

(*Suggestion:* In the context of the MS4 permitting program, briefly describe the MS4 in terms of its general characteristics, such as: capacity, general operation, or other relevant information.)

The following additional information is required as part of an NPDES application from regulated small MS4(s) according to *40 CFR 122.33(b)(2)(i) and 40 CFR 122.34(d)(1):*

(8) An estimate of the square mileage served by the MS4(s);

(9) Descriptions of the best management practices (BMPs) to be implemented by the applicant or another entity for each of the six storm water minimum control measures described in *40 CFR 122.34(b)(1) through (b)(6);*

(10) Descriptions of the measurable goals for each BMPs, including (as appropriate) the months and years in which the action will be taken, including interim milestones and the frequency of the action; and

(11) The person(s) responsible for implementing or coordinating the applicant's storm water management program (SWMP).

(*Suggestion:* Your description of the SWMP should identify those measures that are already in place or are underway, as well as measures that remain to be developed or implemented. As the operator of the MS4, you have the flexibility to determine the BMPs and measurable goals, for each minimum control measure, that are most appropriate for the system. It is not required that all BMPs be fully implemented and in place at the time of application. As stated in *40 CFR 122.34(a)*, EPA will require full implementation of the applicant's SWMP no later than the end of the first permit term (NPDES permits are typically issued for a 5 year period). The application package should fully summarize the SWMP that is anticipated for the area, and should acknowledge those BMPs that remain to be developed, including time lines and milestones for implementation.)

Today's final general permit requires all regulated small MS4s to develop and implement a SWMP. Program components include, at a minimum, 6 minimum measures to address: public education and outreach; public involvement; illicit discharge detection and elimination; construction site runoff control; post-construction storm water management in new development and redevelopment; and pollution prevention and good housekeeping of municipal operations. A regulated small MS4 is required to submit to CEPD the SWMP, and an electronic copy, including the BMPs to be implemented and the measurable goals for each of the minimum control measures listed above. After submitting the required NOI within February 5, 2007, the SWMP, including the electronic version must be submitted within August 3, 2007 to CEPD to the above address.

After February 5, 2007, all notified Small MS4s will have 180 days of their notification to submit an NOI and

SWMP, including an electronic version of the information. This shall be also submitted to the address specified above.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the permit may be obtained between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding holidays, from: Sergio Bosques, Caribbean Environmental Protection Division, Environmental Protection Agency, Region 2, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, San Juan, Puerto Rico 00907–4127; telephone: 787–977–5838; e-mail: *bosques.sergio@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Statutory and Regulatory History

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate storm water discharges under the NPDES program. EPA published a final regulation on the second phase of this program on December 9, 1999, in the **Federal Register**, establishing permit application requirements for ''storm water discharges associated with municipal separate storm sewer systems in urbanized areas''.

EPA believes that this Phase 2 rule provides consistency in terms of program coverage and requirements for existing and newly designated sources. For example, the rule includes most of the municipal donut holes, those MS4s located in incorporated places, townships or towns with a population under 100,000 that are within Phase I counties. These MS4s were not addressed by the NPDES storm water program until the Phase 2 rule while MS4s in the surrounding county are addressed. In addition, the minimum control measures required in the Phase 2 rule for regulated small MS4s are very similar to a number of the permit requirements for medium and large MS4s under the storm water program. Following the Phase 2 rule, permit requirements for all regulated MS4s will require implementation of BMPs.

*Organization of Today's Permit*

Today's permit covers storm water discharges from a wide variety of conveyances and/or systems within urbanized areas in Puerto Rico. Because the conditions which affect the presence of pollutants in storm water discharges vary among urbanized areas and watersheds, today's general permit provides broad discretion to the permittee to develop and implement a storm water management program and meet permit conditions. EPA believes that the flexibility provided in today's general permit facilitates watershed planning and compliance. Today's permit requires storm sewer system map, regulatory mechanism to prevent illicit discharges, plan to detect and address non-storm water discharges, education and measurable goals.

### B. Executive Order 12866

EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### C. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the final construction general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this proposed permit are similar to other Regional general permits which were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control numbers. However, information collection requirements of this proposed small municipal separate storm sewer system general permit will be submitted to OMB for review and approval and will be published in a **Federal Register** notice.

### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the Regulatory Flexibility Act.

### E. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on State and local governments and the private sector. The permit issued today, however, is not a ''rule'' subject to the RFA and is therefore not subject to the requirements of UMRA.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 21, 2006.

**Carl-Axel P. Soderberg,**

*Director, Caribbean Environmental Protection Division, Region 2.*

[FR Doc. E6–18643 Filed 11–3–06; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting Notice

**DATE & TIME:** Thursday, November 9, 2006 at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Advisory Opinion 2006–30: ActBlue, by Jonathan Zucker, Senior Strategist and Counsel.

Management and Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Robert Biersack, Press Officer.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. 06–9105 Filed 11–2–06; 2:29 pm]

BILLING CODE 6715–01–M

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting Notice; Announcing an Open Meeting of the Board of Directors

**TIME AND DATE:** The open meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, November 8, 2006.

**PLACE:** Board Room, First Floor, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

**STATUS:** The meeting will be open to the public.

**MATTER TO BE CONSIDERED AT THE OPEN PORTION:** *Federal Home Loan Bank of Chicago Request to Redeem Excess Stock.*

**CONTACT PERSON FOR MORE INFORMATION:** Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202–408–2876 or *williss@fhfb.gov*.

Dated: November 8, 2006.

By the Federal Housing Finance Board.

**John P. Kennedy,**

*General Counsel.*

[FR Doc. 06–9098 Filed 11–2–06; 10:58 am]

BILLING CODE 6725–01–P

## 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 21, 2006.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. David R. Barnes and Francesca DeRose*, both of Racine, Wisconsin; Nicolet DeRose, Kenosha, Wisconsin, and Kari Barnes, Tigard, Oregon; to acquire voting shares of Wisconsin Bancshares, Inc., Kenosha, Wisconsin, and thereby indirectly acquire voting shares of Banks of Wisconsin, Kenosha, Wisconsin.

**B. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. Karen K. Zaun*, Saint Cloud, Minnesota; to acquire voting shares of Eden Valley Bancshares, Inc., Eden Valley, Minnesota, and thereby indirectly acquire voting shares of State Bank in Eden Valley, Eden Valley, Minnesota.

Board of Governors of the Federal Reserve System, November 1, 2006.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E6–18621 Filed 11–3–06; 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 Web site at http://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 December 1, 2006.

**A. Federal Reserve Bank of St. Louis** (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. The McGehee Bank Employee Stock Ownership Plan*, McGehee, Arkansas; to become a bank holding company by acquiring up to 28 percent of the voting shares of Southeast Financial Bankstock Corporation, McGehee, Arkansas, and thereby indirectly acquire voting shares of McGehee Bank, McGehee, Arkansas.

Board of Governors of the Federal Reserve System, November 1, 2006.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E6–18622 Filed 11–3–06; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers For Medicare & Medicaid Services

### Privacy Act of 1974; Report of a Modified or Altered System

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice of a Modified or Altered System of Records (SOR).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter an existing system of records titled ''Common Working File (CWF),'' System No. 09–70–0526,'' most recently modified at 67 **Federal Register** (FR) 3210 (January 23, 2002). We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1.

We will delete routine use number 8 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject. We will modify existing routine use number 5 that permits disclosure to Peer Review Organizations (PRO). Organizations previously referred to as PROs will be renamed to read: Quality Improvement Organizations (QIO). Information will be disclosed to QIOs relating to assessing and improving quality of care as well as proper payment of claims. The modified routine use will remain as routine use number 5. We will broaden the scope of routine uses number 10 and 11, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all Federally-funded health benefit programs.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173) provisions and to update language in the administrative sections to

correspond with language used in other CMS SORs.

The primary purpose of the system of records is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or State agency, agency of a State government, an agency established by State law, or its fiscal agent; (3) assist third party contacts; (4) assist providers and suppliers of services directly or through fiscal intermediaries or carriers; (5) support Quality Improvement Organizations (QIO) or Quality Review Organizations; (6) assist insurance companies and other groups providing protection for their enrollees, or who are primary payers to Medicare in accordance with 42 United States Code (U.S.C.) 1395y (b); (7) support an individual or organization for research, evaluation, or epidemiological projects; (8) support litigation involving the Agency related to this system of records; and (9) combat fraud, waste, and abuse in certain Federally-funded health care programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the routine uses, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

**EFFECTIVE DATES:** CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 10/30/2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Richard Wolfsheimer, Health Insurance Specialist, Division of Systems Operations, Business Applications Management Group, Office of Information Services, CMS, Room N2–08–18, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–6160.

**SUPPLEMENTARY INFORMATION:**

## I. Description of the Modified or Altered System of Records

### *A. Statutory and Regulatory Basis for System*

Authority for the maintenance of this system of records is given under the authority of sections 1816, and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395h, and 1395kk).

### *B. Collection and Maintenance of Data in the System*

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and Medicare Secondary Payer (MSP) records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

## II. Agency Policies, Procedures, and Restrictions on The Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release CWF information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of CWF. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from this system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines:

a. That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. that the purpose for which the disclosure is to be made is of sufficient importance to warrant the potential effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. that there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record; and

b. remove or destroy at the earliest time all patient-identifiable information.

4. Determines that the data are valid and reliable.

## III. Proposed Routine Use Disclosures of Data in the System

### *A. Entities Who May Receive Disclosures Under Routine Use*

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CWF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or

modify the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

Carriers and intermediaries occasionally work with contractors to identify and recover erroneous Medicare payments for which workers' compensation programs are liable.

2. To another Federal or State agency, agency of a State government, an agency established by State law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/State Medicaid programs within the State.

Other Federal or State agencies in their administration of a Federal health program may require CWF information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the State, to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Treasury Department may require CWF data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

The United States Postal Service may require CWF data for investigating alleged forgery or theft of reimbursement checks.

The Railroad Retirement Board requires CWF information to enable them to assist in the implementation and maintenance of the Medicare program.

SSA requires CWF data to enable them to assist in the implementation and maintenance of the Medicare program.

The Internal Revenue Service may require CWF data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

Disclosure under this routine use shall be used by State Medicaid agencies pursuant to agreements with HHS for administration of State supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Act, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Act, and for the complete administration of the Medicaid program. CWF data will be released to the State only on those individuals who are patients under the services of a Medicaid program within the State or who are residents of that State.

Occasionally State licensing boards require access to the CWF data for review of unethical practices or nonprofessional conduct.

We also contemplate disclosing information under this routine use in situations in which State auditing agencies require CWF information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data are made to State audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with State auditing agencies to assist in accomplishing functions relating to purposes for this system of records.

State and other governmental workers' compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. the data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud, waste, and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require CWF information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries' request for assistance may require access to CWF information.

Occasionally fiscal intermediary/carrier banks, automated clearinghouses, VANS, and provider banks, to the extent necessary transfer to providers electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account

management services to providers using this information.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

Providers and suppliers of services require CWF information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Quality Improvement Organizations ( QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part A and Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to State agencies. QIOs will assist the State agencies in related monitoring and enforcement efforts, assist CMS and Intermediaries and Carriers in program integrity assessment, and prepare summary information for release to CMS.

6. To insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers' compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) An individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y(b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. utilize the information solely for the purpose of processing the individual's insurance claims; and

c. safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers may require CWF information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

CWF data will provide for research, evaluations and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. any employee of the Agency in his or her official capacity, or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the Agency to be for a purpose that is compatible with the purposes for which the Agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

9. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, or abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

10. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require CWF information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

*B. Additional Circumstances Affecting Routine Use Disclosures*

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified

through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

## IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

## V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: October 24, 2006.

**John R. Dyer,**

*Chief Operating Officer, Centers for Medicare & Medicaid Services.*

## System No. 09–70–0526

### SYSTEM NAME:

• Common Working File (CWF),'' HHS/CMS/OIS.

### SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

### SYSTEM LOCATION:

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at CMS Host Sites located in Birmingham, Alabama, and Dallas, Texas.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in an electronic format, and Medicare Secondary Payer (MSP) records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, sex, health insurance claim number (HIC), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the maintenance of this system of records is given under the authority of sections 1816, and 1874 of Title XVIII of the Social Security Act (42 United States Code (U.S.C.) 1395h, and 1395kk).

### PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system of records is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or State agency, agency of a State government, an agency established by State law, or its fiscal agent; (3) assist third party contacts; (4) assist providers and suppliers of services directly or through fiscal intermediaries or carriers; (5) support Quality Improvement Organizations (QIO) or Quality Review Organizations; (6) assist insurance companies and other groups providing protection for their enrollees, or who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b); (7) support an individual or organization for research, evaluation, or epidemiological projects; (8) support litigation involving the Agency related to this system of records; and (9) combat fraud, waste, and abuse in certain Federally-funded health care programs.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the CWF without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish or modify the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance

of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or State agency, agency of a State government, an agency established by State law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. assist Federal/State Medicaid programs within the State.

3. To third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: The individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. the data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud, waste, and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

5. To Quality Improvement Organizations ( QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part A and Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To insurance companies, underwriters, third party administrators (TPA), employers, self-insurers, group health plans, health maintenance organizations (HMO), health and welfare benefit funds, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, liability insurers, no-fault medical automobile insurers, workers' compensation carriers or plans, other groups providing protection against medical expenses without the beneficiary's authorization, and any entity having knowledge of the occurrence of any event affecting (a) An individual's right to any such benefit or payment, or (b) the initial right to any such benefit or payment, for the purpose of coordination of benefits with the Medicare program and implementation of the MSP provision at 42 U.S.C. 1395y (b). Information to be disclosed shall be limited to Medicare utilization data necessary to perform that specific function. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. utilize the information solely for the purpose of processing the individual's insurance claims; and

c. safeguard the confidentiality of the data and prevent unauthorized access.

7. To an individual or organization for research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

8. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. any employee of the Agency in his or her official capacity, or

c. any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records is deemed by the Agency to be for a purpose that is compatible with the purposes for which the Agency collected the records.

9. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such program.

10. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 **Federal Register** 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, computer diskette and on magnetic storage media.

**RETRIEVABILITY:**

Information can be retrieved by the beneficiary's name, HIC, and assigned unique physician identification number.

**SAFEGUARDS:**

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the calendar year in which paid, then destroyed 6 years and 3 months after final payment/action. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

**SYSTEM MANAGER AND ADDRESS:**

Director, Division of Systems Operations, Business Applications Management Group, Office of Information Services, CMS, Room N2–08–18, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**NOTIFICATION PROCEDURE:**

For purpose of access, the subject individual should write to the system manager who will require the system name, assigned card key number, and building/secure area, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These procedures are in accordance with department regulation 45 CFR 5b.5(a)(2)).

**CONTESTING RECORDS PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7).

**RECORDS SOURCE CATEGORIES:**

Sources of information contained in this records system is furnished by the individual. In most cases, the identifying information is provided to the physician by the individual. Information is obtained from other CMS systems of records and data systems: Health Insurance Master Record, Intermediary Medicare Claims Records, Carrier Medicare Claims Records, MSP Record, Third Party Liability Record, Medicare Entitlement Record, Health Maintenance Organization Record, Hospice Record, and in the case of some MSP situations, through third party contacts. The medical information is provided by the providers of medical services.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. E6–18611 Filed 11–3–06; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers For Medicare & Medicaid Services

### Privacy Act of 1974; Report of a Modified or Altered System of Records

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice of a modified or altered system of records (SOR).

**SUMMARY:** In accordance with the Privacy Act of 1974, we are proposing to modify or alter an existing SOR, ''Intermediary Medicare Claims Record (IMCR) System,'' System No. 09–70–0503, last published at 67 **Federal Register** 65982 (October 29, 2002). We propose to change the name of this system to more closely reflect the name of the program used for the processing of Part A claims. We will modify the name to read: ''Fiscal Intermediary Shared System (FISS).'' We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will delete routine use number 8 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject. We will broaden the scope of routine uses number 10 and 11, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all Federally-funded health benefit programs.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the

impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist third party contacts; (4) support providers and suppliers of services dealing through fiscal intermediaries or carriers; (5) support Quality Improvement Organizations (QIO); (6) assist insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y(b); (7) support an individual or organization for a research, evaluation, or epidemiological project; (8) support litigation involving the Agency related to this SOR; and (9) combat fraud, waste, and abuse in certain Federally-funded health care programs. We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''*Effective Dates*'' section for comment period.

**EFFECTIVE DATES:** CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 10/27/2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Monique Outerbridge, Director, Division of System Operations, Business Applications Management Group, Office of Information Services, CMS, Room N2–07–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–2535 or via e-mail at *Monique.outerbridge@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Description of the Modified System

### *A. Statutory and Regulatory Basis For SOR*

In 1988, CMS modified a SOR under the authority of sections 1816, 1862(b) and 1874 of Title XVIII of the Social Security Act (the Act) (42 United States Code (USC) sections 1395(h), 1395y(b), and 1395kk).

### *B. Scope of the Data Collected*

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of request(s) for payment, provider billing for patient services, prepayment plan for group Medicare practice dealing through a carrier, health insurance claim form, request(s) for medical payment, explanation of benefits, request for claim number verification, payment record transmittal, statement of person regarding Medicare payment for medical services furnished deceased patient, report of prior period of entitlement, itemized bills and other similar documents required to support payments to beneficiaries and to physicians and other suppliers of Part A services, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment.

## II. Collection and Maintenance of Data in the System

### *A. Agency Policies, Procedures, and Restrictions on the Routine Use*

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release FISS information that can be associated with an individual as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use''. Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of FISS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

## III. Proposed Routine Use Disclosures of Data in the System

### *A. Entities Who May Receive Disclosures Under Routine Use*

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the FISS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these

routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require FISS information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Treasury Department may require FISS data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

The USPS may require FISS data for investigating alleged forgery or theft of reimbursement checks.

The RRB requires FISS information to enable them to assist in the implementation and maintenance of the Medicare program.

The SSA requires FISS data to enable them to assist in the implementation and maintenance of the Medicare program.

The IRS may require FISS data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y(b).

Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Social Security Act (the Act), for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Act, and for the complete administration of the Medicaid program. FISS data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the FISS data for review of unethical practices or non-professional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require FISS information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data is made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

State and other governmental worker's compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers' compensation programs are liable.

3. To assist third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require FISS information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries' request for assistance may require access to FISS information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, value added networks (VAN), and provider banks, to the extent necessary transfer to provider's electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary

to provide account management services to providers using this information.

4. To assist providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

Providers and suppliers of services require FISS information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part A of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist state agencies in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, and prepare summary information for release to CMS.

6. To assist insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require FISS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To support an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

FISS data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

9. To assist a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

10. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

Other agencies may require FISS information for the purpose of combating fraud, waste, and abuse in such Federally funded programs.

*B. Additional Circumstances Affecting Routine Use Disclosures*

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

## IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent NIST publications; the DHHS Information Systems Program Handbook and the CMS Information Security Handbook.

## V. Effects of the Modified System of Records on Individual Rights

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: October 24, 2006.

**John R. Dyer,**

*Chief Operating Officer, Centers for Medicare & Medicaid Services.*

### System No. 09–70–0503

**SYSTEM NAME:**

''Fiscal Intermediary Shared System (FISS),'' HHS/CMS/OIS

**SECURITY CLASSIFICATION:**

Level Three Privacy Act Sensitive Data

**SYSTEM LOCATION:**

The Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various contractor sites, CMS Regional Offices, CMS Intermediaries, and at Social Security Field Offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system contains information on Medicare beneficiaries, on whose behalf providers have submitted claims for reimbursement on a reasonable cost basis under Medicare Part A and B, or are eligible, and/or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information contained in this system consist of billing for medical and other health care services, uniform bill for provider services or equivalent data in electronic format, and Medicare secondary payer records containing other third party liability insurance information necessary for appropriate Medicare claims payment and other documents used to support payments to beneficiaries and providers of services. These forms contain the beneficiary's name, gender, health insurance claim number (HICN), address, date of birth, medical record number, prior stay information, provider name and address, physician's name, and/or identification number, warranty information when pacemakers are implanted or explanted, date of admission or discharge, other health insurance, diagnosis, surgical procedures, and a statement of services rendered for related charges and other data needed to substantiate claims.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for maintenance of the system is given under §§ 1816, 1862 (b) and 1874 of Title XVIII of the Social Security Act (the Act) (42 U.S.C. §§ 1395(h), 1395y (b), and 1395kk).

**PURPOSE(S) OF THE SYSTEM:**

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist third party contacts; (4) support providers and suppliers of services dealing through fiscal intermediaries or carriers; (5) support Quality Improvement Organizations (QIO); (6) assist insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. 1395y (b); (7) support an individual or organization for a research, evaluation, or epidemiological project; (8) support litigation involving the Agency related to this SOR; and (9) combat fraud, waste, and abuse in certain Federally-funded health care programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the FISS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its

fiscal agent pursuant to agreements with CMS to:

a. contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To assist third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exist, or the custodian of the information will not, as a matter of policy, prsovide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To assist providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

5. To support Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part A of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To assist insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (*i.e.*, health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

7. To support an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

8. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

9. To assist a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

10. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Circumstances Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

All records are maintained on paper, computer diskette, and on magnetic storage media.

**RETRIEVABILITY:**

Information can be retrieved by the beneficiary's name, HICN, and assigned unique physician identification number.

**SAFEGUARDS:**

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not

to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E–Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the fiscal year, in which paid, and destroyed after 6 years and 3 months. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of System Operations, Business Applications Management Group, Office of Information Services, CMS, Room N2–07–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

**NOTIFICATION PROCEDURE:**

For purpose of access, the subject individual should write to the system manager who will require the system name, HICN, address, date of birth, and gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN. Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also specify the record contents being sought. (These Procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

**CONTESTING RECORDS PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These Procedures are in accordance with Department regulation 45 CFR 5b.7).

**RECORDS SOURCE CATEGORIES:**

Sources on information contained in this records system is obtained by the provider from the individual or, in the case of some Medicare secondary payer situations, through third party contacts. The medical information is provided by the providers of medical services.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

## Appendix A.—Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Centers for Medicare & Medicaid Services and the Social Security Administration to perform specific tasks in the Medicare program (see section three below for addresses for intermediaries, section four for addresses for the carriers, and section five for addresses for the Payment Safeguard Contractors).

### I. Central Office Address

• CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

### II. CMS Regional Offices

• Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

• New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

• Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

• Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

• Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

• Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

• Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street—Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

• Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St—Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

• San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

• Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours: 8 a.m.–4:30 p.m.

### III. Intermediary Addresses (Hospital Insurance)

• Medicare Coordinator, Assoc. Hospital Serv. Maine (Me Bc), 2 Gannett Drive, South Portland, ME 04106–6911.

• Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

• Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

• Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

• Medicare Coordinator, Cooperativa, P.O. Box 363428, San Juan, PR 00936–3428.

• Medicare Coordinator, Maryland B/C, P.O. Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

• Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

• Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

• Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

• Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

• Medicare Coordinator, Georgia B/C, P.O. Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

• Medicare Coordinator, Mississippi B/C B MS, P.O. Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

• Medicare Coordinator, North Carolina B/C, P.O. Box 2291, Durham, NC 27702–2291.

• Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

• Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

• Medicare Coordinator, Anthem Insurance Co. (Anthem In), P.O. Box 50451,

8115 Knue Road, Indianapolis, IN 46250–1936.

• Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

• Medicare Coordinator, Group Health of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

• Medicare Coordinator, TrailBlazer, P.O. Box 660156, Dallas, TX 75266–0156.

• Medicare Coordinator, Cahaba GBA, STATION 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

• Medicare Coordinator, Kansas B/C, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

• Medicare Coordinator, Nebraska B/C, P.O. Box 3248, Main Po Station, Omaha, NE 68180–0001.

• Medicare Coordinator, Mutual of Omaha, P.O. Box 1602, Omaha, NE 68101.

• Medicare Coordinator, Montana B/C, P.O. Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

• Medicare Coordinator, Noridian, 4510 13th Avenue SW., Fargo, ND 58121–0001.

• Medicare Coordinator, Utah B/C, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

• Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

• Medicare Coordinator, Arizona B/C, P.O. Box 37700, Phoenix, AZ 85069.

• Medicare Coordinator, UGS, P.O. Box 70000, Van Nuys, CA 91470–0000.

• Medicare Coordinator, Regents BC, P.O. Box 8110 M/S D–4A, Portland, OR 97207–8110.

• Medicare Coordinator, Premera BC, P.O. Box 2847, Seattle, WA 98111–2847.

**IV. Medicare Carriers**

• Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

• Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

• Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

• Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

• Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY 10598.

• Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

• Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

• Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

• Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

• Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

• Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

• Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

• Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

• Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

• Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

• Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

• Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

• Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

• Medicare Coordinator, Cahaba GBA, Jackson Miss, P.O. Box 22545, Jackson, MI 39225–2545.

• Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

• Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, WI 53708–8190.

• Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

• Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

• Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

• Medicare Coordinator, Palmetto GBA–DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

• Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

• Medicare Coordinator, Noridian, 636 Grand Avenue, Des Moines, IA 50309–2551.

• Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

• Medicare Coordinator, Kansas B/S–NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

• Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.

• Medicare Coordinator, Noridian, 4305 13th Avenue South, Fargo, ND 58103–3373.

• Medicare Coordinator, Noridian Backbend (CO), 730 N. Simms #100, Golden, CO 80401–4730.

• Medicare Coordinator, Noridian BCBSND (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

• Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

• Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.

• Medicare Coordinator, NHIC–California, 450 W. East Avenue, Chico, CA 95926.

• Medicare Coordinator, Cigna, Suite 254, 3150 Lake Harbor, Boise, ID 83703.

• Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

**V. Payment Safeguard Contractors**

• Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

• Medicare Coordinator, DynCorp Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Reston, VA 20190–6017.

• Medicare Coordinator, Lifecare Management Partners, Mutual of Omaha Insurance Co., 6601 Little River Turnpike, Suite 300, Mutual of Omaha Plaza, Omaha, NE 68175.

• Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207, 400 South Salina Street, 2890 East Cottonwood Pkwy., Syracuse, NY 13202.

• Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd., P.O. Box 100282, Falls Church, VA.

• Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

• Medicare Coordinator, Computer Sciences Corporation, Suite 600, 3120 Timanus Lane, Baltimore, MD 21244.

• Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Plano, TX 75204.

• Medicare Coordinator, TriCenturion, L.L.C., P.O. Box 100282, Columbia, SC 29202.

[FR Doc. E6–18612 Filed 11–3–06; 8:45 am]

BILLING CODE 4120–03–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers For Medicare & Medicaid Services

### Privacy Act of 1974; Report of Modified or Altered System

**AGENCY:** Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS).

**ACTION:** Notice of modified or altered system of records (SOR).

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify or alter a SOR, ''Carrier Medicare Claims Record (CMCR) System,'' System No. 09–70–0501, most recently modified at 67 **Federal Register** 54428 (August 22, 2002). We propose to change the name of this system to more closely reflect the name of the program used for the processing of Part B claims. We will modify the name to read: ''Medicare Multi-Carrier Claims System (MCS).'' We propose to modify existing routine use number 1 that permits disclosure to agency contractors and consultants to include disclosure to CMS grantees who perform a task for the agency. CMS grantees, charged with completing projects or activities that require CMS data to carry out that activity, are classified separate from CMS contractors and/or consultants. The modified routine use will remain as routine use number 1. We will modify

existing routine use number 5 that permits disclosure to Peer Review Organizations (PRO). Organizations previously referred to as PROs will be renamed to read: Quality Improvement Organizations (QIO). Information will be disclosed to QIOs relating to assessing and improving quality of care as well as proper payment of claims. The modified routine use will remain as routine use number 5. We will delete routine use number 8 authorizing disclosure to support constituent requests made to a congressional representative. If an authorization for the disclosure has been obtained from the data subject, then no routine use is needed. The Privacy Act allows for disclosures with the ''prior written consent'' of the data subject. We will broaden the scope of routine uses number 10 and 11, authorizing disclosures to combat fraud and abuse in the Medicare and Medicaid programs to include combating ''waste'' which refers to specific beneficiary/recipient practices that result in unnecessary cost to all Federally-funded health benefit programs.

We are modifying the language in the remaining routine uses to provide a proper explanation as to the need for the routine use and to provide clarity to CMS's intention to disclose individual-specific information contained in this system. The routine uses will then be prioritized and reordered according to their usage. We will also take the opportunity to update any sections of the system that were affected by the recent reorganization or because of the impact of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Public Law 108–173) provisions and to update language in the administrative sections to correspond with language used in other CMS SORs.

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: (1) Support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist third party contacts; (4) support providers and suppliers of services dealing through fiscal intermediaries or carriers; (5) support Quality Improvement Organizations (QIO); (6) assist insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. § 1395y (b); (7) support an individual or organization for a research, evaluation, or epidemiological project; (8) support litigation involving the Agency related to this SOR; and (9) combat fraud, waste, and abuse in certain Federally-funded health care programs. We have provided background information about the modified system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

**EFFECTIVE DATES:** CMS filed a modified or altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 10/30/2006. To ensure that all parties have adequate time in which to comment, the modified system, including routine uses, will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless CMS receives comments that require alterations to this notice.

**ADDRESSES:** The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

**FOR FURTHER INFORMATION CONTACT:** Monique Outerbridge, Director, Division of System Operations, Business Applications Management Group, Office of Information Services, CMS, Room N2–07–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is 410–786–2535 or via e-mail at *Monique.outerbridge@cms.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Description of the Modified System

### *A. Statutory and Regulatory Basis For SOR*

Authority for the collection and maintenance of this system is given under the provisions of sections 1842, 1862(b) and 1874 of Title XVIII of the Social Security Act (The Act) (42 United States Code (U.S.C.) 1395u, 1395y(b), and 1395kk).

### *B. Scope of the Data Collected*

The system contains information on Medicare beneficiaries who have submitted claims for Supplemental Medical Insurance (SMI) benefit (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary. Information contained in this system consist of request(s) for payment, provider billing for patient services, prepayment plan for group Medicare practice dealing through a carrier, health insurance claim form, request(s) for medical payment, explanation of benefits, request for claim number verification, payment record transmittal, statement of person regarding Medicare payment for medical services furnished deceased patient, report of prior period of entitlement, itemized bills and other similar documents required to support payments to beneficiaries and to physicians and other suppliers of Part B services, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment.

## II. Collection and Maintenance of Data in the System

### *A. Agency Policies, Procedures, and Restrictions on the Routine Use*

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release MCS information that can be associated with an individual as provided for under ''Section III. Entities Who May Receive Disclosures Under Routine Use''. Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of MCS. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the SOR will be approved only for the minimum information necessary to accomplish the purpose of the disclosure only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to properly pay medical insurance benefits to or on behalf of entitled beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

**III. Proposed Routine Use Disclosures of Data in the System**

*A. Entities Who May Receive Disclosures Under Routine Use*

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which CMS may release information from the MCS without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We are proposing to establish or modify the following routine use disclosures of information maintained in the system:

1. To support agency contractors, consultants, or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity. We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with CMS to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require MCS information for the purposes of determining, evaluating, and/or assessing cost, effectiveness, and/or the quality of health care services provided in the state, to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

The Treasury Department may require MCS data for investigating alleged theft, forgery, or unlawful negotiation of Medicare reimbursement checks.

The USPS may require MCS data for investigating alleged forgery or theft of reimbursement checks.

The RRB requires MCS information to enable them to assist in the implementation and maintenance of the Medicare program.

The SSA requires MCS data to enable them to assist in the implementation and maintenance of the Medicare program.

The IRS may require MCS data for the application of tax penalties against employers and employee organizations that contribute to Employer Group Health Plan or Large Group Health Plans that are not in compliance with 42 U.S.C. 1395y (b). Disclosure under this routine use shall be used by state Medicaid agencies pursuant to agreements with the HHS for administration of state supplementation payments for determinations of eligibility for Medicaid, for enrollment of welfare recipients for medical insurance under section 1843 of the Act, for quality control studies, for determining eligibility of recipients of assistance under Titles IV, and XIX of the Act, and for the complete administration of the Medicaid program. MCS data will be released to the state only on those individuals who are patients under the services of a Medicaid program within the state or who are residents of that state.

Occasionally state licensing boards require access to the MCS data for review of unethical practices or non-professional conduct.

We also contemplate disclosing information under this routine use in situations in which state auditing agencies require MCS information for auditing of Medicare eligibility considerations. Disclosure of physicians' customary charge data is made to state audit agencies in order to ascertain the corrections of Title XIX charges and payments. CMS may enter into an agreement with state auditing agencies to assist in accomplishing functions relating to purposes for this SOR.

State and other governmental worker's compensation agencies working with CMS to assure that workers' compensation payments are made where Medicare has erroneously paid and workers compensation programs are liable.

3. To assist third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility for, or an entitlement to, benefits under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter

of policy, provide it to the individual), or

b. the data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: the individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud, waste, and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

Third parties contacts require MCS information in order to provide support for the individual's entitlement to benefits under the Medicare program; to establish the validity of evidence or to verify the accuracy of information presented by the individual or the representative of the applicant, and assist in the monitoring of Medicare claims information of beneficiaries, including proper reimbursement of services provided.

Senior citizen volunteers working in the carriers and intermediaries' offices to assist Medicare beneficiaries' request for assistance may require access to MCS information.

Occasionally fiscal intermediary/carrier banks, automated clearing houses, value added networks (VAN), and provider banks, to the extent necessary transfer to provider's electronic remittance advice of Medicare payments, and with respect to provider banks, to the extent necessary to provide account management services to providers using this information.

4. To assist providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Social Security Act.

Providers and suppliers of services require MCS information in order to establish the validity of evidence, or to verify the accuracy of information presented by the individual as it concerns the individual's entitlement to benefits under the Medicare program, including proper reimbursement for services provided.

Providers and suppliers of services who are attempting to validate items on which the amounts included in the annual Physician/Supplier Payment List, or other similar publications are based.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to state agencies. QIOs will assist the state agencies in related monitoring and enforcement efforts, assist CMS and Carriers in program integrity assessment, and prepare summary information for release to CMS.

6. To assist insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMOs) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data and prevent unauthorized access.

Other insurers, TPAs, HMOs, and HCPPs may require MCS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

7. To support an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

MCS data will provide for research, evaluation, and epidemiological projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

8. To assist the Department of Justice (DOJ), court or adjudicatory body when:

a. The Agency or any component thereof, or

b. Any employee of the Agency in his or her official capacity, or

c. Any employee of the Agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation.

Whenever CMS is involved in litigation, or occasionally when another party is involved in litigation and CMS's policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

9. To assist a CMS contractor (including, but not limited to FIs and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud, waste, and abuse.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

10. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise

combat fraud, waste, or abuse in such programs.

Other agencies may require MCS information for the purpose of combating fraud, waste, and abuse in such Federally-funded programs.

*B. Additional Circumstances Affecting Routine Use Disclosures*

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512 (a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

**IV. Safeguards**

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**V. Effects of the Modified System of Records on Individual Rights**

CMS proposes to modify this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: October 24, 2006.

**John R. Dyer,**

*Chief Operating Officer, Centers for Medicare & Medicaid Services.*

**System No. 09–70–0501**

**SYSTEM NAME:**

''Medicare Multi-Carrier Claims System (MCS),'' HHS/CMS/OIS

**SECURITY CLASSIFICATION:**

Level Three Privacy Act Sensitive Data.

**SYSTEM LOCATION:**

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. See Appendix A for various remote sites where this system is also maintained.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The system contains information on Medicare beneficiaries who have submitted claims for Supplemental Medical Insurance (SMI) benefit (Medicare Part B), or individuals whose enrollment in an employer group health benefits plan covers the beneficiary.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information contained in this system consist of request(s) for payment, provider billing for patient services, prepayment plan for group Medicare practice dealing through a carrier, health insurance claim form, request(s) for medical payment, explanation of benefits, request for claim number verification, payment record transmittal, statement of person regarding Medicare payment for medical services furnished deceased patient, report of prior period of entitlement, itemized bills and other similar documents required to support payments to beneficiaries and to physicians and other suppliers of Part B services, and Medicare secondary payer records containing other party liability insurance information necessary for appropriate Medicare claims payment.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for the collection and maintenance of this system is given under the provisions of sections 1842, 1862 (b) and 1874 of Title XVIII of the Social Security Act (The Act) (42 United States Code (U.S.C.) 1395u, 1395y (b), and 1395kk).

**PURPOSE(S) OF THE SYSTEM:**

The primary purpose of the SOR is to properly pay medical insurance benefits to or on behalf of entitled beneficiaries. Information in this system will also be released to: (1) support regulatory and policy functions performed within the Agency or by a contractor, consultant, or grantee; (2) assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent; (3) assist third party contacts; (4) support providers and suppliers of services dealing through fiscal intermediaries or carriers; (5) support Quality Improvement Organizations (QIO); (6) assist insurance companies and other groups providing protection for their enrollees, insurers and other groups providing protection against medical expenses who are primary payers to Medicare in accordance with 42 U.S.C. § 1395y (b); (7) support an individual or organization for a research, evaluation, or epidemiological project; (8) support litigation involving the Agency related to this SOR; and (9) combat fraud, waste, and abuse in certain Federally-funded health care programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To support agency contractor, consultant or grantee who have been engaged by the agency to assist in the accomplishment of a CMS function relating to the purposes for this system and who need to have access to the records in order to assist CMS.

2. To assist another Federal and/or state agency, agency of a state government, an agency established by state law, or its fiscal agent:

a. Contribute to the accuracy of CMS' proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

3. To assist third party contacts (without the consent of the individuals to whom the information pertains) in situations where the party to be contacted has, or is expected to have information relating to the individual's capacity to manage his or her affairs or to his or her eligibility under the Medicare program and,

a. The individual is unable to provide the information being sought (an individual is considered to be unable to provide certain types of information when any of the following conditions exists: the individual is confined to a mental institution, a court of competent jurisdiction has appointed a guardian to manage the affairs of that individual, a court of competent jurisdiction has declared the individual to be mentally incompetent, or the individual's attending physician has certified that the individual is not sufficiently mentally competent to manage his or her own affairs or to provide the information being sought, the individual cannot read or write, cannot afford the cost of obtaining the information, a language barrier exists, or the custodian of the information will not, as a matter of policy, provide it to the individual), or

b. The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following: The individual's entitlement to benefits under the Medicare program; and the amount of reimbursement; any case in which the evidence is being reviewed as a result of suspected fraud, waste, and abuse, program integrity, quality appraisal, or evaluation and measurement of program activities.

4. To assist providers and suppliers of services dealing through fiscal intermediaries or carriers for the administration of Title XVIII of the Act.

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To assist insurance companies, third party administrators (TPA), employers, self-insurers, managed care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a competitive medical plan (CMP) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP)), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:

a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom the serve as a TPA;

b. Utilize the information solely for the purpose of processing the identified individual's insurance claims; and

c. Safeguard the confidentiality of the data a prevent unauthorized access.

7. To support an individual or organization for a research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment-related projects.

8. To support the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

9. To support a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of the CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

10. To support another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste, or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste, or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures

To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164–512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the

enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, computer diskette and on magnetic storage media.

**RETRIEVABILITY:**

Information can be retrieved by the beneficiary's name, HIC, and assigned unique physician identification number.

**SAFEGUARDS:**

CMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

**RETENTION AND DISPOSAL:**

Records are maintained in a secure storage area with identifiers. Records are closed at the end of the fiscal year, in which paid, and destroyed after 6 years and 3 months. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of Systems Operations, Business Applications Management Group, Office of Information Services, CMS, 7500 Security Boulevard, Room N2–07–27, Baltimore, Maryland 21244–1850.

**NOTIFICATION PROCEDURE:**

For purpose of access, the subject individual should write to the system manager who will require the system name, HIC, address, date of birth, and sex, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), social security number (SSN). Furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay.

**RECORD ACCESS PROCEDURE:**

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

**CONTESTING RECORD PROCEDURES:**

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

**RECORD SOURCE CATEGORIES:**

Sources of information contained in this records system is obtained from third party agencies, Social Security Administration's Master Beneficiary Record, and CMS's Enrollment Database.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

## Appendix A.—Health Insurance Claims

Medicare records are maintained at the CMS Central Office (see section 1 below for the address). Health Insurance Records of the Medicare program can also be accessed through a representative of the CMS Regional Office (see section 2 below for addresses). Medicare claims records are also maintained by private insurance organizations that share in administering provisions of the health insurance programs. These private insurance organizations, referred to as carriers and intermediaries, are under contract to the Centers for Medicare & Medicaid Services and the Social Security Administration to perform specific task in the Medicare program (see section three below for addresses for intermediaries, section four addresses the carriers, and section five addresses the Payment Safeguard Contractors.

### I. Central Office Address

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850.

### II. CMS Regional Offices

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. John F. Kennedy Federal Building, Room 1211, Boston, Massachusetts 02203. Office Hours: 8:30 a.m.–5 p.m.

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands. 26 Federal Plaza, Room 715, New York, New York 10007, Office Hours: 8:30 a.m.–5 p.m.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia. Post Office Box 8460, Philadelphia, Pennsylvania 19101. Office Hours: 8:30 a.m.–5 p.m.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee. 101 Marietta Street, Suite 702, Atlanta, Georgia 30223, Office Hours: 8:30 a.m.–4:30 p.m.

Chicago Region—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. Suite A–824, Chicago, Illinois 60604. Office Hours: 8 a.m.–4:45 p.m.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas, 1200 Main Tower Building, Dallas, Texas. Office Hours: 8 a.m.–4:30 p.m.

Kansas City Region—Iowa, Kansas, Missouri, Nebraska. New Federal Office Building, 601 East 12th Street–Room 436, Kansas City, Missouri 64106. Office Hours: 8 a.m.–4:45 p.m.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming. Federal Office Building, 1961 Stout St–Room 1185, Denver, Colorado 80294. Office Hours: 8 a.m.–4:30 p.m.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada. Federal Office Building, 10 Van Ness Avenue, 20th Floor, San Francisco, California 94102. Office Hours: 8 a.m.–4:30 p.m.

Seattle Region—Alaska, Idaho, Oregon, Washington. 1321 Second Avenue, Room 615, Mail Stop 211, Seattle, Washington 98101. Office Hours 8 a.m.–4:30 p.m.

### III. Intermediary Addresses (Hospital Insurance)

Medicare Coordinator, Assoc. Hospital Serv. Maine (ME BC), 2 Gannett Drive, South Portland, ME 04106–6911.

Medicare Coordinator, Anthem New Hampshire, 300 Goffs Falls Road, Manchester, NH 03111–0001.

Medicare Coordinator, BC/BS Rhode Island (RI BC), 444 Westminster Street, Providence, RI 02903–3279.

Medicare Coordinator, Empire Medicare Services, 400 S. Salina Street, Syracuse, NY 13202.

Medicare Coordinator, Cooperativa, P.O. Box 363428, San Juan, PR 00936–3428.

Medicare Coordinator, Maryland B/C, P.O. Box 4368, 1946 Greenspring Ave., Timonium, MD 21093.

Medicare Coordinator, Highmark, P5103, 120 Fifth Avenue Place, Pittsburgh, PA 15222–3099.

Medicare Coordinator, United Government Services, 1515 N. Rivercenter Dr., Milwaukee, WI 53212.

Medicare Coordinator, Alabama B/C, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Florida B/C, 532 Riverside Ave., Jacksonville, FL 32202–4918.

Medicare Coordinator, Georgia B/C, P.O. Box 9048, 2357 Warm Springs Road, Columbus, GA 31908.

Medicare Coordinator, Mississippi B/C B MS, P.O. Box 23035, 3545 Lakeland Drive, Jackson, MI 39225–3035.

Medicare Coordinator, North Carolina B/C, P.O. Box 2291, Durham, NC 27702–2291.

Medicare Coordinator, Palmetto GBA A/RHHI, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Tennessee B/C, 801 Pine Street, Chattanooga, TN 37402–2555.

Medicare Coordinator, Anthem Insurance Co. (Anthem In), P.O. Box 50451, 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Arkansas B/C, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Group Health Of Oklahoma, 1215 South Boulder, Tulsa, OK 74119–2827.

Medicare Coordinator, TrailBlazer, P.O. Box 660156, Dallas, TX 75266–0156.

Medicare Coordinator, Cahaba GBA, Station 7, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/C, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Nebraska B/C, P.O. Box 3248, Main Po Station, Omaha, NE 68180–0001.

Medicare Coordinator, Mutual Of Omaha, P.O. Box 1602, Omaha, NE 68101.

Medicare Coordinator, Montana B/C, P.O. Box 5017, Great Falls Div., Great Falls, MT 59403–5017.

Medicare Coordinator, Noridian, 4510 13th Avenue S.W., Fargo, ND 58121–0001.

Medicare Coordinator, Utah B/C, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Wyoming B/C, 4000 House Avenue, Cheyenne, WY 82003.

Medicare Coordinator, Arizona B/C, P.O. Box 37700, Phoenix, AZ 85069.

Medicare Coordinator, UGS, P.O. Box 70000, Van Nuys, CA 91470–0000.

Medicare Coordinator, Regents BC, P.O. Box 8110 M/S D–4A, Portland, OR 97207–8110.

Medicare Coordinator, Premera BC, P.O. Box 2847, Seattle, WA 98111–2847.

**IV. Medicare Carriers**

Medicare Coordinator, NHIC, 75 Sargent William Terry Drive, Hingham, MA 02044.

Medicare Coordinator, B/S Rhode Island (RI BS), 444 Westminster Street, Providence, RI 02903–2790.

Medicare Coordinator, Trailblazer Health Enterprises, Meriden Park, 538 Preston Ave., Meriden, CT 06450.

Medicare Coordinator, Upstate Medicare Division, 11 Lewis Road, Binghamton, NY 13902.

Medicare Coordinator, Empire Medicare Services, 2651 Strang Blvd., Yorktown Heights, NY 10598.

Medicare Coordinator, Empire Medicare Services, NJ, 300 East Park Drive, Harrisburg, PA 17106.

Medicare Coordinator, Triple S, #1441 F.D., Roosvelt Ave., Guaynabo, PR 00968.

Medicare Coordinator, Group Health Inc., 4th Floor, 88 West End Avenue, New York, NY 10023.

Medicare Coordinator, Highmark, P.O. Box 89065, 1800 Center Street, Camp Hill, PA 17089–9065.

Medicare Coordinator, Trailblazers Part B, 11150 McCormick Drive, Executive Plaza 3 Suite 200, Hunt Valley, MD 21031.

Medicare Coordinator, Trailblazer Health Enterprises, Virginia, P.O. Box 26463, Richmond, VA 23261–6463. United Medicare Coordinator, Tricenturion, 1 Tower Square, Hartford, CT 06183.

Medicare Coordinator, Alabama B/S, 450 Riverchase Parkway East, Birmingham, AL 35298.

Medicare Coordinator, Cahaba GBA, 12052 Middleground Road, Suite A, Savannah, GA 31419.

Medicare Coordinator, Florida B/S, 532 Riverside Ave, Jacksonville, FL 32202–4918.

Medicare Coordinator, Administar Federal, 9901 Linnstation Road, Louisville, KY 40223.

Medicare Coordinator, Palmetto GBA, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, CIGNA, 2 Vantage Way, Nashville, TN 37228.

Medicare Coordinator, Railroad Retirement Board, 2743 Perimeter Parkway, Building 250, Augusta, GA 30999.

Medicare Coordinator, Cahaba GBA, Jackson Miss, P.O. Box 22545, Jackson, MI 39225–2545.

Medicare Coordinator, Adminastar Federal (IN), 8115 Knue Road, Indianapolis, IN 46250–1936.

Medicare Coordinator, Wisconsin Physicians Service, P.O. Box 8190, Madison, WI 53708–8190.

Medicare Coordinator, Nationwide Mutual Insurance Co., P.O. Box 16788, 1 Nationwide Plaza, Columbus, OH 43216–6788.

Medicare Coordinator, Arkansas B/S, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Arkansas-New Mexico, 601 Gaines Street, Little Rock, AR 72203.

Medicare Coordinator, Palmetto GBA–DMERC, 17 Technology Circle, Columbia, SC 29203–0001.

Medicare Coordinator, Trailblazer Health Enterprises, 901 South Central Expressway, Richardson, TX 75080.

Medicare Coordinator, Nordian, 636 Grand Avenue, Des Moines, IA 50309–2551.

Medicare Coordinator, Kansas B/S, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0001.

Medicare Coordinator, Kansas B/S–NE, P.O. Box 239, 1133 Topeka Ave., Topeka, KS 66629–0239.

Medicare Coordinator, Montana B/S, P.O. Box 4309, Helena, MT 59601.

Medicare Coordinator, Nordian, 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Noridian Backbend (C0), 730 N. Simms #100, Golden, CO 80401–4730.

Medicare Coordinator, Noridian BCBSND (WY), 4305 13th Avenue South, Fargo, ND 58103–3373.

Medicare Coordinator, Utah B/S, P.O. Box 30270, 2455 Parleys Way, Salt Lake City, UT 84130–0270.

Medicare Coordinator, Transamerica Occidental, P.O. Box 54905, Los Angeles, CA 90054–4905.

Medicare Coordinator, NHIC-California, 450 W. East Avenue, Chico, CA 95926.

Medicare Coordinator, Cigna, Suite 254, 3150 Lake Harbor, Boise, ID 83703.

Medicare Coordinator, Cigna, Suite 506, 2 Vantage Way, Nashville, TN 37228.

**V. Payment Safeguard Contractors**

Medicare Coordinator, Aspen Systems Corporation, 2277 Research Blvd., Rockville, MD 20850.

Medicare Coordinator, DynCorp Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Reston, VA 20190–6017.

Medicare Coordinator, Lifecare Management Partners Mutual of Omaha Insurance Co., 6601 Little River Turnpike, Suite 300, Mutual of Omaha Plaza, Omaha, NE 68175.

Medicare Coordinator, Reliance Safeguard Solutions, Inc., P.O. Box 30207, 400 South Salina Street, 2890 East Cottonwood Pkwy., Syracuse, NY 13202.

Medicare Coordinator, Science Applications International, Inc., 6565 Arlington Blvd. P.O. Box 100282, Falls Church, VA.

Medicare Coordinator, California Medical Review, Inc., Integriguard Division Federal Sector Civil Group, One Sansome Street, San Francisco, CA 94104–4448.

Medicare Coordinator, Computer Sciences Corporation, Suite 600, 3120 Timanus Lane, Baltimore, MD 21244.

Medicare Coordinator, Electronic Data Systems (EDS), 11710 Plaza America Drive, 5400 Legacy Drive, Plano, TX 75204.

Medicare Coordinator, TriCenturion, L.L.C., P.O. Box 100282, Columbia, SC 29202.

[FR Doc. E6–18613 Filed 11–3–06; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United

States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: The Health Education Assistance Loan (HEAL) Program Regulations (OMB No. 0915–0108) Extension**

The Health Education Assistance Loan (HEAL) Program has regulations that contain notification, reporting and recordkeeping requirements to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under the OMB number referenced above, much of the burden associated with the regulations is cleared under separate OMB numbers for the HEAL forms and electronic submissions used to report required information. The table below provides the estimate of burden for the remaining regulations.

The estimates of burden are as follows:

REPORTING REQUIREMENTS

| No. of respondents | No. of transactions | Total transactions | Hours per response | Total burden hours |
|---|---|---|---|---|
| 17 Holders | 5 | 78 | 12 Min | 17 |
| 190 Schools | .4 | 76 | 10 Min | 13 |
| Total Reporting | | | | 30 |

NOTIFICATION REQUIREMENTS

| No. of respondents | No. of transactions | Total transactions | Hours per response | Total burden hours |
|---|---|---|---|---|
| 7,930 Borrowers | 1 | 7,930 | 10 Min | 1,322 |
| 17 Holders | 7,910 | 134,470 | 10 Min | 22,412 |
| 190 Schools | .89 | 170 | 14 Min | 40 |
| Total Notification | | | | 23,774 |

RECORDKEEPING REQUIREMENTS

| No. of respondents | No. of transactions | Total transactions | Hours per response | Total burden hours |
|---|---|---|---|---|
| 17 Holders | 3,568 | 60,656 | 14 Min | 14,153 |
| 190 Schools | 257 | 48,830 | 15 Min | 12,208 |
| Total Recordkeeping | | | | 26,361 |
| Total | | | | 50,165 |

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 31, 2006.

**Cheryl R. Dammons,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E6–18620 Filed 11–3–06; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on Migrant Health.

*Date and Time:* November 15, 2006, 1 p.m. to 3:30 p.m. (Eastern Time).

*Place:* Audio Conference Call, Telephone: 1–866–727–1333, Password: 7822925.

*Status:* The meeting will be open to the public.

*Purpose:* The purpose of the meeting is to discuss services and issues related to the health of migrant and seasonal farmworkers and their families to be able to formulate recommendations to the Secretary of Health and Human Services.

*Agenda:* The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on

farmworker issues, including the status of farmworkers health at the local and national level.

Agenda items are subject to change as priorities indicate.

*For Further Information Contact:* Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 15–99, Rockville, Maryland 20857, telephone (301) 594–0367.

Dated: October 31, 2006.

**Cheryl R. Dammons,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E6–18626 Filed 11–3–06; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2005–22837]**

### Nationwide Automatic Identification System, Final Programmatic Environmental Impact Statement Record of Decision

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Coast Guard (USCG) announces the availability of the Record of Decision (ROD) for the Nationwide Automatic Identification System (NAIS) final Programmatic Environmental Impact Statement (PEIS). The NAIS is being implemented pursuant to the Maritime Transportation Security Act of 2002, and will include installation of Automatic Identification System (AIS) equipment and related support systems on and around communications towers or other structures along 95,000 miles of coastline and inland rivers. The project will enable detection and identification of vessels carrying (AIS) equipment to enhance maritime domain awareness.

**ADDRESSES:** The ROD and final PEIS are available for viewing online at the DOT's docket management Web site: *http://dms.dot.gov* under docket number 22837. A copy of the ROD and final PEIS can also be obtained on the NAIS project Web site: *http://www.uscg.mil/hq/g-a/AIS/* or by contacting Anita Allen, PhD, NAIS Environmental Manager, at 202–474–3292 or *Anita.A.Allen@uscg.mil.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, please call or e-mail Anita Allen, PhD, NAIS Environmental Manager, at 202–475–3292 or *Anita.A.Allen@uscg.mil.* If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations at 202–366–0271.

**SUPPLEMENTARY INFORMATION:**

#### Background and Purpose

The Environmental Protection Agency issued a Notice of Availability of the final PEIS in the **Federal Register** on October 6, 2006 (71 FR 59105). As supported by the analysis in the PEIS, the USCG has decided to implement the proposed NAIS project consistent with the Preferred Alternative of using AIS based technology and a combination of the following coverage mechanisms: Establishing a combination of collocated and newly built shore-based RF sites for short-range AIS coverage; leasing commercial satellite services for long-range AIS coverage; and installing AIS equipment on existing offshore oil and gas platforms and data buoys for supplemental long-range coverage. Implementation of the proposed NAIS project through the Preferred Alternative would ensure that the USCG satisfies the purpose and need for NAIS. The Preferred Alternative implementation approach will offer siting flexibility that will help mitigate or minimize the potential for environmental impacts, and allow the USCG to maximize the use of existing infrastructure to meet coverage requirements.

Dated: October 30, 2006.

**J.P. Currier,**

*Rear Admiral, United Stated Coast Guard, Assistant Commandant for Acquisition.*

[FR Doc. E6–18653 Filed 11–3–06; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2006–26256]**

### National Maritime Security Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Maritime Security Advisory Committee (NMSAC) will hold a meeting to discuss various issues relating to national maritime security. This notice announces the date, time, and location for the meeting of the NMSAC.

**DATES:** NMSAC will meet on Tuesday, November 14, 2006, from 1 p.m. to 5 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 1, 2006. Any material requested to be distributed to each member of the Committee should reach the Coast Guard on or before November 1, 2006.

**ADDRESSES:** NMSAC will meet at the Fairfax Marriott at Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia, 22033. Send written material and requests to make oral presentations to Mr. Ike Eisentrout, Commandant (G–PCP–1), NMSAC Executive Assistant, U.S. Coast Guard Headquarters, Room 5302, 2100 Second St., SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Ike Eisentrout, NMSAC Executive Assistant, telephone 202–372–1119, fax 202–372–1905.

**SUPLEMENTARY INFORMATION:** Notice of the meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770 as amended).

#### Agenda of Meeting

The agenda includes the following:

(1) Welcome and opening remarks; introduction of new Executive Assistant.

(2) Approval of Minutes from 25 July 2006 NMSAC Meeting and 13 September 2006 NMSAC Teleconference.

(3) Updates from several working groups to include: Cruise Ship Regulations, Report and analysis of the TSA/DoD Seal User's Guide, MTSA Subchapter H Recommendations, Report and comments on the Maritime Modal Implementation Annex.

(4) Miscellaneous Updates on: Maritime Sector Coordinating Council concept; Report on the Transportation Workers Identification Card initiative; Potential initiatives for the next International Maritime Organization council; Report on the National Maritime Recovery Symposium; Refresher training for committee members on use of Homeport.

(5) Public Comments.

(6) New Committee Action Items.

(7) Closing Remarks.

#### Procedural

The meeting is open to the public. However, participation in NMSAC deliberations is limited to NMSAC members, Department of Homeland Security officials, and persons attending the meeting for special presentations.

Please note that the meeting may close early if all business is finished. The Fairfax Marriott Hotel is a public facility, but persons attending should be ready to show a photo identification card for admittance to the meeting. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the NMSAC Executive Assistant no later than November 1, 2006. If you would like a copy of your material distributed to each member of the Committee in advance of the meeting, please submit 25 copies to the Executive Assistant no later than November 1, 2006.

**Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Assistant as soon as possible.

**Tina L. Burke,**

*Commander, U.S. Coast Guard, Acting Chief, Office of Port and Facility Activities, Designated Federal Official, NMSAC.*

[FR Doc. E6–18681 Filed 11–3–06; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collection, Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (OMB Control Number 1010–0090).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 216, subpart B. The title of this ICR is 30 CFR 216.57 Stripper Royalty Rate Reduction Notification. The form associated with this ICR is Form MMS–4377, Stripper Royalty Rate Reduction Notification.

**DATES:** Submit written comments on or before January 5, 2007.

**ADDRESSES:** Submit written comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service or wish to hand-carry your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 216.57 Stripper Royalty Rate Reduction Notification.

*OMB Control Number:* 1010–0090.

*Bureau Form Number:* Form MMS–4377, Stripper Royalty Rate Reduction Notification.

*Abstract:* The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

The Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982, 30 U.S.C. 1701 *et seq.*, states in Section 101(a) that the Secretary ''* * * shall establish a comprehensive inspection, collection, and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner.'' The persons or entities described at 30 U.S.C. 1713 are required to make reports and provide reasonable information as defined by the Secretary. Applicable public laws pertaining to mineral leases on Federal and Indian lands are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm*.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are paid appropriately.

The Bureau of Land Management, the surface management agency for Federal onshore leases, granted royalty rate reductions to operators of stripper oil properties producing an average of less than 15 barrels of oil per eligible well per well-day for applicable sales periods from October 1, 1992 through January 31, 2006. See 43 CFR 3103.4–2. The purpose of these royalty rate reductions was to encourage continued production, provide an incentive for enhanced oil recovery projects, discourage abandonment of properties producing an average of less than 15 barrels of oil per eligible well per well-day, and reduce the operator's expenses. The royalty rate for a stripper oil property was lower than the royalty rate reflected in the lease and thus reduced the amount of revenues paid to the Federal Government.

Reporters used the Form MMS–4377 to notify MMS of royalty rate changes for production through January 31, 2006. Operators submitted an initial Form MMS–4377 when a new property qualified as a stripper oil property. Reporters submitted Form MMS–4377 to notify MMS of a royalty rate reduction that was lower than the initial royalty rate reduction on an existing stripper oil property (out-year notification). The decision to request an initial royalty rate reduction was voluntary; however, failure to timely submit the out-year notification resulted in the royalty rate change being denied. Although the benefits under 43 CFR 3103.4–2 terminated effective February 1, 2006, MMS continues to verify submitted notifications and sometimes requires the operator to submit an amended notification.

Proprietary information submitted to MMS under this collection is protected, and no items of a sensitive nature are collected. The requirement to respond is

required to obtain the benefit of a royalty rate reduction.

*Frequency:* As requested by MMS.

*Estimated Number and Description of Respondents:* 150 operators of stripper oil properties producing an average of less than 15 barrels of oil per eligible well per well-day.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 180 hours.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

| 30 CFR 216 Subpart B | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 216.57 | **Stripper royalty rate reduction notification** In accordance with its regulations at 43 CFR 3103.4–1, titled ''Waiver, suspension, or reduction of rental, royalty, or minimum royalty,'' the Bureau of Land Management (BLM) may grant reduced royalty rates to operators of low producing oil leases to encourage continued production. Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS for each 12-month qualifying period that a reduced royalty rate(s) is granted. [58 FR 64903, Dec. 10, 1993] Please note the BLM citation and title changed to 43 CFR 3103.4–2 Stripper well royalty reductions | 1.2 | 150 | 180 |
| Total Burden | | | 150 | 180 |

*Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden:* We have identified no ''non-hour cost'' burden associated with the collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*Comments:* Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

*Public Comment Policy:* We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We also will make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208–7744.

Dated: October 24, 2006.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. E6–18665 Filed 11–3–06; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collection, Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (OMB Control Number 1010–0110).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled ''Training and Outreach Evaluation.'' The form associated with this collection is Form MMS–4420A–F, Training and Outreach Evaluation.

**DATES:** Submit written comments on or before January 5, 2007.

**ADDRESSES:** Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, 6th Ave. and Kipling Blvd., Denver, Colorado 80225. Please also send a copy of your comments to MMS via e-mail at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Sharron L. Gebhardt at (303) 231–3211.

**FOR FURTHER INFORMATION CONTACT:** Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Training and Outreach Evaluation.

*OMB Control Number:* 1010–0110.

*Bureau Form Number:* Form MMS–4420A–F.

*Abstract:* The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's Indian trust responsibility.

The MMS frequently provides training and outreach to our constituents to facilitate their compliance with laws and regulations and to ensure that they are well informed. We present training sessions to oil and gas and solid minerals reporters on various aspects of royalty reporting, production reporting, and valuation. Additionally, we provide training sessions to our financial and systems contractors, state and tribal auditors, and MMS employees. We provide instructor-led or computer-based training. We use the training and outreach evaluation form to survey our customers and to improve our training and outreach efforts, as directed in Executive Order 12862, Setting Customer Service Standards (September 11, 1993).

We ask participants to complete and return an evaluation form during the last few minutes of each training or outreach session or upon completion of computer-based training. Participant response is voluntary. Some questions are uniform across all of the evaluation forms; however, some questions are specific to the audience or to each type of training or outreach.

The MMS collects this information using Form MMS–4420A–F, Training and Outreach Evaluation. No proprietary information is submitted to MMS under this collection, and no items of a sensitive nature are collected. The requirement to respond is voluntary.

*Frequency of Response:* On occasion.

*Estimated Number and Description of Respondents:* 2,500 industry representatives, state and tribal auditors, MMS contractors, and MMS employees.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 400 hours.

Each part of the form requires 9 to 10 minutes to complete, based on the estimate used for the previous renewal of 9.6 minutes per evaluation or response. We calculated the burden hours, as follows: 2,500 respondents × 9.6 minutes = 24,000 minutes / 60 minutes = 400 hours.

*Estimated Annual Reporting and Recordkeeping ''Non-hour Cost'' Burden:* We have identified no ''non-hour cost'' burdens.

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request, and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

*Public Comment Policy:* We will post all comments in response to this notice

on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208–7744.

Dated: October 23, 2006.

**Lucy Querques Denett,**

*Associate Director for Minerals Revenue Management.*

[FR Doc. E6–18667 Filed 11–3–06; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 21, 2006. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 21, 2006.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**CALIFORNIA**

**Alameda County**

California Memorial Stadium, Bet. Piedmont Ave., Stadium Rim Way, Canyon Rd., Bancroft Way and Prospect St., Berkeley, 06001086

**Los Angeles County**

Eevin, Ard, House, 851 W. Mountain St., Glendale, 06001087

**Mono County**

Conway Ranch Historic District, Address Restricted, Lee Vining, 06001074

**IDAHO**

**Twin Falls County**

Toana Freight Wagon Road Historic District, Generally run S to N from Nevada-Idaho stateline to the Snake River, Castleford, 06001075

**ILLINOIS**

**Madison County**

Chain of Rocks Bridge, West Chain of Rocks Rd., Madison, 06001091

**MASSACHUSETTS**

**Bristol County**

Cohannet Mill No. 3, 120 Ingell St., Taunton, 06001088

**Middlesex County**

Hildreth–Robbins House, 19 Maple Rd., Chelmsford, 06001090

**MICHIGAN**

**Berrien County**

Ingraham School, 6514 Coloma North Rd., Coloma, 06001084

**MISSOURI**

**Gasconade County**

Hermann Historic District (Boundary Increase), 214 and 304 Franklin, 301–501 Gellert, 2202 MO 100, Hermann, 06001089

**MONTANA**

**Lewis and Clark County**

Williams Street Bridge, Williams St. crossing Ten Mile Creek, N of jct. of Williams St. and Broadwater Ave., Helena, 06001094

**Teton County**

Teton County Courthouse, 1 Main Ave. S, Choteau, 06001093

**Valley County**

Rundle Building, 208 Fifth St. S, Glasgow, 06001092

**NEW YORK**

**Broome County**

Binghamton Railway Company Complex, 375 State St., Binghamton, 06001076

**Delaware County**

Bloomville Methodist Episcopal Church, 35 Church St., Bloomville, 06001080

**Monroe County**

Garbuttsville Cemetery, Union St., Garbutt, 06001077

**Orange County**

Checkerboard Inn, 1292 Orange Turnpike, Monroe, 06001078

**Washington County**

Anthony, Susan B., Childhood House, 2835 NY 29, Battenville, 06001079

**OHIO**

**Butler County**

Voice of America Bethany Relay Station, 8070 Tylersville Rd., West Chester, 06001081

**OREGON**

**Wasco County**

Maupin Section Foreman's House, 601 Deschutes Access Rd., Maupin, 06001082

**Washington County**

Rice, Richard and Helen, House, 26385 N. W. Groveland Dr., Hillsboro, 06001096

**TENNESSEE**

**Davidson County**

Wilkinson House, 7663 Wilkinson Rd., Joelton, 06001095

**Roane County**

Stone, Dr. Gred, Sr., Hospital, 105 Roane St., Oliver Springs, 06001097

**TEXAS**

**Tarrant County**

Ponton, Dr. Arvel and Faye, House, 1208 Mistletoe Dr., Fort Worth, 06001085

**Travis County**

Granger House and the Perch, 805 W. 16th St., Austin, 06001083

**VIRGINIA**

**Fairfax County**

Gunnell, John, House, 489 Arnon Meadow Rd., Great Falls, 06001100

**Hampton Independent City**

Phoebus Historic District, Roughly bounded by VA 64, Mallory St., E. County St. and Willard Ave., Hampton (Independent City), 06001098

**Rockingham County**

Chrisman, George, House, 5341 Shaver Mill Rd., Linville, 06001099

A request for REMOVAL has been made for the following resource:

**TENNESSEE**

**Sevier County**

Cole, Alex, Cabin, 5 mi. S of Gatlinburg off U.S. 441 in Great Smokey Mountains Gatlinburg vicinity, 76000165

[FR Doc. E6–18596 Filed 11–3–06; 8:45 am]

BILLING CODE 4312–51–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Glen Canyon Dam Adaptive Management Work Group (AMWG)

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent and notice of public meeting.

**SUMMARY:** The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam consistent with the Grand Canyon Protection Act. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

*Dates and Addresses:* The AMWG will conduct the following public meeting:

Phoenix, Arizona—December 5–6, 2006. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and begin at 8 a.m. and conclude at 3 p.m. on the second day. The meeting will be held at the Fiesta Inn Resort (Encantada Ballroom) located at 2100 South Priest Drive in Tempe, Arizona.

*Agenda:* The purpose of the meeting will be to (1) review and develop a recommendation to the Secretary of the Interior for a Long-Term Experimental Plan; (2) receive an update on progress for development of a Lower Colorado River recovery program and related work/goals for the endangered humpback chub; (3) discuss a selective withdrawal structure for Glen Canyon Dam; (4) review fiscal year 2006 program expenditures; (5) approve the public outreach Web site; and (6) discuss research and monitoring reports, basin hydrology, and other administrative and resource issues pertaining to the AMP. To view a copy of the draft agenda, please visit Reclamation's Web site at: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/06dec05/index.html.*

**SUPPLEMENTARY INFORMATION:**

### Anticipated Approach Regarding Adoption of Long-Term Experimental Plan

Based upon the foregoing agenda, the Department of the Interior anticipates utilizing the information developed through, and any recommendation(s) from, the TWG and the AMWG in preparing appropriate environmental compliance documentation to analyze the alternatives for a Long-Term Experimental Plan for the future operation of Glen Canyon Dam and other potential associated management activities. The Long-Term Experimental Plan is intended to ensure a continued, structured application of adaptive management in such a manner as to protect, mitigate adverse impacts to, and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established, including, but not limited to natural and cultural resources and visitor use, consistent with applicable federal law.

The Long-Term Experimental Plan will build on a decade of scientific experimentation and monitoring that has taken place as part of the AMP, and will build on the knowledge gained by experiments, operations, and management actions taken under the AMP. Accordingly, the Department intends to tier from earlier National Environmental Policy Act (NEPA) compliance documents prepared as part of the Department's Glen Canyon AMP efforts, see 40 CFR §§ 1500.4(i), 1502.20, and 1508.20(b), such as the 2002 Environmental Assessment prepared on adaptive management experimental actions at Glen Canyon Dam (Proposed Experimental Releases from Glen Canyon Dam and Removal of Non-Native Fish).

### Notice of Intent

Pursuant to 40 CFR § 1508.22, the Department of the Interior, through this **Federal Register** notice, announces its notice of intent to prepare and consider an environmental impact statement on the adoption of a Long-Term Experimental Plan for the future operation of Glen Canyon Dam and other associated management activities. The Long-Term Experimental Plan is proposed to implement a structured, long-term, program of experimentation (including dam operations, potential modifications to Glen Canyon Dam intake structures, and other potential management actions, such as removal of non-native fish species) in the Colorado River below Glen Canyon Dam. The range of alternatives for the proposed action will be developed following recommendations provided by the AMWG. The Department anticipates initiation of consultation through the U.S. Fish and Wildlife Service, as appropriate, on the consideration and implementation of the Long-Term Experimental Plan.

### Scoping

Pursuant to 40 CFR 1501.7(a)(1), 1501.7(b)(4), the Department of the Interior intends to utilize the information presented at the upcoming AMWG meeting as part of the scoping process in the NEPA process that is intended to address adoption and implementation of a Long-Term Experimental Plan pursuant to this **Federal Register** notice. In addition, Reclamation will also utilize the information developed through prior meetings of the AMWG, TWG, and Science Planning Group as relevant information for the purposes of scoping the upcoming NEPA process and to develop the appropriate scope of analysis pursuant to 40 CFR 1508.25. Opportunities for additional public comment will be described in a subsequent **Federal Register** notice.

### Relationship With Settlement Agreement in Center for Biodiversity v. Kempthorne

Recently, the Center for Biodiversity and others filed suit against the U.S. Department of the Interior regarding operations of Glen Canyon Dam. In a Settlement Agreement approved by the United States District Court for the District of Arizona, the United States and Plaintiffs agreed to the following provision:

> 1. Not later than January 31, 2007, Reclamation shall initiate environmental documentation activities pursuant to NEPA and the ESA with respect to modification of current, or other prospective, operations of Glen Canyon Dam and associated management actions of Reclamation and other agencies with the Department of the Interior; * * * (Settlement Agreement at section 1, pg. 3)

It is the intention of the Department of the Interior to comply with this provision of the Settlement Agreement through this Notice of Intent published in the **Federal Register**. The Settlement Agreement can be found at the following Internet location: *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/06sep06CC/Attach_07.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Dennis Kubly, Bureau of Reclamation, telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov.*

To allow full consideration of information by the AMWG members,

written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

**Public Disclosure**

It is our practice to make comments, including names, home addresses, home telephone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or 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 a 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 or officials of organizations or businesses, available for public inspection in their entirety.

Dated: October 24, 2006.

**Darryl Beckmann,**

*Deputy Regional Director—UC Region, Bureau of Reclamation.*

[FR Doc. E6–18575 Filed 11–3–06; 8:45 am]

BILLING CODE 4310–MN–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–444–446 and 731–TA–1107–1109 (Preliminary)]**

## Coated Free Sheet Paper From China, Indonesia, and Korea

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation Nos. 701–TA–444–446 (Preliminary) and preliminary phase antidumping investigation Nos. 731–TA–1107–1109 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China, Indonesia, and Korea of coated free sheet paper, provided for in subheadings 4810.13.19, 4810.13.20, 4810.13.50, 4810.13.70, 4810.14.19, 4810.14.20, 4810.14.50, 4810.14.70, 4810.19.19, and 4810.19.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of China, Indonesia, and Korea and that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by December 15, 2006. The Commission's views are due at Commerce within five business days thereafter, or by December 22, 2006.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**DATES:** *Effective Date:* October 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on October 31, 2006, by NewPage Corporation, Dayton, OH.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on November 21, 2006, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than November 16, 2006, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 27, 2006, a written brief

containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 1, 2006.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E6–18654 Filed 11–3–06; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Delaware Hazardous Substances Cleanup Act

Notice is hereby given that on September 29, 2006, a proposed Consent Decree in *United States and the State of Delaware* v. *E.I. Dupont De Nemours & Company, Inc., and CIBA Specialty Chemicals Corporation,* Civil Action No. 06–612 was lodged with the United States District Court for the District of Delaware.

In this action the United States and the State of Delaware sought claims for natural resource damages brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), as amended, 42 U.S.C. 9601 *et seq.* and the Delaware Hazardous Substance Cleanup Act (''HSCA''), 7 *Del. C.* Chapter 91 with respect to the release of hazardous substances from DuPont-Newport chemical facility, located in Newport, Delaware. Under the proposed Consent Decree, the defendants will fund restoration projects on the ''Pike Property'' as set forth in the Damage Assessment and Restoration Plan (''DARP'', attached to the Consent Decree), and the State of Delaware will hold an environmental covenant for the Pike Property to protect it in perpetuity. Defendants will reimburse each Trustee for its Damage Assessment Costs, and make a payment to Delaware for groundwater injuries. The total value of the settlement as set forth in the Consent Decree is $1.6 million.

The Department of Justice will receive for a period of fifteen (15) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States and the State of Delaware* v. *E.I. Du Pont De Nemours & Company, Inc., and CIBA Specialty Chemicals Corporation*, D.J. Ref. 90–11–2–883/2.

The Consent Decree may be examined at the Office of the United States Attorney, for the District of Delaware, 1007 Orange Street, Suite 700, Wilmington, Delaware. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

A copy of the Consent Decree may also be obtained at the offices of the Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, Site Investigation and Restoration Branch, 391 Lukens Drive, New Castle, Delaware 19720, Main phone number: 302–395–2600, Site Name: DuPont Newport NRDA DE–X009. Contacts: Jane Biggs Sanger, Elizabeth LaSorte, or Robert Newsome. An electronic version of the Consent Decree and the DARP can be viewed at *http://apps.dnrec.state.de.us/intraviewer/session/frmmain.cfm.*

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 06–9104 Filed 11–3–06; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Dairy Farmers of America, Inc.; Proposed Final Judgement and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgement, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Kentucky in *United States of America and Commonwealth of Kentucky* v. *Dairy Farmers of America, Inc. and Southern Belle Dairy Co., LLC,* No. 6:03–cv–206. On April 24, 2003, the United States and Commonwealth of Kentucky filed a Complaint alleging that the acquisition by DFA of an ownership interest in Southern Belle Dairy Co., LLC (''Southern Belle''), violated Section 7 of the Clayton Act, 15 U.S.C. 18. An Amended Complaint was filed on May 6, 2004. The proposed Final Judgment, filed on October 2, 2006, requires DFA to divest its interest in Southern Belle and use its best efforts to cause its partner, the Allen Family Limited Partnership, to divest its interest in Southern Belle as well. Copies of the Amended Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW., and at the Office of the Clerk of the United States District Court for the Eastern District of Kentucky, London, Kentucky.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice,

1401 H St., NW., Suite 4000, Washington, DC 20530 (202–307–0001).

**J. Robert Kramer II,**

*Director of Operations, Antitrust Division.*

**United States District Court, Eastern District of Kentucky, London Division**

*United States of America, and Commonwealth of Kentucky, Plaintiffs, v. Dairy Farmers of America, Inc., and Southern Belle Dairy Co., LLC, Defendants*

Civil Action No.: 03–206–KSF
Filed:

**Amended Complaint**

The United States of America, acting under the direction of the Attorney General of the United States, and the Commonwealth of Kentucky, by and through its Attorney General, bring this civil action to obtain equitable relief against defendants, including compelling the Dairy Farmers of America, Inc. (''DFA'') to divest its interest in the Southern Belle dairy located in Somerset, Kentucky, and allege as follows:

*I. Nature of the Action*

1. Up until February 2002, DFA, through its subsidiaries, operated the Flav-O-Rich dairy in London, Kentucky (''Flav-O-Rich'') and competed vigorously against the Southern Belle dairy, located thirty miles away in Somerset, Kentucky (''Southern Bell''), to supply milk to school districts located in Kentucky and Tennessee. That competition resulted in lower prices and better service for school districts that provide milk to students.

2. In February 2002, DFA, through another subsidiary, acquired control of Southern Belle, eliminating that important competition. When it made that acquisition, DFA understood that the Department of Justice had in September 1998 successfully challenged a merger involving the very same dairies, under different ownership, because it would have substantially lessened competition in violation of Section 7 of the Clayton Act.

3. Southern Belle and Flav-O-Rich are the only two dairies or two of only a few dairies that bid to supply school milk in many parts of Kentucky and Tennessee. In 45 school districts, the acquisition has created a monopoly. In 55 other districts, the number of bidders has effectively declined from three to two, reducing competition substantially.

4. History in this region has demonstrated that less competition results in higher prices. Many school districts in this area previously had to pay higher prices as victims of a criminal bid-rigging conspiracy involving school milk. The former owners of Southern Belle and Flav-O-Rich engaged in that conspiracy and pled guilty to conspiring with each other for more than a decade to rig school milk bids.

5. Because many of the affected school districts are small or rural districts, often in the mountains, it is unlikely that other dairies will enter or expand into these markets to eliminate the anticompetitive effects of the acquisition. Indeed, Southern Belle's former owner, in the course of debarment proceedings following the criminal conviction, explained that entry was unlikely in many of these very districts, and that the elimination of Southern Belle as a competitor would reduce competition and cause prices to rise.

*II. Defendants*

6. Defendant Dairy Farmers of America, Inc. (''DFA'') is a Kansas corporation with its headquarters and principal place of business in Kansas City, Missouri. DFA is the largest dairy farmer cooperative in the world. In 2001, it had approximately 25,500 members in 48 states, and sold approximately 45.6 billion pounds of raw milk. DFA had over $7.9 billion in revenues in 2001.

7. DFA owns a 50% common equity interest and approximately 92% preferred equity interest (around $500,000,000) in National Dairy Holdings, L.P. (''NDH''). It also has a 50% interest in Dairy Management LLC, which is the managing arm of NDH. Based on its financial interests in NDH, DFA has the rights to between 50% and 75% or more of NDH's profits. In forming NDH, DFA and its partners in NDH agreed, among other that DFA must approve any decision to commit NDH to any contracts or expenditures exceeding $50,000, to appoint new NDH officers, or change the compensation (e.g., increase the salary) of NDH's officers.

8. DFA is the sole supplier of raw milk and is the contractually preferred supplier of raw milk to Flav-O-Rich and other NDH dairies. DFA also sells more raw, unprocessed milk to dairies in Kentucky and Tennessee than does any other entity.

9. In addition to its controlling interests in Flav-O-Rich, DFA also owns financial interests in several other dairies that sell school milk in parts of Kentucky and Tennessee, including five additional NDH dairies, three Turner Holdings dairies, and one Ideal American dairy. Until February 2002, when the instant acquisition was consummated, Southern Belle competed with a number of these dairies in addition to NDH dairies such as Flav-O-Rich.

10. In December 2001, DFA, through NDH, acquired control and influence over all significant business decisions of Flav-O-Rich and other NDH dairies. Flav-O-Rich processes approximately 30 million gallons of fluid milk per year and had annual revenues of approximately $70 million in 2001. Flav-O-Rich distributes and sells school milk primarily in the eastern two-thirds of Kentucky and Tennessee.

11. In February 2002, DFA, through its partially owned subsidiary, Southern Belle Dairy Co., LLC, (''Southern Bell subsidiary''), acquired control and influence over all significant business decisions of Southern Belle. DFA and subsidiaries controlled in who or in part by DFA contributed approximately $18 million of the $19 million purchase price for Southern Belle. The Allen Family Limited Partnership (''AFLP'') contributed the remaining $1 million, which DFA guaranteed AFLP could recover any time after February 26, 2005. DFA and its subsidiaries own a 50% common equity interest and almost 100% preferred equity interest (around $4,000,000), and 100% credit interest (around $13,000,000) in Southern Belle.

12. DFA formed its Southern Belle subsidiary to acquire the Southern Belle dairy after it became clear that its NDH subsidiary could not acquire the dairy based on the Department of Justice's September 1998 challenge.

13. In planning how DFA would control the Southern Belle subsidiary after they formed it, DFA and AFLP agreed, among other things, that DFA must approve any decision to commit Southern Belle to any contracts or expenditures exceeding $150,000, as well as hiring and compensation decisions for Southern Belle's officers. DFA also gained the right to control the supply of raw milk to the dairy and, based on its debt and equity holdings, the rights to between 50% and 75% of the dairy's profits.

14. Defendant Southern Belle Dairy Co., LLC, is a Delaware limited liability company with its headquarters and principal place of business in Somerset, Kentucky, where it owns and operates the Southern Belle dairy. Southern Belle processes approximately 25 million gallons of fluid milk per year and had annual revenues of approximately $65 million in 2001. Southern Belle distributes and sells school milk primarily in the eastern two-thirds of Kentucky and Tennessee.

*III. Jurisdiction and Venue*

15. This Complaint is filed under Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and by the Commonwealth of Kentucky under 15 U.S.C. 26, to prevent and restrain defendants from continuing to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and under the provisions of K.R.S. § 367.110 *et seq.*

16. Defendants, on their own or through their subsidiaries, transport and sell school and other milk in the flow of interstate commerce in Kentucky and Tennessee and are engaged in interstate commerce and in activities substantially affecting interstate commerce. Defendant DFA also buys and sells raw milk in interstate commerce. This Court has jurisdiction over the subject matter of this action and the parties pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a) and 1345.

17. Both of the defendants transact business and are found in the Eastern District of Kentucky. Defendant Southern Belle's principal place of business is in this district. Venue is proper in this judicial district pursuant to 15 U.S.C. 22 and 28 U.S.C. 1391.

*IV. History of Collusion on School Milk Sales in the Relevant Markets*

18. In late 1993, Southern Belle and Flav-O-Rich pled guilty to the felony of conspiring to raise the price of school milk by agreeing on which dairy would submit the lowest bid for which school district. The conspiracy existed from at least the late 1970s through July 1989, and resulted in substantial harm to over thirty school districts. Southern Belle paid a $375,000 criminal fine; Flav-O-Rich paid $1,000,000. No others were charged with participating in this conspiracy. The current acquisition recreates the effect of this conspiracy in many of those same school districts harmed by the conspiracy for over a decade. *See United States* v. *Southern Belle Dairy Co.*, [1998–1996 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 45,092, at 44,599 (E.D. Ky. Nov. 13, 19920; *United States* v. *Flav-O-Rich, Inc.*, [1998–1996 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 45,092, at 44,605 (N.D. Ga. Dec. 22, 1992).

*V. The Manufacture, Distribution, and Sale of School Milk Is a Relevant Product Market*

19. Dairies purchase raw milk from dairy farmers and agricultural cooperatives, pasteurize and package the milk, and distribute and sell the processed product. Fluid milk (''fluid milk''P is raw milk that has been processed for human consumption, may be unflavored or flavored with chocolate or fruit flavorings, and does not include extended shelf life (ESL) milk or ultra high temperature (UHT) milk, which are produced by different manufacturing processes, generally cost significantly more than fluid milk, and have numerous significant physical differences compared with fluid milk, such as shelf stability, and a significantly different taste, among other attributes.

20. School milk is fluid milk that is processed, distributed, and sold to school districts, usually in half pint containers, pursuant to contracts with school districts. While these contracts may also include other products, school milk accounts for the vast majority of the dollar value of these contracts.

21. The U.S. Department of Agriculture (''USDA'') sponsors several programs to reimburse schools for meals and snacks served to students from lower income families. To qualify, schools must offer mild to every student, regardless of the income of that student's family. If schools want to receive the federal reimbursements, they cannot substitute other products for school milk, regardless of the milk's cost.

22. Individual school districts generally solicit bids from dairies to supply them with school milk. Sometimes, groups of school districts solicit bids to supply school milk to some or all of the school districts in the group, but each individual school district usually chooses (even if it solicited bids as part of a group) the dairy to which it will award its business.

23. Schools require many important services in connection with the supply of school milk. These services often include frequent delivery (usually every day or every other day because schools generally cannot store more than a limited amount of milk); delivery to all or almost all schools in a district; reordering of milk; stocking milk in the coolers; rotating products; retrieving spoiled and damaged products; providing quick emergency shipments (to guarantee a school has enough milk on hand so it will not lose school meal reimbursements); the return of milk before holidays; specific times of delivery (e.g., early morning so as not to conflict with times when students are present); specific access requirements (e.g., providing keys to drivers); allotting credit for retrieved products; cleaning and maintaining coolers; and other requirements.

24. School districts would not switch to alternative products or delivery methods in the event of a small but significant increase in the price of school milk.

25. The manufacture, distribution, and sale of school milk constitutes a relevant product market or line of commerce within the meaning of Section 7 of the Clayton Act.

*VI. The Relevant Geographic Markets*

26. Individual school districts generally solicit bids for school milk, although sometimes groups of school districts solicit bids for school milk for some or all of the school districts in the group. School districts usually decide which dairy to award with a school milk contract on an individual basis (regardless of whether they solicit bids individually or as part of a group). Several school districts belong to a group of school districts that (1) requires its members to solicit bids for school milk only through that group, and (2) requires bidders to submit a uniform bid for all of the districts in the group. Each school district typically requires its school milk supplies to deliver to each school within the school district. School districts vary with respect to how many schools must be served, the distance between the schools, the size of the schools in the school district, and other attributes. Each school district has its own requirements with respect to the frequency of deliveries (typically every day or every other day, because schools generally cannot store more than a limited amount of milk), the time of deliveries, the quantity of deliveries, products included, cooler requirements, and specific or individual service requirements.

27. Due to the high level of service requirements of schools, the high frequency of delivery required, the small volume delivered at each stop, the seasonal nature of the business, and other factors, the viable suppliers of school milk are generally limited to those dairies that already have significant local distribution in the area. Dairies that do not currently have nearby routes are generally not viable suppliers of school milk to such school districts. These factors limit school districts' choice of suppliers.

28. Dairies charge different prices to different school districts or groups of school districts (''price discriminate''), based on, among other things, the number of competing dairies in the area, the strength of competition in these localized school milk markets, and the unique service and other requirements of schools.

29. Accordingly, each school district, or group of school districts that requires its members to use the school milk

supplier who submits a winning bid that is uniform for that entire group, constitutes a relevant geographic market or section of the country within the meaning of Section 7 of the Clayton Act. School districts harmed by the acquisition include those, among others, listed in Attachment A (''Merger-to-Monopoly Markets'') and Attachment B (''Merger-to-Duopoly Markets'').

*VII. Harm to Consumers*

30. Competition between Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) resulted in lower prices and better service for many school milk customers in Kentucky and Tennessee. Southern Belle's competitive presence forced these other dairies to lower their respective bid prices for school milk contracts.

31. Before DFA's acquisition of Southern Belle, school milk markets in Kentucky and Tennessee had very few competitors and thus were already highly concentrated. These markets have become much more concentrated as a result of the acquisition.

32. In many of these markets, Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) are clearly the two dairies able to supply school milk most economically, and would benefit (at the expense of consumers) by acting together at DFA's direction to raise one or both of their bids. Because it shares each dairy's profits, DFA has a financial incentive to encourage, facilitate, or enforce such cooperation. And, with DFA's control or influence over critical business decisions of the dairies, the dairies are likely to cooperate. Reducing the number of independent bidders from two to one in these markets makes it very likely that prices will rise or the level of service will decrease for these districts.

33. In a number of other school districts, Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) are two of only three likely bidders. Reducing the number of independent bidders from three to two in these markets makes it very likely that prices will rise or the level of service will decrease for these districts.

34. The effect of DFA's acquisition of control and influence over Southern Belle is to substantially lessen competition, or to tend to create a monopoly in violation of Section 7 of the Clayton Act.

*VIII. Entry Is Difficult*

35. To maintain its ability to sell school milk, the former owner of Southern Belle told the USDA during debarment proceedings in 1998 that competition would decrease and prices would rise if it could not bid. It said that Southern Belle was an ''important supplier to very small school districts in Kentucky and Tennessee,'' especially in the ''rural districts in the mountains of eastern Kentucky.'' (Letter from Joseph L. Ruby, *Wiley Rein & Fielding*, to Yvette Jackson, *Acting Administrator, Food and Consumer Service, USDA,* Jan. 23, 1998, at 2, copy provided in Attachment C.) It also said that those school districts would be unlikely to find any new school milk entrants to replace the lost competition if it could not bid.

36. Entry by new competitors or expansion by existing dairies in the manufacture, distribution, and sale of school milk will not be timely, likely, or sufficient to defeat any increase in prices or decrease in the level of service in the affected school milk markets. A dairy is unlikely to enter a school milk market, even after a small but significant price increase, unless it already services a substantial number of existing commercial fluid milk customers from its route trucks in the school district. This is true because school milk business is usually used to ''fill out'' a dairy's existing commercial fluid milk route truck business, as schools require the regular (e.g., every day or every other day) delivery of school milk along with a number of important labor-intensive and time-consuming services, which would not be economical but for the existing fluid milk customer accounts. Thus, only dairies with existing straight truck delivery routes in an area can compete efficiently for school milk business in that area. Entry or expansion into the school milk business also requires substantial investment in specialized manufacturing assets and infrastructure, including the high cost of installing a dedicated half pint filler.

37. Neither entry nor expansion prevented Southern Belle and Flav-O-Rich from successfully carrying a decade-long criminal bid rigging conspiracy against many of these same school milk districts. Such long-lasting collusion would not have been possible if higher prices easily attracted new competitors.

*IX. Violations Alleged*

38. DFA's acquisition of Southern Belle through its partially owner Southern Belle subsidiary will likely have the following effects, among others:

a. Competition generally in the manufacture, distribution, and sale of school milk in the relevant geographic markets will be substantially lessened;

b. Actual and potential competition between Southern Belle and Flav-O-Rich (or other dairies in which DFA has financial interests) in the manufacture, distribution, and sale of school milk in the relevant geographic markets will be substantially lessened; and

c. Prices for school milk in the relevant geographic markets will likely increase.

39. DFA's partial acquisition of Southern Belle violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and K.R.S. § 367.110 *et seq.*

*X. Relief Requested*

40. Plaintiffs request that this Court:

a. Adjudge the acquisition of Southern Belle by defendant DFA to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and K.R.S. § 367.110 *et seq.*

b. Compel DFA to divest all of its interests (including common equity, preferred equity, credit interests, raw milk procurement authority, etc.) in Southern Belle, and take any further actions needed to place Southern Belle in the same or comparable competitive position as existed prior to the acquisition;

c. Permanently enjoin and restrain DFA, including any of its subsidiaries or joint ventures, and all persons acting on behalf of any of these entities, from acquiring or maintaining, in whole or part, any simultaneous legal or beneficial interests (including common equity, preferred equity, credit interests, or raw milk procurement authority) in both Southern Belle and Flaw-O-Rich;

d. Compel DFA, including any of its subsidiaries or joint ventures, and all persons acting on behalf of any of these entities, to provide plaintiff United States of America with notification at least 30 calendar days prior to any acquisition, in whole or in part, of any legal or beneficial interests (including common equity, preferred equity, credit interests, or raw milk procurement authority) in any fluid milk processing operation;

e. Allow any school district or school purchasing cooperative to terminate or rescind any contract to supply school milk entered into with defendants on or after February 20, 2002, including but not limited to eliminating any restrictions on or disincentives to terminating or rescinding such contracts and otherwise refunding or returning consideration paid in advance pursuant to such contracts (i.e., making such contracts voidable in the sole discretion of the school districts or purchasing cooperatives);

f. Award plaintiffs the costs of this action; and

g. Award plaintiffs such other and further relief as is proper.

Respectfully submitted,

For Plaintiff United States of America:

R. Hewitt Pate,
*Assistant Attorney General.*

J. Bruce McDonald,
*Deputy Assistant Attorney General.*

Mark J. Botti,
*Chief, Litigation I Section.*

Dated: March 30, 2004.

For Plaintiff Commonwealth of Kentucky:

David R. Vandeventer,
*Assistant Attorney General, Kentucky Bar No. 72790, Office of the Attorney General of Kentucky, 1024 Capital Center Drive, Frankfort, KY 40601, 502–696–5385.*

Dated: March 30, 2004.

John R. Read,
*Assistant Chief, Litigation I Section.*

J.D. Donaldson, Jody A. Boudreault, N. Christopher Hardee, Richard S. Martin, Richard D. Cooke, Ihan Kim,
*U.S. Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, 202–307–0001.*

**ATTACHMENT A—Merger-to-Monopoly Markets**

Adair County, KY
Ashland Independent, KY
Bell County, KY
Berea Independent, KY
Boyd County, KY
Boyle County, KY
Breathitt County, KY
Campbellsville Independent, KY
Casey County, KY
Clay County, KY
Clinton County, KY
Cumberland County, KY
East Bernstadt Independent, KY
Estill County, KY
Fairview Independent, KY
Garrard County, KY
Harlan Independent, KY
Harrodsburg Independent, KY
Hazard Independent, KY
Jackson County, KY
Jenkins Independent, KY
Jessamine County, KY
Laurel County, KY
Lee County, KY
Leslie County, KY
Letcher County, KY
Lincoln County, KY
Madison County, KY
McCreary County, KY
Mercer County, KY
Montgomery County, KY
Oneida Baptist, KY
Owsley County, KY
Perry County, KY
Pineville Independent, KY
Pulaski County, KY
Rockcastle County, KY
Russell County, KY
Science Hill Independent, KY
Somerset Independent, KY
Wayne County, KY
Whitley County, KY
Williamsburg Independent, KY
Wolfe County, KY
Clay County, TN

**ATTACHMENT B—Merger-to-Duopoly Markets**

Allen County, KY
Barbourville Independent, KY
Barren County, KY
Bath County, KY
Butler County, KY
Carter County, KY
Caverna Independent, KY
Corbin Independent, KY
Fayette County (Lexington), KY
Franklin County, KY
Glasgow Independent, KY
Green County, KY
Greenup County, KY
Hart County, KY
Knox County, KY
Larue County, KY
Lawrence County, KY
Logan County, KY
Menifee County, KY
Metcalfe County, KY
Middlesboro Independent, KY
Monticello Independent, KY
Morgan County, KY
Ohio County, KY
Owensboro Independent, KY
Rowan County, KY
Russell Independent, KY
Russellville Independent, KY
Simpson County, KY
Taylor County, KY
Alcoa City, TN
Anderson County, TN
Blount County, TN
Bristol City, TN
Campbell County, TN
Carter County, TN
Clinton City, TN
Cocke County, TN
Elizabethon Independent, TN
Green County, TN
Greenville City, TN
Hawkins County, TN
Hamblen County, TN
Johnson City, TN
Johnson County, TN
Knox County, TN
Macon County, TN
Maryville City, TN
Metro Davidson (Nashville), TN
Rogersville City, TN
Sevier County, TN
Sullivan County, TN
Unicoi County, TN
Union County, TN
Washington County, TN

**ATTACHMENT C**

**WILEY, REIN & FIELDING**

January 23, 1998

*By Messenger*

Ms. Yvette Jackson,
*Acting Administrator, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1008, Alexandria, VA 22302.*

Re: Southern Belle Dairy Company, Notice of Suspension and Debarment

Dear Ms. Jackson: On behalf of the Southern Belle Dairy division of Broughton Foods, Inc. (''Southern Belle''), we would like to supplement the administrative record made at the meeting of January 15, 1998, in connection with certain issues raised at the hearing, and also to propose certain actions to assure that a repeat of the alleged reporting violations will not occur in the future.

Southern Belle desires to supplement the record with the following documentation, which is attached:

*The Termination of Mr. Christian*

At our meeting, Mr. Hallberg expressed interest in reviewing documentation relating to Mr. Christian's probation as of May 1997, leading to his termination for performance reasons. The following documentation is enclosed:

Exh. 1. A May 15, 1997 ''agenda'' for a meeting with Mr. Christian.

Exh. 2. A May 15, 1997 memo by Mr. Christian's superior, Mike Chandler, summarizing a meeting with Mr. Christian at which he was informed of his need to improve performance or face termination, with a review to take place in two months.

*Southern Belle's Contracts Under $100,000*

At our meeting, Ms. Landos sought information concerning the number of school milk contracts under $100,000 that were serviced by Southern Belle. Attached hereto as Exh. 3 are two lists, showing actual 1996–97 and projected 1997–98 sales by school districts.

The lists show that, for 1996–97, Southern Belle serviced 46 districts. Of those, 33 districts had sales under $100,000. Of the 33 districts, 16 had sales under $50,000.

Projected sales for 1997–98 show that Southern Belle is currently servicing 55 districts. Of these, 39 districts are projected to have sales under $100,000. Of the 39 districts, 20 are projected to have sales under $50,000.

These figures reveal that Southern Belle is an important supplier to very small school districts in Kentucky and Tennessee. As the maps we provided show, many of these are rural districts in the mountains of eastern Kentucky. These districts would likely find it difficult to attract alternative suppliers from more distant locations.

It is of equal interest that for two years in a row, Southern Belle has been the low bidder in the Fayatte County district (that is, Lexington, Ky.), which has sales of over $600,000, and attracts multiple bids from competing dairies.

As mentioned above, in addition to supplementing the record with this additional documentation, Southern Belle would like to suggest that it undertake certain changes in its current procedures, which it hopes will prevent the recurrence of any reporting difficulties in the future.

As a preface to doing so, we note that Southern Belle, having been on the verge of bankruptcy and liquidation, is now a strong competitor and often the low bidder for school milk and other government contracts. Southern Belle has been able to continue in business and to attract a merger partner in Broughton Foods, whose purchase of Southern Belle means the continuing presence of a competitive dairy in the

southeastern Kentucky region. The proposed debarment for reporting violations would undermine much of the progress that Southern Belle has made, with FCS's assistance and under its compliance program, over the past few years. It would also unavoidably require the consolidation of routes and the layoffs of many Southern Belle employees. Debarment would therefore hurt the local Somerset, Kentucky economy and would reduce competition for government dairy contracts in the region.

Going forward, to insure that timely and accurate reporting is carried out under the Compliance Agreement, all Southern Belle management will be informed that they are to report actual or suspected misconduct to an Ethics Committee member within 24 hours. Furthermore, the Ethics Committee (which now has two new members from Broughton Foods) will implement new procedures whereby, when a violation is reported, it will convene quickly using telephone and fax, conduct an investigation, and make a timely report.

Finally, it appeared that there was a concern that the minutes of the September 26, 1997 Ethics Committee may not have captured the discussion at that meeting with complete accuracy. It has been the practice to have the minutes of each meeting kept by one member, and not reviewed as a matter of course until the next meeting. To eliminate accuracy concerns in the future, Southern Belle will undertake to have the minutes typed and distributed to all members by the business day following the meeting, so that any omissions can be corrected immediately.

In closing, Southern Belle would like to point out that there are a number of Kentucky state government contracts which are traditionally bid in February, including contracts for parks, universities, state hospitals, and vocational schools. Southern Belle would appreciate the ability to bid on these contracts, and submits that it is in the government's interest to permit Southern Belle to compete for them. We therefore request that, if at all possible, this matter be resolved promptly so that Southern Belle may participate in the bidding for at least some of these contracts.

Very truly yours,

/s/ Joseph L. Ruby

Joseph L. Ruby

cc: Philip Cline, Martin Shearer, Steven Diamond, Esquire.

Exhibit 1

Agenda

Meeting with Steve Christian

May 15, 1997

Items to be discussed:

Company expectations in the following areas,

1. Call on new business:

This should be done on a consistent basis and should be scheduled so that we are not wasting time.

2. Call on existing business:

We need to continue to see existing business but not spend all our time on this effort.

3. Respond to call sheets by routemen:

This need to be followed-up on and results put in writing to the routemen with a copy to Zone Sales Manager.

4. Fill out a customer call sheet daily and send to the Zone Sales Manager.

5. Oversee and have responsibility for Branch operations, this does not mean to stay in the office. Steve can get a daily report from Larry when he is in the office from 3:00–5:00 p.m.

6. Will also be responsible for other duties assigned by the Zone Sales Manager, such as school bids, etc.

Hours of work:

8:00 a.m. to 3:00 p.m.—Mon. through Thurs.—In market

3:00 p.m. to 5:00 p.m.—Mon. through Thurs.—Office

8:00 a.m. to 12:00 p.m.—Friday—In market

12:00 p.m. to 5:00 p.m.—Friday—Office

Exhibit 2

May 15, 1997

Harold Soper and I met with Steve Christian at the Louisville Branch. We reviewed his job description and asked him if there was anything that he could not do, or was unwilling to do. Steve said that he did not want to make sales calls or call on existing business. We stressed that all Branch Managers did this and that it was an important part of his job.

After reviewing the Job Description, we provided Steve with some basic forms to document sales calls and to be filled out by the routemen when they have prospect or need price information.

We discussed with Steve the need to create a better work environment for the routemen as several had complained that they had been mistreated in some way. One routeperson reported that he was not receiving mail communication from Somerset, another said he was being used around the Branch for jobs that were not related to his route.

We stressed to Steve that these matters, as well as others, must be improved. And that if he did not make some improvement during the next two months, he would be fired. I asked Steve if he understood what he was being asked to do, and he said he did.

We made an agreement to meet within two months to review his progress.

/s/ Mike Chandler

Exhibit 3

PROJECTED FROM ACTUAL 8/97–12/97

| School system | Contract No. | 1997–98 Sales |
|---|---|---|
| Adair County Schools | 21627 | 95,893.38 |
| Barbourville City Schools | 22238 | 17,608.30 |
| Bath County Schools | 29192 | 84,831.85 |
| Berea Community Schools | 21352 | 26,750.62 |
| Bowling Green City Schools | 27981 | 122,667.00 |
| Boyle County Schools | 26130 | 37,890.91 |
| Breathitt County Schools | 33238 | 143,257.60 |
| Bristol City (TN) Schools | 34728 | 81,402.62 |
| Burgin City Schools | 26097 | 14,299.24 |
| Campbell County Schools | 29969 | 250,504.95 |
| Clarksville Community (IN) | 34815 | 30,299.82 |
| Corbin City Schools | 24627 | 72,999.58 |
| Cumberland County Schools | 30004 | 41,371.73 |
| Danville City Schools | 25979 | 56,280.46 |
| East Bernstadt School | 21157 | 17,540.36 |
| Estill County Schools | 25799 | 89,665.39 |
| Fayette County Schools | 21100 | 608,675.03 |
| Green County Schools | 26795 | 42,321.70 |
| Greeneville City Schools | 30007 | 44,520.96 |
| Harrodsburg City Schools | 33160 | 31,790.80 |
| Hart County Schools | 28389 | 66,226.97 |
| Hazard Independent Schools | 34848 | 27,636.88 |
| Jackson Independent Schools | 34847 | 14,163.46 |
| Knox County Schools (KY) | 21278 | 183,628.12 |
| Larue County Schools | 29988 | 74,432.16 |
| Lee County Schools | 24621 | 56,578.79 |
| Lexington Private Schools | 15121 | 35,552.81 |

PROJECTED FROM ACTUAL 8/97–12/97—Continued

| School system | Contract No. | 1997–98 Sales |
|---|---|---|
| Lincoln County Schools | 24191 | 164,317.71 |
| Macon County Schools | 23173 | 88,989.91 |
| Madison County Schools | 25545 | 229,139.64 |
| McCreary County Schools | 24237 | 140,930.13 |
| Meade County Schools | 28454 | 153,510.34 |
| Menifee County Schools | 24919 | 32,323.89 |
| Mercer County Schools | 21763 | 52,000.58 |
| Metcalfe County Schools | 28395 | 59,048.89 |
| Monroe County Schools | 26543 | 77,986.33 |
| Monticello City Schools | 21575 | 25,423.20 |
| Montgomery County Schools | 24157 | 132,973.99 |
| Morgan County Schools | 29503 | 103,785.66 |
| Nashville Metro Schools | 23505 | 335,067.84 |
| Pickett County Schools | 26661 | 28,096.62 |
| Pulaski County Schools | 19140 | 294,978.80 |
| Putnam County Schools | 27240 | 221,463.07 |
| Rockcastle County Schools | 21088 | 87,306.99 |
| Rowan County Schools | 28846 | 82,248.66 |
| Russell County Schools | 26382 | 101,533.70 |
| Science Hill School | 29991 | 13,520.93 |
| Simpson County Schools | 33154 | 70,436.38 |
| Somerset City Schools | 13449 | 45,378.31 |
| Taylor County Schools | 26781 | 74,838.52 |
| Van Buren County Schools | 27118 | 26,809.74 |
| Wayne County Schools | 26404 | 89,391.06 |
| West Clark Community (IN) | 32001 | 60,298.90 |
| Whitley County Schools | 32580 | 202,722.31 |
| Williamsburg City Schools | 20425 | 27,033.50 |
| Total | | 5,390,347.09 |

| School system | Contract No. | Actual 1996–97 sales |
|---|---|---|
| Adair County Schools | 21627 | 95,893.38 |
| Bath County Schools | 29192 | 84,831.85 |
| Berea Community Schools | 21352 | 26,750.62 |
| Bourbon County Schools | 23293 | 95,217.02 |
| Boyle County Schools | 26130 | 37,890.91 |
| Burgin City Schools | 26097 | 14,299.24 |
| Campbell County Schools | 29969 | 250,504.95 |
| Caverna Independent Schools | 28461 | 35,597.42 |
| Clinton City Schools | 23381 | 30,363.58 |
| Clinton County Schools | 26260 | 57,222.29 |
| Cumberland County Schools | 30004 | 41,371.73 |
| Danville City Schools | 25979 | 56,280.46 |
| East Bernstadt School | 21157 | 17,540.36 |
| Estill County Schools | 25799 | 89,665.39 |
| Fayette County Schools | 21100 | 608,675.03 |
| Garrard County Schools | 24200 | 78,654.92 |
| Greeneville City Schools | 30007 | 44,520.96 |
| Hardin County Schools | 33249 | 367,140.54 |
| Harrodsburg City Schools | 33160 | 31,790.80 |
| Hart County Schools | 28389 | 66,226.97 |
| Knox County Schools (KY) | 21278 | 183,628.12 |
| Lee County Schools | 24621 | 56,578.79 |
| Lexington Private Schools | 15121 | 35,552.81 |
| Lincoln County Schools | 24191 | 164,317.71 |
| Macon County Schools | 23173 | 88,989.91 |
| Madison County Schools | 25545 | 229,139.64 |
| McCreary County Schools | 24237 | 140,930.13 |
| Menifee County Schools | 24919 | 32,323.89 |
| Mercer County Schools | 21763 | 52,000.58 |
| Metcalfe County Schools | 28395 | 59,048.89 |
| Monroe County Schools | 26543 | 77,986.33 |
| Monticello City Schools | 21575 | 25,423.20 |
| Montgomery County Schools | 24157 | 132,973.99 |
| Morgan County Schools | 29503 | 103,785.66 |
| Pickett County Schools | 26661 | 28,096.62 |
| Powell County Schools | 31815 | 91,315.15 |
| Pulaski County Schools | 19140 | 294,978.80 |

| School system | Contract No. | Actual 1996–97 sales |
|---|---|---|
| Putnam County Schools | 27240 | 221,463.07 |
| Rockcastle County Schools | 21088 | 87,306.99 |
| Russell County Schools | 26382 | 101,533.70 |
| Science Hill School | 29992 | 13,520.93 |
| Simpson County Schools | 33154 | 70,436.38 |
| Somerset City Schools | 13449 | 45,378.31 |
| Van Buren County Schools | 27118 | 26,809.74 |
| Wayne County Schools | 26404 | 89,391.06 |
| Whitley County Schools | 32580 | 202,722.31 |
| Total | | 4,786,071.13 |

**United States District Court, Eastern District of Kentucky, London Division**

*United States of America, et al., Plaintiffs,* v. *Dairy Farmers of America, Inc., Defendant*

Civil Action No.: 6:03–206–KSF

**Final Judgment**

*Whereas,* plaintiffs, the United States of America and the Commonwealth of Kentucky, and defendant Dairy Farmers of America, Inc. (''DFA''), by their respective attorneys, have consented to the entry of this Final Judgment without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And whereas,* the United States of American and the Commonwealth of Kentucky have concluded, after due investigation and careful consideration of the relevant circumstances, including the claims asserted in the Amended Complaint, and the legal and factual defenses thereto, that the public interest is served by entering into a Stipulation, to avoid the uncertainties of litigation and to assure that the benefits of this Final Judgment are obtained;

*And whereas,* DFA agrees that venue and jurisdiction are proper in this Court;

*And whereas,* DFA agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas,* the essence of this Final Judgment is the prompt and certain divestiture of the Divestiture Assets by DFA;

*And whereas,* DFA, despite its belief that it has good defenses to the claims asserted against it in the Amended Complaint, has nevertheless agreed to enter into this Final Judgment to avoid further expense, inconvenience, the uncertainties of litigation, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the United States of America and the Commonwealth of Kentucky;

*And whereas,* DFA, the United States of America, and the Commonwealth of Kentucky desire to resolve disputes between them concerning DFA's acquisition of a partial interest in Southern Belle Dairy Co., LLC, without further Court proceedings except as set out below;

*And whereas,* DFA has entered into a written agreement with AFLP to facilitate the resolution of this matter;

*And whereas,* DFA has represented to the United States that the divestitures required below can and will be made and that DFA will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now therefore,* before any testimony is taken, without trail or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

*I. Jurisdiction*

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against DFA under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and under the provisions of K.R.S.§ 367.110 et seq., but, by virtue of this Final Judgment, DFA has not and does not admit either the allegations set forth in the Complaint or any liability or wrongdoing.

*II. Definitions*

As used in this Final Judgment:

A. ''Acquirer'' means the entity or entities to whom DFA or the trustee divest the Divestiture Assets.

B. ''AFLP'' means the Allen Family Limited Partnership, managed by Robert Allen.

C. ''DFA'' means Dairy Farmers of America, Inc., a Kansas corporation with its headquarters in Kansas City, Missouri, its successors and assigns, its subsidiaries and divisions, and their directors, officers, managers, agents, and employees.

D. ''Divestiture Assets'' means any and all of DFA's interests in the Southern Belle Dairy including DFA's Series A Preferred Capital Interest and Series B Preferred Capital Interest, and any and all lines of credit or other loans that Mid-Am has extended to the Southern Belle Dairy, and any interest in the Southern Belle Dairy acquired from AFLP.

E. ''Mid-Am'' means Mid-Am Capital LLC, a subsidiary of DFA and a Delaware limited liability company with its headquarters in Kansas City, Missouri, its successors and assigns, its subsidiaries and divisions, and their directors, officers, managers, agents, and employees.

F. ''Southern Belle Dairy'' means the Southern Belle Dairy Co., LLC, a Delaware limited liability company that owns and operates a milk processing plant located in Pulaski County, Kentucky, and all related assets, including all rights and interests in it, including all property and contract rights, all existing inventory, accounts receivable, pertinent correspondence and files, customer lists, all related customer information, advertising materials, contracts or other relationships with suppliers, customers and distributors, any rights, contracts and licenses involving intellectual property, trademarks, tradenames or brands, computers and other physical assets and equipment used for production at, distribution from, or associated with, that plant or any of its distribution branches and locations.

G. ''Stipulation'' means the Stipulation signed by the United States, the Commonwealth of Kentucky, and DFA in this matter.

*III. Applicability*

A. This Final Judgment applies to DFA, as defined above, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. DFA shall require, as a condition of the sale or other disposition of all or substantially all of DFA's assets or of lesser business units that include the Divestiture Assets, that the purchaser

agrees to be bound by the provisions of this Final Judgment. DFA need not, however, obtain such an agreement from the Acquirer of the Divestiture Assets.

*IV. Divestitures*

A. DFA is ordered and directed within five days after notice of the entry of this Final Judgment by the Court, to divest the Divestiture Assess in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Kentucky. The United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, may agree to an extension of this time period for any divestiture of up to thirty additional calendar days. DFA agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. DFA shall also use commercially reasonable efforts to cause AFLP to divest its interests in the Southern Belle Dairy to an acquirer acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Kentucky.

C. In accomplishing the divestitures ordered by this Final Judgment, DFA promptly shall make known to one or more potential purchasers the availability of the Divestiture Assets. DFA shall inform any potentially qualified purchaser making inquiry regarding a possible purchase of the Divestiture Assets that such assets are being offered for sale.

D. DFA shall use commercially reasonable efforts to cause to be furnished to all prospective Acquirers, subject to the customary confidentiality assurances, all information and documents relating to the Divestiture Assets and the Southern Belle Dairy customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. DFA shall make available such information to the United States and the Commonwealth of Kentucky at the same time that such information is made available to any other person.

E. DFA shall use commercially reasonable efforts to obtain permission for prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Southern Belle Dairy; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. DFA shall use commercially reasonable efforts to cause to be provided to the Acquirer and the United States information relating to the personnel involved in the operation of the Southern Belle Dairy to enable the Acquirer to make offers of employment. DFA shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing, or distribution of products from the Southern Belle Dairy.

G. DFA shall not take any action that will impede in any way the operation of the Southern Belle Dairy of the divestiture of the Divestiture Assets.

H. Unless the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, otherwise consents in writing, the divestiture pursuant to the Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that the Southern Belle Dairy will be a viable, ongoing dairy. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment.

(1) Shall be made to an Acquirer that, in the United States' sole judgment, after consultation with the Commonwealth of Kentucky, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in school and fluid milk markets in Kentucky and Tennessee; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that none of the terms of any agreement between an Acquirer and DFA give DFA the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

*V. Appointment of Trustee*

A. If DFA has not divested the Divestiture Assets within the time period specified in Section IV(A), DFA shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States (after consultation with the Commonwealth of Kentucky) at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of DFA any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. DFA shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by DFA must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of DFA, on such terms and conditions as the United States approves, after consultation with the Commonwealth of Kentucky, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to DFA and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. DFA shall use its best efforts to assist the trustee in accomplishing the required divestiture. While the trustee shall have the right to sell the Divestiture Assets, DFA shall use commercially reasonable efforts to cause AFLP to divest its interests in the Southern Belle Dairy to an acquirer acceptable to the United States in its sole discretion, after consultation with the commonwealth of Kentucky. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and DFA shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for

trade secret or other confidential research, development, or commercial information. DFA shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States, the Commonwealth of Kentucky, DFA, and the court setting forth the trustee's efforts to accomplish the divestiture ordered under this final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court and DFA's copy of the reports shall have such confidential information redacted. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States and the Commonwealth of Kentucky who shall have the right to make additional recommendations consistent with the purpose of the trust. The trustee shall at the same time furnish the report to DFA, but with all confidential information redacted. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period required by the United States.

H. If necessary in the trustee's judgment to divest the Divestiture Assets, DFA shall use its best efforts to assist the trustee in dissolving the Southern Belle Dairy under Delaware Statute 6 Del. C. § 18–802, or such other applicable statutes and laws.

*VI. Notice of Proposed Divestitures*

A. Within two business days following execution of definitive divestiture agreement, DFA or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the Commonwealth of Kentucky of the proposed divestiture required by Sections IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify DFA. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen calendar days of receipt by the United States of such notice, the United States may request from DFA, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. DFA and the trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States has been provided the additional information requested from DFA, the proposed Acquirer, and third party, and the trustee, whichever is later, the United States shall provide written notice to DFA and the trustee is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to DFA's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Sections IV or Section V shall not be consummated. Upon objection by DFA under Section V(C), the divestiture proposed under Section V shall not be consummated unless approved by the Court.

*VII. Financing*

DFA shall not finance all or any part of any purchase made pursuant to Section IV or V or this Final Judgment.

*VIII. Supply Contracts*

DFA shall not require the Acquirer to enter into a supply contract for raw milk with DFA as a condition for the sale of the Divestiture Assets.

*IX. Affidavits*

A. Within twenty calendar days of DFA's signing the Stipulation, and every thirty calendar days thereafter until the divestiture has been completed under Sections IV or V, DFA shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts DFA has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by DFA, including limitation on information, shall be made within fourteen calendar days of receipt of such affidavit.

B. Within twenty calendar days of DFA's signing the Stipulation, DFA shall deliver to the United States an affidavit that describes in reasonable detail all actions DFA has taken and all steps DFA has implemented on an ongoing basis to comply with the Stipulation. DFA shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in DFA's earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. DFA shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

*X. Compliance Inspection*

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Untied States Department of Justice or the Commonwealth of Kentucky, including consultants and other persons retained by either of them, shall, upon written request of a duly authorized

representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for Kentucky, and on reasonable notice to DFA, be permitted:

Access during DFA's office hours to inspect and copy, or at plaintiffs' option, to require DFA provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of DFA, relating to any matters contained in this Final Judgment; and

To interview, either informally or on the record, DFA's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by DFA.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for Kentucky, DFA shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States or the Commonwealth of Kentucky to any person other than an authorized representative of the executive branch of the United States or the Commonwealth of Kentucky, except in the course of legal proceedings to which at least one of the plaintiffs is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by DFA to the plaintiffs, DFA represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and DFA marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the plaintiffs shall give DFA ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

*XI. Reacquisition of the Divestiture Assets*

Other than acquiring AFLP's interests in the Southern Belle Dairy for resale to the Acquirer, DFA may not directly or indirectly reacquire in whole or in part the Divestiture Assets or any interest in the Southern Belle Dairy during the term of this Final Judgment without the prior written approval of the United States. Unless the United States otherwise agrees in writing, DFA will urge any partnership, joint venture, limited liability company, or other firm in which it has an equity interest, not to acquire the Divestiture Assets or any interest in Southern Belle Dairy during the term of this Final Judgment; such urging shall include, among other things, voting its interest, if applicable, against such an acquisition.

*XII. Retention of Jurisdiction*

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

*XIII. Expiration of Final Judgment*

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

*XIV. Public Interest Determination*

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

FILED ELECTRONICALLY

**United States District Court, Eastern District of Kentucky, London Division**

*United States of America, et al. Plaintiffs,* v. *Dairy Farmers of America, Inc., et al., Defendants*

Civil Action No.: 6:03–206–KSF

**Competitive Impact Statement**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), plaintiff United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of This Proceeding*

The United States and the Commonwealth of Kentucky (collectively, the ''government'') filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on April 24, 2003, alleging that the acquisition by Dairy Farmers of America, Inc. (''DFA'') of its interest in Southern Belle Dairy Co., LLC (''Southern Belle'') violated Section 7 of the Clayton Act (''Section 7''), 15 U.S.C. 18.[1] An Amended Complaint was filed on May 6, 2004.

The Amended Complaint alleged that the acquisition may substantially lessen competition for the sale of milk sold to schools in one hundred school districts in eastern Kentucky and Tennessee. On August 31, 2004, the District Court granted summary judgment to DFA and Southern Belle. The government appealed, and on October 25, 2005, the Court of Appeals reversed the grant of summary judgment as to DFA and remanded the case for trial. The Court of Appeals affirmed the dismissal of Southern Belle, leaving DFA as the only defendant. *See United States* v. *Dairy Farmers of America*, 426 F.3d 850 (6th Cir. 2005).

On October 2, 2006, the United States filed a proposed Final Judgment that requires DFA to divest its interest in Southern Belle and use its best efforts to require its partner, the Allen Family Limited Partnership (''AFLP''), to also divest its interest in Southern Belle. DFA has proposed divesting its interest and AFLP's interest in Southern Belle to Prairie Farms Dairy, Inc. (''Prairie Farms''), and the government has approved Prairie Farms as a suitable buyer of DFA's and AFLP's interest in Southern Belle. The proposed Final Judgement is designed to eliminate the anticompetitive effects of the acquisition alleged in the Amended Complaint.

The government and DFA have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

*II. The Alleged Violations*

A. The Defendants

Dairy Farmers of America (''DFA'') is a Kansas milk marketing cooperative with its headquarters and principal place of business in Kansas City, Missouri. DFA is the largest dairy cooperative in the world. DFA sells raw milk in interstate commerce. In 2005, DFA had 20,000 members in 49 states, marketed 59.7 billion pounds of raw

[1] The Commonwealth of Kentucky joined this lawsuit under 15 U.S.C. 26, and also sought relief pursuant to the provisions of K.R.S. § 367.110, *et seq.*

milk in the United States, and had over $8.9 billion in revenues.

Southern Belle Dairy Co., LLC (''Southern Belle'') owns the Southern Belle dairy processing plant. Southern Belle is a Delaware limited liability company with its headquarters and principal place of business in Somerset, Kentucky. Southern Belle processed approximately 25 million gallons of raw milk in 2001 and had annual revenues of approximately $65 million that year. Southern Belle sells fluid milk in interstate commerce, including milk to school districts in Kentucky and Tennessee.

B. The Acquisition

Southern Belle was formed by DFA on February 20, 2002. It acquired the assets of the Southern Belle dairy plant on February 25, 2002. On February 26, 2002, DFA's joint venture partner AFLP acquired 50 percent of Southern Belle. The purchase price of the Southern Belle dairy plant was approximately $18.7 million: $2 million in common equity; $4 million in preferred equity; and the rest paid through of a line of credit. DFA and AFLP each contributed $1 million in exchange for each receiving 50 percent of the common interests in Southern Belle. A subsidiary of DFA contributed $4 million in exchange for preferred equity interests and extended to Southern Belle the line of credit used to finance the remaining $12.7 million of the purchase price.

C. Anticompetitive Effects of the Acquisition

The Amended Complaint alleged that the manufacture, distribution, and sale of school milk constitutes a relevant product market. Milk is a product that has special nutritional characteristics and no practical substitutes. Dairies sell milk to schools with special services, including storage coolers, daily or every-other-day delivery to each school, constant rotation of old milk, and replacement of expired milk. Moreover, school districts must provide milk in order to receive substantial funds under Federal school meal subsidy programs. There are no other products that school districts would substitute for school milk in the event of a small but significant price increase.

The Amended Complaint alleged that the relevant geographic markets in which to assess the competitive effects of the acquisition are the school districts in eastern Kentucky and Tennessee identified in Attachments A and B of the Amended Complaint, either as individual districts or, where applicable, as groups of districts that solicit school milk bids together.[2] As a practical matter, these school districts are unable to turn to additional school milk suppliers, who would not bid for their school milk contracts even if the price of school milk were to increase by a small but significant amount.

The Amended Complaint alleged that DFA's acquisition of its interest in Southern Belle would lessen competition substantially in the sale of school milk in each of the school districts identified in the Amended complaint. These districts receive school milk bids from Southern Belle and dairies operated by National Dairy Holdings, LP (''NDH''), a dairy holding company also 50 percent-owned by DFA. Some affected districts and groups of districts also receive bids from a third supplier. One of the NDH-operated dairies that serves the affected school districts is the Flav-O-Rich dairy, located in London, Kentucky, only 30 miles from the Southern Belle plant in Somerset, Kentucky. The transaction lessened competition for school districts receiving milk contract bids from both Southern Belle and NDH because, as a result of the transaction, both Southern Belle and NDH were 50 percent-owned by DFA. Since any contracts won by Southern Belle from NDH, or vice versa, through aggressive bidding would likely reduce DFA's profits, reduced competition between Southern Belle and NDH is in DFA's interest.

In 45 of the school districts listed in the Amended Complaint, the effect of the acquisition has been to establish a monopoly, with only Southern Belle and Flav-O-Rich (or another NDH dairy) as possible milk suppliers. In these districts, the acquisition would give DFA the incentive and ability to encourage, facilitate, or enforce cooperation between Southern Belle and NDH to raise prices or decrease the level or quality of service provided to these school districts. In 55 school districts listed in the Amended Complaint, the acquisition has reduced the number of independent competitors from three to two, making it likely that the remaining bidders will bid less aggressively against each other.

The Amended complaint also alleged that entry into the affected markets by other dairies or distributors would not be timely, likely, or sufficient to deter the anticompetitive effects caused by the acquisition. Dairies or distributors not currently competing in the affected markets would be unlikely to start bidding as a result of a small but significant increase in school milk prices. This is supported by the lack of new entry into these markets when competition between Southern Belle and Flav-O-Rich has been reduced. First, in the 1980s, these two dairies rigged bids for school milk contracts for many of the school districts affected by the acquisition. Despite an increase in school milk prices, new entry did not occur in these markets to undermine the bid-rigging conspiracy, which lasted for over ten years. Second, competition between Southern Belle and Flav-O-Rich was eliminated in some districts when Southern Belle was suspended from bidding on certain school milk contracts from 1998 to 2000 by the U.S. Department of Agriculture for violating provisions of an antitrust compliance program. Again, for those districts affected by the loss of Southern Belle as a bidder for school milk contracts, relative prices for school milk rose and new entry did not occur to return prices to a competitive level.

For all of these reasons, the government concluded that the transaction would substantially lessen competition in the sale of school milk in the school districts in Kentucky and Tennessee identified in the Amended Complaint, by increasing prices and/or reducing quality, all in violation of Section 7 of the Clayton Act. Indeed, the government found evidence that, after the transaction, bids to districts where Southern Belle and Flav-O-Rich were the only bidders were higher than bids received by other districts with only two bidders, though this was not true before the transaction.

*III. Explanation of the Proposed Final Judgment*

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects identified in the Amended Complaint by requiring DFA to divest its interest in Southern Belle. In addition, the proposed Final Judgment requires DFA to use commercially reasonable efforts to cause AFLP to divest its interest in Southern Belle. The proposed Final Judgment requires the United States, in consultation with the Commonwealth of Kentucky, to approve any buyer of DFA's and AFLP's interests in Southern Belle. The divestitures must be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that Southern Belle will be a viable, ongoing dairy business capable to competing effectively in the sale of school and fluid milk in Kentucky and Tennessee.

[2] These groups of school districts require bidders to charge the same price to the entire group, require successful bidders to serve all of group's districts at the same price, and require the group's members to accept the group bid.

The effect of these divestitures would be to restore competition between Southern Belle and NDH, with the divestiture of AFLP's interest allowing a buyer of Southern Belle to acquire the entire dairy as a going concern, rather than as a 50 percent owner in conjunction with AFLP. During the divestiture process, DFA is prohibited from taking any steps to degrade the operations of Southern Belle, and the entire Southern Belle dairy business is to be sold through the divestiture, instead of piecemeal, so it can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant markets. In addition, DFA is not permitted to finance any part of a purchaser's acquisition of the Southern Belle dairy and is prohibited from requiring the purchaser to enter into a raw milk supply contract with DFA as a condition of the divestiture.

The government and DFA reached agreement on the terms of the proposed Final Judgment and signed the Stipulation on May 15, 2006. That same day, DFA and AFLP executed an option agreement giving DFA the ability to purchase AFLP's ownership interest in Southern Belle. This option agreement allows DFA to sell the dairy in its entirety rather than just DFA's partial ownership interest in the dairy. Not only would a complete transfer of Southern Belle to a new owner eliminate the government's concerns about DFA's ownership interests in both Southern Belle and Flav-O-Rich, the divestitures also eliminate the possibility of anticompetitive effects as a result of DFA's ability to influence AFLP, its long-time business partner.

In exchange for DFA's agreement to divest its interest in Southern Belle and use its best efforts to have AFLP do the same, and so that DFA could find a buyer for the dairy, the government agreed in a letter agreement with DFA dated May 15, 2006, not to file the Stipulation and proposed Final Judgment until the earlier of 120 days after signing the Stipulation, or DFA gave notice that it executed an agreement with a buyer. A copy of this letter agreement is provided as Exhibit A to this Competitive Impact Statement. If DFA was not able to find a buyer for Southern Belle after 120 days had elapsed, DFA agreed that the government could file the Stipulation and proposed Final Judgment.

If a buyer for Southern Belle were not found by five days after DFA receives notice of the entry of the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. The proposed Final Judgment allows the United States to delay the appointment of the trustee for thirty days. If a trustee is appointed, the proposed Final Judgment provides that DFA will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestitures required by the proposed Final Judgment eliminate the harm to competition identified in the Amended Complaint by making Southern Belle completely independent from DFA and NDH, including the Flav-O-Rich dairy. Prairie Farms' purchase of Southern Belle accomplishes this goal of the proposed Final Judgment. Prairie Farms will be purchasing Southern Belle as a complete going concern, including the plant in Somerset, Kentucky, distribution facilities, equipment, and trademarks. The government believes that Prairie Farms can capably operate and manage Southern Belle, as it already owns and operates several dairy processing plants. The government believes that Southern Belle will continue to bid on school milk contracts under Prairie Farms' ownership, including against Flav-O-Rich and other NDH dairies. The divestiture of DFA's and AFLP's interests in Southern Belle to Prairie Farms has allowed the government to secure relief more quickly than if the matter had gone to trial. In addition, this relief is equal to, and probably exceeds, the relief that the government could have obtained after a victory at trial.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against DFA or Southern Belle.

*V. Procedures Available for Modification of the Proposed Final Judgment*

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement is published in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H St. NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

*VI. Alternatives to the Proposed Final Judgment*

The government considered, as an alternative to the proposed Final Judgment, a full trial on the merits of the Amended Complaint against DFA, continuing the litigation and seeking the divestiture of DFA's interest in Southern Belle and other injunctive relief requested in the Amended Complaint. The government is satisfied, however, that the divestitures and other relief

contained in the proposed Final Judgment will preserve competition in the relevant markets alleged in the Amended Complaint. The government believes that by requiring DFA to divest its interest in Southern Belle, as well as using its best efforts to have AFLP simultaneously divest its interest in the remaining 50 percent of the dairy, the relief obtained in the proposed Final Judgment has allowed the government to secure relief more quickly than if the matter had gone to trial. In addition, the relief is equal to, and probably exceeds, the relief that the government could have obtained after a victory at trial.

*VII. Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60)-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgement is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) and (B) [3] As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[4] In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1985)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Amended Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-American Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

*VIII. Determinative Documents*

In formulating the proposed Final Judgment, the United States considered DFA's agreement with AFLP, dated May 15, 2006, giving DFA the option to purchase AFLP's interest in Southern Belle. This agreement, a determinative document as described in Section 2(b) of the APPA, 15 U.S.C. 16(b), is available for public inspection at the office of the Department of Justice in Washington, DC, Room 200, 325 Seventh Street, NW., and at the office of

[3] In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. *Compare* 15 U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). On the points discussed herein, the 2004 amendments did not alter the substance of the Tunney Act, and the pre-2004 precedents cited below remain applicable.

[4] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (d. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

the Clerk of the United States District Court for the Eastern District of Kentucky, London, Kentucky, as Exhibit B to this Competitive Impact Statement.

Dated: October 2, 2006.

Respectfully Submitted,

Jon B. Jacobs, Richard Martin, N. Christopher Hardee, Richard D. Cooke, Ihan Kim,
*Attorneys, Litigation I Section, Antitrust Division, United States Department of Justice, City Center Building, 1401 H. Street NW., Suite 4000, Washington, DC 20530. Telephone: 202–307–0001. Facsimile: 202–307–5802. E-mail: ihan.kim@usdoj.gov.*

**Certificate of Service**

This certifies that I caused a true and correct copy of the foregoing Competitive Impact Statement to be served on October 2, 2006, in the manner indicated:

David A. Owen, Esq., Greenebaum Doll & McDonald, PLLC, 300 West Vine Street—Suite 1100, Lexington, KY 40507, Counsel for Dairy Farmers of America, Inc. (via e-mail and first-class mail).

W. Todd Miller, Esq., Baker & Miller, PLLC, 2401 Pennsylvania Ave., Suite 300, Washington, DC 20037, Counsel for Dairy Farmers of America, Inc. (via e-mail and first-class mail).

John M. Famularo, Esq., Stites & Harbison PLLC, 250 West Main Street, Suite 2300, Lexington, Kentucky 40507, Counsel for Dean Foods Company (via e-mail and first-class mail).

John L. Fleischaker, Esq., R. Kenyon Meyer, Esq., Jeremy S. Rogers, Esq., Dinsmore & Shohl LLP, 1400 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202, Counsel for Chicago Tribune Company (via e-mail and first-class mail).

Charles E. Shivel, Jr., Esq., Stoll Keenon Ogden PLLC, 300 West Vine Street—Suite 2100, Lexington, KY 40507, Counsel for Southern Belle Dairy Co., LLC (via e-mail and first-class mail).

J. Jackson Eaton, III, Esq., Gross, McGinley, LaBarre & Eaton, LLP, P.O. Box 4600—33 South Seventh Street, Allentown, PA 18105, Counsel for Southern Belle Dairy Co., LLC (via e-mail and first-class mail).

Maryellen B. Mynear, Esq., Office of the Kentucky Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, KY 40601, Counsel for Commonwealth of Kentucky (via e-mail and first-class mail).

/s/ Ihan Kim,
*Attorney for Plaintiff, United States of America.*

**Exhibit A—Letter Agreement Between the United States, Commonwealth of Kentucky, and Dairy Farmers of America, Inc.**

**U.S. Department of Justice**

Antitrust Division

May 15, 2006

*Via Hand Delivery*

W. Todd Miller, Esq.,
*Baker & Miller, PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 2005*

*Re: United States of America, et al.* v. *Dairy Farmers of America, et al.*

Dear Todd: This letter sets forth the agreement among the Department of Justice (''the Department''), the Commonwealth of Kentucky (''the Commonwealth''), and Diary Farmers of America, Inc. (''DFA'') regarding the Stipulation and proposed Final Judgment in this matter. Except as discussed below, the Department and the Commonwealth agree not to file the Stipulation and proposed Final Judgment with the Court until the earlier of (1) 120 calendar days after DFA's signing of the Stipulation or (2) the day after DFA gives notice to the United States and the Commonwealth pursuant to Section VI.A of the proposed Final Judgment that DFA has executed a divestiture agreement with a proposed Acquirer of the Divestiture Assets. During this period, however, the Department and the Commonwealth reserve the right to file the Stipulation and proposed Final Judgment with the Court under seal should they, in their sole discretion, determine after giving 15 days written notice of its reasons to DFA that DFA is not complying with the terms of the Stipulation and proposed Final Judgment. The Department will exercise its sole discretion under this letter agreement and the Final Judgment in good faith in light of the relevant facts, law, and public policy.

Beginning immediately with DFA's signing of the Stipulation, DFA must comply with all obligations and prohibitions set forth in the Stipulation and proposed Final Judgment including keeping the Department and the Commonwealth informed as to DFA's actions seeking an Acquirer.

If this accurately sets forth the agreement among the Department, the Commonwealth and DFA, please execute a copy of this letter on behalf of DFA and return the copy to me.

Sincerely,

Mark J. Botti,
*For the United States Department of Justice.*

Maryellen B. Mynear,
*For the Commonwealth of Kentucky.*

Agreed:

W. Todd Miller,
*Counsel for Dairy Farmers of America, Inc.*

Date: May 15, 2006

cc. David A. Owen.

**Exhibit B—Determinative Document Pursuant to 15 U.S.C. 16(b): Option Agreement Between Dairy Farmers of America, Inc. and Allen Family Limited Partnership**

**Redacted**

*Public Version*

Option Agreement

This OPTION AGREEMENT is dated and made effective as of the 15th day of May, 2006, among DAIRY FARMERS OF AMERICA, INC., a Kansas cooperative marketing association (''DFA''), and ALLEN FAMILY LIMITED PARTNERSHIP, a Pennsylvania limited partnership (''AFLP'').

*Recitals*

*WHEREAS,* AFLP is the owner of one hundred percent (100%) of the common member interest (''AFLP Interests'') of Southern Belle Dairy Co., LLC, a Delaware limited liability company (''Southern Belle''); and

*WHEREAS,* DFA is or will become the owner of the [REDACTED] of Series A Preferred Capital Interest and the [REDACTED] of Series B Preferred Capital Interest in Southern Belle, plus all lines of credit or other loans from Mid-Am Capital, L.L.C., (''DFA Interests''); and

*WHEREAS,* DFA is a defendant in an action filed by the United States of America through its Department of Justice (''DOJ'') and by the Commonwealth of Kentucky and pending in the United States District Court for the Eastern District of Kentucky originally titled *United States of America and the Commonwealth of Kentucky* v. *Dairy Farmers of America, Inc. and Southern Belle Dairy Co., LLC,* Civil Action No. 6:03–cv–206–KSF (the ''DOJ Litigation'');

*WHEREAS,* DFA and AFLP have been in discussions regarding the possibility of entering into a purchase agreement (''Purchase Agreement'') relating to all of the AFLP Interests, subject to and conditioned on (i) full and final settlement of the DOJ Litigation and (ii) DFA's ability and the DOJ's acceptance and/or acquiescence to DFA concurrently entering into a definitive purchase agreement relating to the sale of the DFA and AFLP Interests and/or the sale of all or substantially all of the operational assets of Southern Belle Dairy (''Assets'') with a third-party purchaser (''Acquirer''), pursuant to which an Acquirer would purchase both the DFA and the AFLP Interests and/or the Assets from DFA (the ''Acquisition Agreement''); and

*WHEREAS,* in furtherance of the discussions and as a condition precedent to the DFA's obligation to purchase the AFLP Interests from AFLP, and for the additional consideration set forth herein, the AFLP desires to grant, and herein does grant, to DFA an option to purchase the AFLP interests according to the terms and subject to the conditions set forth in this Agreement.

*NOW, THEREFORE,* in consideration of the premises herein and the representations, warranties, covenants and agreements contained herein, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. *Grant of Option.* AFLP hereby grants to DFA an unconditional, irrevocable option (the ''Option'') to purchase, subject to the terms and conditions hereof, the AFLP Interests for the total sum of [REDACTED] (''Purchase Price'') payable in cash at the time of closing. The Option shall terminate upon the earliest to occur of: (i) the written mutual agreement of DFA and AFLP to terminate the Option; or (ii) the delivery of at least ten (10) days prior written notice from DFA to AFLP that DFA has decided to terminate the Option. The Option may only be exercised during the period from the date hereof through the first date to occur of clause (i) or (ii) of the immediately preceding sentence (the ''Option Period'').

2. *Option Grant Payment.* Upon the execution of this Option Agreement by the parties hereto, DFA shall remit to AFLP the amount of One Thousand Dollars ($1,000) and other good and valuable consideration,

the receipt of which is hereby acknowledged by AFLP for the grant of the Option by AFLP pursuant to this Agreement.

3. *Exercise of Option by DFA.*

(a) DFA shall exercise the Option for the AFLP Interests, but only upon (i) full and final settlement of the DOJ Litigation and (ii) DFA's ability and DOJ's acceptance and/or acquiescence to DFA concurrently entering into a definitive Acquisition Agreement relating to the sale of the AFLP and DFA Interests and/or the sale of all or substantially all of the Assets with an Acquirer during the Option Period. The Option may not be exercised in part, but may only be exercised for all of the AFLP Interests subject to this Agreement and as set forth in the Purchase Agreement.

(b) At the closing (''Closing''), DFA shall pay to AFLP the Purchase Price by wire transfer of immediately available funds to an account designated by such AFLP or by delivery of a certified check to the AFLP address listed on the signature page to this Agreement.

At the Closing, and upon confirmation of the satisfaction of the conditions set forth in Section 3(a)(i) and (ii) above, simultaneously with the payment of the Purchase Price as provided for hereinabove, (i) DFA will execute the Acquisition Agreement pursuant to terms and conditions mutually agreed between DFA and such Acquirer.

4. *Conditions Precedent to Closing by DFA.* AFLP, as manager of Southern Belle Dairy, LLC, hereby represents and warrants to DFA as follows:

(a) AFLP shall offer to furnish to all prospective Acquirers from DFA, subject to customary confidentiality assurances, all information and documents relating to the AFLP Interests or Assets of the Southern Belle Dairy provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. AFLP shall make available such information to the United States and the Commonwealth of Kentucky at the same time that such information is made available to any such prospective Acquirer.

(b) AFLP shall permit prospective Acquirers from DFA of the AFLP Interests and/or the Assets to have reasonable access to personnel and make inspections of the physical facilities of the Southern Belle Dairy; access to any and all environmental, zoning and other permit documents and information; and access to any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

(c) AFLP shall provide the Acquirer from DFA and the United States information relating to the personnel involved in the operation of the Southern Belle Dairy to enable the Acquirer to make offers of employment. AFLP shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing or distribution of products from the Southern Belle Dairy.

(d) AFLP shall not take any action that will impede in any way the operation of the Southern Belle Dairy or the divestiture of the AFLP and DFA Interests and/or the Assets by DFA.

(e) AFLP shall not change the authorized or issued AFLP or DFA Interests or grant any option or right to purchase such Interests other than as set forth herein.

(f) AFLP shall not amend the organizational document of Southern Belle.

(g) AFLP shall not damage or cause the loss of any material customer, asset or property of Southern Belle Dairy.

(h) AFLP shall not incur any indebtedness or borrow money in excess of Three Hundred Thousand Dollars ($300,000).

(i) AFLP shall not cause a material change in the accounting methods used by Southern Belle Dairy.

(j) AFLP shall not enter into a sale or transfer of any of the assets of Southern Belle Dairy except in the ordinary course of business.

(k) AFLP shall not enter into any contract or agreement to do any of the foregoing.

5. *Representations, Warranties and Covenants of AFLP.*

(a) AFLP hereby represents and warrants to DFA the following: (i) AFLP has sole and exclusive record title to and ownership of the AFLP Interests that are the subject of this Agreement; (ii) the AFLP Interests are free and clear of any liens, restrictions, claims, charges, options, rights of first refusal or encumbrances, with no defects of title whatsover, except as provided in the Second Amended and Restated Limited Liability Company Agreement of Southern Belle Dairy Co., LLC; (iii) with respect to any AFLP Interests which were acquired by gift or inheritance, all federal and state estate or gift tax returns, as the case may be, required to be filed were duly and timely filed, and all taxes payable with respect thereto were paid; (iv) AFLP has the requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; (v) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by AFLP and authorized by the required governing body prior to the date hereof and no other proceedings on the part of AFLP or consents from or filings with any person or entity or regulatory body are necessary to authorize this Agreement, for AFLP to perform its obligations hereunder or to consummate the transactions contemplated hereby, except as provided in the Second Amended and Restated Limited Liability Company Agreement of Southern Belle Dairy Co., LLC; (vi) this Agreement has been duly and validly executed and delivered by AFLP; and (vii) this Agreement constitutes a legal, valid and binding obligation of AFLP, enforceable against AFLP in accordance with its terms.

(b) AFLP hereby covenants that, during the period described in the following sentence, it will maintain ownership interest in and to all of the AFLP Interests, and will not, directly or indirectly, offer for sale, sell, distribute, grant any option, right to purchase, suffer any lien or encumbrance upon, pledge, hypothecate or otherwise dispose of any of the AFLP Interests. The restrictions in the foregoing sentence shall apply from the date of this Agreement until the earlier to occur of (i) the purchase of all of the AFLP Interests pursuant to the exercise of the Option or (ii) the termination of the Option Period.

(c) AFLP hereby represents and warrants to DFA and covenants for the benefit of DFA that at Closing, AFLP shall deliver such executed instruments of assignment, as applicable, evidencing the sale and transfer of the AFLP Interests to DFA or a bill of sale and any other documents, instruments or certificates necessary to evidence the transfer of any of the Assets.

6. *Representations, Warranties and Covenants of DFA.* DFA hereby represents and warrants to AFLP as follows: (i) DFA has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (ii) contingent on and subject to full and final settlement of the DOJ Litigation and the simultaneous execution of an Acquisition Agreement with an Acquirer as described herein and subject to the conditions set forth herein, the execution and delivery of the Agreement by DFA and the performance of its obligations hereunder, have been duly and validly authorized by the Board of Directors of DFA and no other corporate proceedings on the part of the DFA or consents from for filings with any person or entity or regulatory body, other than the provisions of the Revised and Restated Limited Liability Company Agreement of Southern Belle, are necessary to authorize this Agreement, for DFA to perform its obligations hereunder; (iii) this Agreement has been duly and validly executed and delivered by DFA; and (iv) this Agreement constitutes a legal, valid and binding obligation of the DFA enforceable against DFA in accordance with its terms, subject to full and final settlement of the DOJ Litigation and ability of DFA to simultaneously execute of an Acquisition Agreement with an Acquirer of the Assets and/or the DFA and AFLP Interests from DFA, and subject to the conditions set forth herein.

7. *Amendments: Entire Agreement.* This Agreement may not be modified except by written instrument executed by the parties hereto. This Agreement contains the entire agreement among the parties hereto with respect to the transactions contemplated hereby and supersedes all prior understandings, representations, warranties, promises and undertakings between the parties hereto with respect to the transactions contemplated hereby.

8. *Assignment.* Neither of the parties hereto may assign any of its rights or obligations under this Agreement or the Option created hereunder to any other person without the express written consent of the other party.

9. *Validity.* If any term, provision, covenant or restriction contained in this Agreement is held by a court or a federal or state regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, provisions and covenants and restrictions contained in this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated; *provided* that each party is able to receive substantially all of the rights and substantially all of the benefits it is to have

had/or receive, as applicable, under this Agreement.

10. *Notices*. All notices, requests, claims, demands and other communications hereunder shall be deemed to have been duly given when delivered in person, by fax, telecopy, or by registered or certified mail (postage prepaid, return receipt requested) at the address set forth on the signature page hereto.

11. *Governing Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely in that State and without regard to any of its conflicts of law principles which could result in the application of the laws of another jurisdiction.

12. *Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. This Agreement may be executed by facsimile signature, which shall constitute a legal and valid signature for all purposes hereof. This Agreement shall not be effective until counterparts executed by AFLP and DFA have been delivered to each of them.

13. *Costs*. Except as otherwise expressly provided for herein, each of the parties hereto shall bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated hereunder, including fees and expenses of its accountants and counsel.

14. *Additional Documents*. In the event of the exercise of the Option by DFA, DFA and AFLP agree to execute and deliver all other documents and instruments and take all other action that may be reasonably requested in writing by the other party hereto in order to consummate the transactions provided for by such exercise and to effectuate the intents of this Agreement, but not including any indemnities, warranties, representations or similar covenants other than with respect to good title to the AFLP interests to be assigned and transferred.

*In Witness Whereof*, each of the parties has caused this Agreement to be executed individually or on its behalf by its officers thereunto duly authorized, all as of the date first above written.

**ALLEN FAMILY LIMITED PARTNERSHIP**

By: /s/ Robert W. Allen.
Name: Robert W. Allen.
Title: General Partner, 2400 Ballybunion Road, Center Valley, Pennsylvania 18034.

**DAIRY FARMERS OF AMERICA, INC.**

By: /s/ David A. Geisler.
Name: David A. Geisler.
Title: Senior Vice-President/Legal, 10220 North Ambassador Drive, Kansas City, Missouri 64153.

**Acknowledgement and Consent**

The undersigned specifically acknowledges and consents to the transactions as set forth in the Agreement and will cooperate to effectuate the consummation of said transactions insofar as legally necessary and reasonably appropriate.

MID–AM CAPITAL, L.L.C.

By: Dairy Farmers of America, Inc., as sole manager.
By: /s/ David G. Meyer.
Name: David G. Meyer.
Title: Senior Vice President/Finance.

[FR Doc. 06–8795 Filed 11–3–06; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

October 31, 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 by calling the Department of Labor. A copy of this ICR, with applicable supporting documentation, may be obtained at *http://www.reginfo.gov/public/do/PRAMain,* or contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov*.

In July 2004, ETA solicited comments from the general public on the establishment of a single, streamlined reporting and recordkeeping system, formally called the ETA Management Information and Longitudinal Evaluation (EMILE) reporting system. The notice of 60-day public comment on the proposed EMILE reporting system was published in the **Federal Register** on July 16, 2004 (Vol. 69, No. 136, pages 42777–42779). The proposed EMILE reporting system was designed to streamline 12 ETA program reporting systems into one comprehensive reporting structure that would allow for consistent, comparable analysis across ETA funded employment and training programs, using the definitions for a set of common performance measures initially specified in Training and Employment Guidance Letter (TEGL) 15–03, Common Measures Policy, and subsequently revised by TEGL 17–05, Common Measures Policy for the Employment and Training Administration's (ETA) Performance Accountability System and Related Performance Issues.

ETA received comments from 161 unique entities, including state workforce agencies and boards, local workforce investment areas, non-profit organizations and national associations, Native American and other tribal organizations, public interest and advocacy groups, and other private citizens and stakeholders. Due to the large volume of comments submitted by each entity, ETA worked during calendar year 2005 to organize and analyze the public comments, make appropriate revisions to agency policy guidance on the common measures, and assess the feasibility of implementing the proposed EMILE reporting requirements in several States.

ETA has reconciled the public comments and made appropriate revisions to the original EMILE proposal, which has been re-named to the Workforce Investment Streamlined Performance Reporting (WISPR) system. This revised proposal will replace the current quarterly reporting requirements of the following seven ETA activities: Wagner-Peyser Act, Veterans Employment and Training Service, the Workforce Investment Act (WIA) Adult, WIA Dislocated Worker, WIA Youth, and Trade Adjustment Assistance Act programs, and National Emergency Grants.

The Department is seeking or has already received separate OMB clearances on revisions to the following program reporting systems to incorporate standardized data collection necessary to implement a set of common performance measures: National Farm Worker Jobs Program, Indian and Native American Program, Senior Community Service and Employment Program, and entities receiving H–1B Technical Skills Training or Responsible Reintegration of Youthful Offenders grants. These programs will continue to report separately, and the data elements collected for these programs have been aligned, to the extent practicable, with those in the proposed WISPR System. The decision to not include these programs in the WISPR System was based on concerns about burden (time and resources) expressed by many commenters.

While the proposed WISPR System represents a comprehensive data collection and reporting approach, it is important to note that every effort has been made to establish common data definitions and formats with minimum burden to grantees. At its foundation, the proposed WISPR System organizes customer information that is maintained by states in order to run their day-to-day operations, and includes a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, hold states and grantees appropriately accountable for the Federal funds they receive, and allow the Department to fulfill its

oversight and management responsibilities. The WISPR System proposal does build on revisions in state data collection approved by OMB in early 2006 to implement the common performance measures. In some cases, additional data collection requirements are included for Federal oversight or to comply with existing statutory requirements, and these are also included in the proposed WISPR System.

The WISPR System features a set of aggregate quarterly reports for capturing services to employer and job seeker customers, including a special aggregate report on services to the nation's eligible veterans and transitioning service members. A standardized set of participant data that includes information on demographics, types of services received, and performance outcomes based on a set of common measures defined consistently across programs is a key component of this proposed reporting system. The WISPR System will be used to respond more quickly and effectively to the management information needs of Congress, the Administration and the general public.

The WISPR System will ensure there is consistency across all ETA formula-funded state programs so all programs are evaluated using the same criteria. When job seeker and employer data are collected, maintained and reported consistently and accurately at a basic level (*e.g.*, grantee field office or One-Stop Career Center), data can be aggregated from each program and reported to higher levels with greater confidence that the data are comparable from customer to customer, from program to program, and from year to year. The WISPR System also incorporates provisions to ensure the integrity of reported data, and resolve data collection and reliability issues raised by OIG and GAO regarding the Department's ability to accurately evaluate program performance.

**Proposed Changes**

To address concerns expressed in the public comments about reporting burden (time and financial resources), the following changes are proposed in the WISPR System:

- The EMILE requirement to submit quarterly individual records on employer customers has been eliminated and replaced with an aggregate quarterly report (ETA Form 9131). Information contained on the employer report will provide a more complete picture of the total impact of the One-Stop system by including the characteristics of employers served and the type and frequency of services being delivered;
- The EMILE requirement to submit quarterly participant and exiter records has been eliminated and replaced with the requirement for states to submit quarterly records on exiters only;
- In the absence of quarterly participant records, the EMILE quarterly workforce investment performance report has been modified to include data collection on participant counts by key demographics and the types of adult and youth services received (ETA Form 9132). This uniform report format will facilitate consistent performance calculations and focus on the core functions of the workforce system: employment for adults and skills for youth; and
- Data collection requirements for job seeker customers has been substantially reduced compared to the original EMILE individual record to address public concerns regarding the amount of data to be collected and reported and align with recent changes approved by OMB.

Additionally, a special report is proposed to capture service information for participants who are eligible veterans and transitioning service members, to comply with reporting requirements for the Jobs for Veterans grants (ETA Form 9133).

To address public concerns regarding the submission of integrated reports, states will be given a range of options for submitting separate quarterly reports and records depending on how the state administers the workforce programs covered by the reporting system. This additional flexibility for submitting performance information to the Department will be available during the first two years of WISPR System implementation. Also, the collection of quarterly customer satisfaction reports for the WIA and Wagner-Peyser Act programs are not included in the WISPR System to reflect recent OMB notices of action to discontinue this information collection.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 45 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 and Training Administration.

*Type of Review:* New.

*Title:* Workforce Investment Streamlined Performance Reporting (WISPR) System.

*OMB Number:* 1205—0NEW.

*Frequency:* Quarterly.

*Affected Public:* State and Local Governments.

*Type of Response:* Recordkeeping; Reporting.

*Number of Respondents:* 54.

*Annual Responses:* 2,376.

*Average Response time:* 376 hours per State.

*Total Annual Burden Hours:* 813,241.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* 0.

*Description:* Respondents are State governments. This reporting and recordkeeping system features a set of aggregate reports for capturing services to employers and job seeker customers, including a special aggregate report on services to the nation's eligible veterans and transitioning service members. Selected standardized participant data that includes information on demographics, types of services received, and performance outcomes based on a set of common measures will also be collected and reported for the purposes of general program oversight, evaluation, and performance assessment of the WIA, Wagner-Peyser, Veterans Employment and Training Service, and Trade Adjustment Assistance programs, and National Emergency Grants.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. E6–18605 Filed 11–3–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

October 31, 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 toll-free number) / e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer, 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:* Center for Faith-Based and Community Initiatives.

*Type of Review:* Reinstatement with Change of a Previously Approved Collection.

*Title:* Workforce Investment Board Survey.

*OMB Number:* 1290–0004.

*Type of Response:* Reporting.

*Affected Public:* State, Local, and Tribal Government.

*Number of Respondents:* 500.

*Number of Annual Responses:* 500

*Estimated Time per Response:* Varies from 10 minutes for DOL respondents to 2 hours for DOJ respondents.

*Total Burden Hours:* 156.

*Total Annualized capital/startup costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $0.

*Description:* The U.S. Department of Labor (DOL), and the Employment and Training Administration (ETA) and the Center for Faith-Based and Community Initiatives (CFBCI) specifically, needs accurate, timely information on how services and systems under Workforce Investment Act (WIA) are unfolding and on the challenges and successes states and local areas encounter. Only in this way can it properly discharge its obligations to issue policy clarifications, regulations and technical assistance. This need is particularly acute given that the workforce investment system has been evolving rapidly in the several years since WIA was enacted. It is expected that WIA will continue to change rapidly.

Much of the information available to DOL on key operational issues is impressionistic or anecdotal in nature, based on hearsay or unsystematic observations, and not accurate as to the incidence or scope nationally. When accurate nationwide information is available, as from long-term in-depth evaluation studies, it is often not timely. Thus DOL has a need for accurate and timely information that can be found only with systematic studies.

Regarding the survey for Workforce Investment Boards (WIBs) in particular, the White House Office of Faith-Based and Community Initiatives (WHOFBCI) and OMB have directed DOL to conduct this survey. The reason is that ETA and CFBCI currently do not have a mechanism by which to obtain information regarding the grants, contracts, and cooperative agreements being awarded by local and state WIBs using WIA formula funds. It is critical that DOL obtain this information in order to better understand how much money is being spent and the types of organizations that receive the funds. This WIB survey will bridge the gap in DOL's knowledge of WIB grants, contracts, and cooperative agreements that utilize WIA youth funds.

The U.S. Department of Justice (DOJ) is in a similar situation. Like the DOL, much of the information available to DOJ on key operational issues is impressionistic or anecdotal in nature, based on hearsay or unsystematic observations, and not accurate as to the incidence or scope nationally. When accurate nationwide information is available, as from long-term in-depth evaluation studies, it is often not timely. Thus DOJ has a need for accurate and timely information that can be found only with systematic studies. Absent this survey, the DOJ does not have a mechanism by which to obtain information regarding certain grants, contracts, and cooperative agreements being awarded by state administering agencies using DOJ funds, particularly the Bureau of Justice Assistance's Residential Substance Abuse Treatment for State Prisoners program (RSAT). It is critical that DOJ obtain this information in order to better understand how much money is being spent and the types of organizations that receive the funds. Again, like DOL, DOJ is especially interested to obtain information on those grants being awarded to faith-based and community-based non-profit organizations.

This DOL survey is designed to fill a critical gap in its information needs regarding how the workforce system is unfolding and will inform development of legislation, regulations and technical assistance. The WHOFBCI used the information gathered by DOL in the December 2005 survey to determine the degree to which faith-based and community-based non-profit organizations received WIA Youth formula funds at the state and local levels. DOL will use the information gathered in the upcoming surveys to determine whether there have been any changes in the way DOL funds have been awarded, especially regarding their issuance to faith-based and community-based non-profit organizations.

**Darrin A. King,**

*Acting Departmental Clearance Officer.*

[FR Doc. E6–18616 Filed 11–3–06; 8:45 am]

**BILLING CODE 4510–23–P**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the

period of October 16 through October 20, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' Separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*TA–W–60,224; Misty Mountain Threadworks, Inc., Banner Elk, NC: September 28, 2005.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

*TA–W–60,217; Z-Star Industries, Inc., Formerly Known as Z-Star, Inc., Watertown, NY: October 5, 2005.*

*TA–W–60,080; Hewlett Packard Development Co., L.P., Nonstop Enterprise Division, HP Safeguard Software, Austin, TX: September 11, 2005.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–60,051; Cambridge Lee Industries, LLC, Plant #4, Leesport, PA: August 29, 2005.*

*TA–W–60,051A; Cambridge Lee Industries, LLC, Plant #1, Reading, PA: August 29, 2005.*

*TA–W–60,090; Klaussner Furniture Industries, Inc., KFI Candor Facilities, Candor, NC: September 14, 2005.*

*TA–W–60,122; Ethan Allen Operations, Inc., Distribution Center, Old Fort, NC: September 18, 2005.*

*TA–W–60,231; Molly West Handbound Books, Emeryville, CA: October 10, 2005.*

*TA–W–57,308; Sonic Manufacturing Technologies, Fremont, CA: May 26, 2004.*

*TA–W–60,004; Hughes Manufacturing, A Division of Magna Powertrain, Farmington Hills, MI: September 1, 2005.*

*TA–W–60,061; Genesis Engineering and Technologies, Inc., Interlochen, MI: September 11, 2005.*

*TA–W–60,067; Paola Yarns, Inc., Statesville, NC: August 15, 2005.*

*TA–W–60,125; Xcel Mold and Machine, Inc., North Canton, OH: September 16, 2005.*

*TA–W–60,139; Pechiney Plastic Packaging, Inc., A Subsidiary of Alcan Packaging, San Leandro, CA: September 18, 2005.*

*TA–W–60,124; Associated Spring, Barnes Group Inc., Troy, MI: September 19, 2005.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–60,064; Delphi Corporation, Automotive Holdings Group, Columbus, OH: September 11, 2005.*

*TA–W–60,110; Dura Automotive Systems, Inc., #5 Industrial Drive, Hannibal, MO: September 18, 2005.*

*TA–W–60,111; Dura Automotive Systems, Inc., Hannibal, MO: September 19, 2005.*

*TA–W–60,157; Visteon Systems, LLC, Climate Control Division, Connersville, IN: September 22, 2005.*

*TA–W–60,170; AET Films, Inc., Covington Plant, Covington, VA: September 29, 2005.*

*TA–W–60,212; Standex Electronics, Douglas, AZ: October 4, 2005.*

*TA–W–60,043; P.S.W., Inc., Chino, CA: August 31, 2005.*

*TA–W–60,144; Ethan Allen Operations, Inc., Atoka, OK: September 8, 2005.*

*TA–W–60,149; Bloch Washington, Formerly Known As Mirella, Inc., Seattle, WA: September 21, 2005.*

*TA–W–60,194; Innovex, Inc., Litchfield, MN: October 3, 2005.*

*TA–W–60,200; Fiskars Brands, Inc., Spencer Division, Spencer, WI: October 4, 2005.*

*TA–W–60,221; Whittier Wood Products, Eugene, OR: December 7, 2006.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–60,216; Component Concepts, Inc., Stridemark, LLC, Thomasville, NC: October 6, 2005.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

*TA–W–60,224; Misty Mountain Threadworks, Inc., Banner Elk, NC:*

*TA–W–60,217; Z-Star Industries, Inc., Formerly Known as Z-Star, Inc., Watertown, NY.*

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*TA–W–60,080; Hewlett Packard Development Co., L.P., Nonstop Enterprise Division, HP Safeguard Software, Austin, TX.*

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*TA—W–60,126; Michelin North America, BF Goodrich Tire Manufacturing, Opelika, AL.*

*TA–W–60,147; Superior Lumber, LLC, Glendale, OR.*

*TA–W–60,169; Cognex Corporation, Natick, MA.*

*TA–W–60,187; PCC Airfoils, LLC, Douglas, GA.*

*TA–W–60,211; American Dryer Corporation, Fall River, MA.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–60,029; Standard Register Co. (The), Terre Haute Plant, Terre Haute, IN.*

*TA–W–60,047; RR Donnelley, Lancaster Premedia Center, Lancaster, PA.*

*TA–W–60,160; Multi-Fineline Electronix, Inc., Corporate Division, Anaheim, CA.*

*TA–W–60,196; TRW Automotive, Body Control Systems North America Division, Rushford, MN.*

*TA–W–60,201; Weyerhaeuser Company Raymond Lumber, Softwood Lumber Division, Raymond, WA.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–59,906; PBM Graphics of the Triad, Greensboro, NC.*

*TA–W–59,981; Moeller Electric Corp., A Subsidiary of J.H. Controls, Inc., Lincoln Park, NJ.*

*TA–W–59,996; Federal Mogul Products, St. Louis, MO.*

*TA–W–60,055; Swift Textiles, dba Swift Galey, Midland, GA.*

*TA–W–60,060; Robinson Transformer, dbs Transformer Manufacturers, Robinson, IL.*

*TA–W–60,078; Weyerhaeuser Company, Lebanon Lumber Division, Lebanon, OR.*

*TA–W–60,134; Alatech Healthcare, LLC, Slocomb, AL.*

*TA–W–60,166; Up North Industries, LLC, Petoskey, MI.*

*TA–W–60,158; Geneva Steel, LLC, Lindon, UT.*

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

*None.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–59,923; Dow Jones and Company, Inc., Chicopee, MA.*

*TA–W–59,923A; Dow Jones and Company, Inc., South Brunswick, NJ.*

*TA–W–60,114; Jackson County Board of Education, Jackson County Continuing Education, McKee, KY.*

*TA–W–60,228; Eudyna Devices USA, Inc., (EUDU), San Jose, CA.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of October 16 through October 20, 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 27, 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–18636 Filed 11–3–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,068]**

### Burley Design, Inc. Eugene, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 13, 2006 in response to a worker petition filed by a company official on behalf of workers at Burley Design, Inc., Eugene, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of October 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–18638 Filed 11–3–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,292]**

### Forest City Technologies, Inc., Wixom, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 25, 2006 in response to a petition filed on behalf of workers of Forest City Technologies Inc., Wixom, Michigan.

One of the three petitioning workers was separated more than one year prior to the October 18, 2006 date of the petition. The petition has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of October 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–18641 Filed 11–3–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,271]**

### Town of Hartland; Hartland, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 20, 2006 in response to a petition filed by a company official on behalf of workers at the Town of Hartland waste treatment facility located in Hartland, Maine. The workers were engaged in waste treatment services.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of October, 2006

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–18640 Filed 11–3–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA-W–59,965]**

### Jones Apparel of Texas II, Ltd, Armour Facility, El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on September 27, 2006, applicable to workers of Jones Apparel of Texas II, Ltd, El Paso, Texas. The notice was published in the **Federal Register** on October 16, 2006 (71 FR 60762).

At the request of the State agency and a company official, the Department reviewed the certification for workers of the subject firm. New information shows that the Department did not identify the subject firm name in its entirety. The name of the subject firm should read Jones Apparel of Texas II, Ltd, Armour Facility, El Paso, Texas.

Based on these findings, the Department is amending this certification to correctly identify the subject firm name to read Jones Apparel of Texas II, Ltd, Armour Facility, El Paso, Texas.

The intent of the Department's certification is to include all workers of the El Paso, Texas location of the subject firm who was adversely affected by a shift in production to China, Vietnam, Cambodia, Egypt and the Hashemite facilities in China.

The amended notice applicable to TA–W–59,965 is hereby issued as follows:

> ''All workers of Jones Apparel of Texas II, Ltd, Armour Facility, El Paso, Texas, who became totally or partially separated from employment on or after August 21, 2005 through September 27, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

I further determine that all workers of Jones Apparel of Texas II, Ltd, Armour Facility, El Paso, Texas, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of October 2006.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–18637 Filed 11–3–06; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–60,262]**

### Paramount Cards Inc.; A Subsidiary of Paramount Card Holding Corporation; Pawtucket, RI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 19, 2006 in response to a worker petition filed by a company official on behalf of workers of Paramount Cards Inc., a subsidiary of Paramount Card Holding Corporation, Pawtucket, Rhode Island.

The petitioning group of workers is covered by an active certification (TA–W–57,952) which expires on October 5, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of October 2006.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E6–18639 Filed 11–3–06; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### National Advisory Committee on Occupational Safety and Health (NACOSH); notice of Meeting

**AGENCY:** Occupational Safety and Health Administration, (OSHA), Labor.

**ACTION:** National Advisory Committee on Occupational Safety and Health (NACOSH); notice of meeting.

**SUMMARY:** Congress created NACOSH to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Occupational Safety and Health Act of 1970. The purpose of this **Federal Register** notice is to announce the upcoming NACOSH meeting. The Agenda items for the meeting will include updates on activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). Presentation will also be made on the following: National Occupational Research Agenda (NORA); Cooperative Programs; Enforcement Update; Standards Update; and Cranes and Derricks Small Business Regulatory Enforcement Fairness Act (SBREFA) Update.

**DATES:** NACOSH will meet on Tuesday, November 28, 2006, from 9 a.m. to approximately 4:30 p.m.

**ADDRESSES:** The meeting will take place in Room N3437 A, B, and C, of the Frances Perkins Department of Labor Building, located at 200 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** For additional information, please contact Deborah Crawford, 202–693–1932, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1932; *fax:* (202) 693–1641; *e-mail: Crawford.Deborah@dol.gov.* Individuals with disabilities who need special accommodations and wish to attend the meeting should contact: Veneta Chatmon, *phone:* (202) 693–1634 at least one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The NACOSH meeting is open to the public. All interested persons are invited to attend the NACOSH meeting at the time and location listed above. Anyone wishing to attend this meeting must be prepared to exhibit photo identification and sign-in at the Frances Perkins Department of Labor Building for authorization to enter the meeting area.

*Public Participation:* Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Deborah Crawford at the address provided above. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 at the Frances Perkins Department of Labor Building, telephone: (202) 693–2350 or check the National Advisory Committee on Occupational Safety and Health information pages located at *http://www.osha.gov/dop/nacosh/nacosh.html.*

**Edwin G. Foulke, Jr.,**

*Assistant Secretary of Labor.*

[FR Doc. E6–18645 Filed 11–3–06; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: 06—083]**

### Notice of Information Collection Under OMB Review

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection under OMB review.

**SUMMARY:** The National Aeronautics and Space Administration, 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 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., Mail Code JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@hq.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting extension of an existing collection, Subcontractor Report, that is used to help NASA monitor mentor-protégé performance and progress in accordance with the mentor-protégé agreement. Respondents will be for-profit small disadvantaged businesses. The NASA Mentor-Protégé Program is designed to provide incentives for NASA prime contractors to assist small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small business (WOSB) concerns, in enhancing their capabilities to perform NASA contracts and subcontracts.

#### II. Method of Collection

NASA uses electronic methods to collect information from collection respondents.

#### III. Data

*Title:* NASA Mentor-Protégé Program—Small Business and Small Disadvantaged Business Concerns Report.

*OMB Number:* 2700–0078.

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

*Number of Respondents:* 20.

*Affected Public:* Business or other for-profit.

*Estimated Time Per Response:* 1.5 hours.

*Estimated Total Annual Burden Hours:* 30.

*Estimated Total Annual Cost:* $0.

#### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance

of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

**Gary Cox,**

*Deputy Chief Information Officer (Acting).*

[FR Doc. E6–18692 Filed 11–3–06; 8:45 am]

BILLING CODE 7510–13–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office; Public Interest Declassification Board (PIDB); Notice of Meeting

Pursuant to Section 1102 of the Intelligence Reform and Terrorism Prevention Act of 2004 which extended and modified the Public Interest Declassification Board (PIDB) as established by the Public Interest Declassification Act of 2000 (Pub. L. 106–567, title VII, December 27, 2000, 114 Stat. 2856), announcement is made for the following committee meeting:

*Name of Committee:* Public Interest Declassification Board (PIDB).

*Date of Meeting:* Monday, November 13, 2006.

*Time of Meeting:* 10 a.m. to 1:30 p.m.

*Place of Meeting:* National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington Room, Washington, DC 20408.

*Purpose:* To discuss declassification program issues.

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Tuesday, November 7, 2006. ISOO will provide additional instructions for gaining access to the location of the meeting.

**FOR FURTHER INFORMATION CONTACT:** J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5250.

Dated: October 27, 2006.

**J. William Leonard,**

*Director, Information Security Oversight Office.*

[FR Doc. E6–18629 Filed 11–3–06; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: National Survey of Public Participation in the Arts. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the address section below on or before December 4, 2006. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**ADDRESSES:** Tom Bradshaw, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 616, Washington, DC 20506–0001, telephone (202) 682–5527 (this is not a toll-free number), fax (202) 682–5677.

**Johnie Lewis,**

*Acting Director, Administrative Services, National Endowment for the Arts.*

[FR Doc. 06–9087 Filed 11–3–06; 8:45 am]

BILLING CODE 7537–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–220 and 50–410]**

### Nine Mile Point Nuclear Station, LLC; Nine Mile Point Nuclear Station, Units 1 and 2; Notice of Issuance of Renewed Facility Operating License Nos. DPR–63 and NPF–69 for an Additional 20-Year Period; Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License Nos. DPR–63 and NPF–69 to the Nine Mile Point Nuclear Station, LLC (the licensee), the operator of the Nine Mile Point Nuclear Station (NMP), Units 1 and 2. Renewed Facility Operating License No. DPR–63 authorizes operation of NMP, Unit 1, by the licensee at reactor core power levels not in excess of 1850 megawatts thermal, in accordance with the provisions of the NMP renewed license and its Technical Specifications. Renewed Facility Operating License No. NPF–69 authorizes operation of NMP, Unit 2, by the licensee at reactor core power levels not in excess of 3467 megawatts thermal, in accordance with the provisions of the NMP renewed license and its Technical Specifications.

This notice also serves as the record of decision for the renewal of Facility Operating License Nos. DPR–63 and NPF–69 for NMP, Units 1 and 2. As discussed in the Final Supplemental Environmental Impact Statement (FSEIS) for NMP, dated May 2006, the Commission considered a range of reasonable alternatives that included generation from coal, natural gas, oil, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, other biomass-derived fuels, delayed retirement, utility-sponsored conservation, a combination of alternatives, and a no-action alternative. This range of alternatives was discussed

in the Generic Environmental Impact Statement for License Renewal, Supplement 24 regarding Nine Mile Point Nuclear Station, Units 1 and 2.

After weighing the environmental, economic, technical and other benefits of the facility against environmental costs and considering available alternatives, the Commission found that the adverse environmental impacts of license renewal are not so great that preserving the option of license renewal would be unreasonable. The Commission also has taken all practicable measures within its jurisdiction to avoid or minimize environmental harm in its decision to renew Operating License Nos. DPR–63 and NPF–69. No license conditions are imposed in connection with mitigation measures.

NMP, Units 1 and 2, are located on approximately 900 acres along the shore of Lake Ontario, Oswego County, New York. The site is approximately 5 miles north-northeast of the nearest boundary of the City of Oswego. The licensee's application for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in each license.

Prior public notice of the action involving the proposed issuance of the renewed licenses and of an opportunity for a hearing regarding the proposed issuance of the renewed licenses was published in the **Federal Register** on July 21, 2004 (69 FR 43633).

For further details with respect to this action, *see* (1) the Nine Mile Point Nuclear Station, LLC license renewal application for Nine Mile Point Nuclear Station, Units 1 and 2 dated May 26, 2004, as amended July 15, 2005; (2) the Commission's safety evaluation report (NUREG–1900), published in September 2006; and (3) the Commission's final environmental impact statement (NUREG–1437, Supplement 24), published in May 2006. These documents are available at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at (*http://www.nrc.gov/reading-rm/adams.html*).

Copies of Renewed Facility Operating License Nos. DPR–63 and NPF–69 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Director, Division of License Renewal. Copies of the NMP, Units 1 and 2, Safety Evaluation Report (NUREG–1900) and the Final Environmental Impact Statement (NUREG–1437, Supplement 24) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161–0002 (*http://www.ntis.gov*), 703–605–6000, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA, 15250–7954. (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requester's Government Printing Office deposit account number or a VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 31st day of October, 2006.

For the Nuclear Regulatory Commission.

**Frank P. Gillespie,**

*Director, Division of License Renewal, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–18627 Filed 11–3–06; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 52–009–ESP; ASLBP No. 04–823–03–ESP]**

## Atomic Safety and Licensing Board; Before Administrative Judges: Lawrence G. McDade, Chairman, Nicholas G. Trikouros, Dr. Richard E. Wardwell; in the Matter of System Energy Resources, Inc.; Early Site Permit for Grand Gulf Site; Revised Notice of Hearing

October 31, 2006.

On October 6, 2006, this Atomic Safety and Licensing Board issued a Notice of Hearing,[1] which indicated that an evidentiary session would be convened beginning on Tuesday, November 14, 2006, to receive testimony and exhibits in the ''mandatory hearing'' portion of this proceeding regarding the October 16, 2003, application of System Energy Resources, Inc. (SERI) for a 10 CFR Part 52 early site permit (ESP), seeking approval of the site of the existing Grand Gulf Nuclear Station (GGNS) near Port Gibson in Claiborne County, Mississippi, for the possible future construction of a new nuclear power generation facility.[2] This mandatory hearing will concern safety and environmental matters relating to the proposed issuance of the requested ESP, as described in our October 6 Notice. The Board hereby gives notice that the mandatory hearing will now begin on Wednesday, November 29, 2006, and will continue day-to-day thereafter until concluded.

### A. Date, Time, and Location of Mandatory Hearing

*Date:* Wednesday, November 29, 2006.

*Time:* Beginning at 9 a.m. EST.

*Location:* ASLBP Hearing Room, Two White Flint North, Third Floor, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

Any members of the public who plan to attend the mandatory hearing are advised that security measures will be employed at the entrance to the hearing facility, including searches of hand-carried items such as briefcases or backpacks. The public is further advised that, in accordance with 10 CFR 2.390, portions of the hearing sessions may be closed to the public because the matters at issue may involve the discussion of protected information.

### B. Scheduling Information Updates

Updated/revised scheduling information regarding the evidentiary hearing can be found on the NRC Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* or by calling (800) 368–5642, extension 5036, or (301) 415–5036.

*It is so ordered.*

Dated: Rockville, Maryland, October 31, 2006.

For the Atomic Safety and Licensing Board.[3]

**Lawrence G. McDade,**

*Chairman, Administrative Judge.*

[FR Doc. 06–9075 Filed 11–3–06; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–7004–ML, ASLBP No. 05–838–01–ML]**

## Atomic Safety and Licensing Board, Before Administrative Judges: Lawrence G. McDade, Chairman, Dr. Peter S. Lam, Dr. Richard E. Wardwell; In the Matter of USEC, Inc. (American Centrifuge Plant); Notice of Opportunity To Make Oral or Written Limited Appearance Statements

October 31, 2006.

This proceeding involves the application of USEC, Inc. (USEC) for authorization to construct a facility and

[1] *See* 71 FR 60,583 (Oct. 13, 2006).

[2] *See* 69 FR 2636 (Jan. 16, 2004).

[3] Copies of this Notice were sent this date by Internet e-mail transmission to counsel for (1) SERI; and (2) the NRC Staff.

to possess and use source, byproduct, and special nuclear material in order to enrich natural uranium to a maximum of ten percent uranium-235 ($U^{235}$) by the gas centrifuge process. USEC proposes to do this at a facility—denominated the American Centrifuge Plant (ACP)—to be constructed near Piketon, Ohio.

More specifically, on August 23, 2004, USEC filed an application with the Nuclear Regulatory Commission (NRC) to obtain a thirty-year license under 10 CFR Parts 30, 40, and 70 to operate its proposed ACP. Thereafter a public interest group, the Portsmouth/Piketon Residents for Environmental Safety and Security (PRESS) and an individual, Geoffrey Sea (Sea), filed petitions to intervene. Based on the pleadings submitted, and after hearing argument from the putative intervenors, this Board determined that neither Petitioner had presented an admissible contention. LBP–05–28, 62 NRC 585 (2005). Both PRESS and Sea appealed the Board's Order and, on April 3, 2006, the Commission affirmed the Board's rulings as to both Petitioners. CLI–06–09, 63 NRC 433 (2006); CLI–06–10, 63 NRC 451 (2006). Therefore, the only matter remaining before this Board is satisfaction of the Mandatory Hearing requirement with regard to USEC's License Application (LA). 42 U.S.C. 2243(b)(1); 10 CFR 70.23a, 70.31(e).

This Atomic Safety and Licensing Board hereby gives notice that, in accordance with 10 CFR 2.315(a), the Board will entertain oral limited appearance statements from members of the public in connection with this proceeding at the date, time, and location specified below.

**A. Date, Time, and Location of Oral Limited Appearance Statement Session**

The session will be held on the following date at the specified location and time:

*Date:* Tuesday, December 12, 2006.

*Time:* 6 p.m. EST until 9 p.m. EST.

*Location:* Ohio State University Endeavor Center, Training Room 160, 1862 Shyville Road, Piketon, Ohio 45661.

**B. Participation Guidelines for Oral Limited Appearance Statements**

Any person not a party, or the representative of a party, to the proceeding will be permitted to make an oral statement setting forth his or her position on matters of concern relating to this proceeding. Although these statements do not constitute testimony or evidence in the proceeding, they nonetheless help the Board and/or the parties in their consideration of the issues.

Oral limited appearance statements will be entertained during the hours specified above, or such lesser time as might be necessary to accommodate the speakers who are present. In this regard, if all scheduled and unscheduled speakers present at the session have made a presentation, the Licensing Board reserves the right to terminate the session before the ending time listed above. During the limited appearance session no signs or banners will be permitted in the room.

In order to allow all interested persons an opportunity to address the Board, the time allotted for each statement normally will be no more than five (5) minutes, but may be limited, or expanded, depending on the number of written requests to make oral statements that are submitted in accordance with Section C below, and/or the number of persons present at the designated time. At the outset of each statement, the speaker should identify himself or herself by stating their name, city and state of residence, and stating whether they have any affiliation (such as employment, consultancy, or membership) with any of the parties (USEC or the NRC).

**C. Submitting a Request To Make an Oral Limited Appearance Statement**

Persons wishing to make an oral statement who have submitted a timely written request to do so will be given priority over those who have not filed such a request. To be considered timely, a written request to make an oral statement must either be mailed, faxed, or sent by e-mail so as to be received by 5 p.m. EST on December 5, 2006. Written requests to make an oral statement should be submitted to:

*Mail:* Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

*Fax:* (301) 415–1101 (verification (301) 415–1966).

*E-mail: hearingdocket@nrc.gov.*

In addition, using the same method of service, a copy of the written request to make an oral statement should be sent to the Chairman of this Licensing Board as follows:

*Mail:* Administrative Judge Lawrence G. McDade, c/o: Debra Wolf, Esq. Law Clerk, Atomic Safety and Licensing Board Panel, Mail Stop T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

*Fax:* (301) 415–5599 (verification (301) 415–6094).

*Email: daw1@nrc.gov.*

**D. Submitted Written Limited Appearance Statements**

A written limited appearance statement may be submitted to the Board regarding this proceeding at any time, either in lieu of or in addition to any oral statement. Such statements should be sent to the Office of the Secretary using the methods prescribed above, with a copy to the Licensing Board Chairman.

**E. Availability of Documentary Information Regarding the Proceeding**

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

**F. Scheduling Information Updates**

Updated/revised scheduling information regarding the limited appearance session can be found on the NRC Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm* or by calling (800) 368–5642, extension 5036, or (301) 415–5036.

Dated: October 31, 2006.

For the Atomic Safety and Licensing Board.[1]

**Lawrence G. McDade, Chairman**

*Administrative Judge.*

[FR Doc. 06–9076 Filed 11–3–06; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–259, 50–260, and 50–296]**

## Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2 and 3; Draft Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level

**AGENCY:** U.S. Nuclear Regulatory Commission.

[1] Copies of this Notice were sent this date by Internet electronic mail transmission to counsel for (1) USEC; and (2) the NRC Staff.

**ACTION:** Notice of Opportunity for Public Comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has prepared a draft Environmental Assessment (EA) as its evaluation of a request by the Tennessee Valley Authority (TVA) for license amendments to increase the maximum thermal power at Browns Ferry Nuclear Plant (BFN) from 3458 megawatts-thermal (MWt) to 3952 MWt for Units 2 and 3 and from 3293 MWt to 3952 MWt for Unit 1. These represent power increases of approximately 15 percent for BFN Units 2 and 3 and a total of 20 percent for BFN Unit 1. As stated in the NRC staff's position paper dated February 8, 1996, on the Boiling-Water Reactor Extended Power Uprate (EPU) Program, the NRC staff would prepare an environmental impact statement if it believes a power uprate would have a significant impact on the human environment. The NRC staff did not identify any significant impact from the information provided in the licensee's EPU applications for BFN Units 1, 2, and 3, or from the NRC staff's independent review; therefore, the NRC staff is documenting its environmental review in an EA. Also, in accordance with the position paper, the draft EA and Finding of No Significant Impact are being published in the **Federal Register** with a 30-day public comment period.

**Environmental Assessment**

*Plant Site and Environs:*

BFN is located on approximately 340 ha (840 ac) of Federally owned land that is under the custody of the TVA in Limestone County, Alabama. The EPU would apply to facilities at the BFN site, which is located in northern Alabama on the northern shore of Wheeler Reservoir, an impoundment of the Tennessee River, at Tennessee River Mile (TRM) 294. The BFN site is approximately 16 km (10 mi) south of Athens, Alabama; 16 km (10 mi) northwest of Decatur, Alabama; and 48 km (30 mi) west of Huntsville, Alabama.

Land in the vicinity of BFN is used primarily for agriculture. Population densities are low, with no population centers of significance within 16 km (10 mi) of the plant. The site is surrounded to the north and east by rural countryside. It includes open pasture lands, scattered farmsteads, few residents, and little industry within several miles. The terrain is gently rolling with open views to higher elevations to the north. The southern and western sides of the plant site abut the Wheeler Reservoir, which is a wide expanse of open river used for a variety of recreational purposes. The reservoir in the vicinity of the plant site is moderately used by recreational boaters and fishermen. There are no homes within the foreground viewing distance to the north and east. However, adjacent to the plant site several developments have partial views of the site—a small residential development is sited to the northwest and another across the Wheeler Reservoir to the southwest, and the Mallard Creek public use area is directly across the reservoir. A berm, graded during the initial construction of the plant site and containing approximately 2.5 million $m^3$ (3.3 million $yd^3$) of earth excavated to make cooling water channels, lies adjacent to the cooling tower complex and blocks views of the northern and eastern plant areas. Two wildlife management areas—Swan Creek State Wildlife Management Area and Mallard-Fox Creek State Wildlife Management Area—are within 5 km (3 mi) of the BFN site. The Swan Creek Wildlife Management Area includes 1232 ha (3045 ac) of land and 2357 ha (5825 ac) of water surrounded by numerous industrial facilities. The Mallard-Fox Creek State Wildlife Management Area encompasses approximately 593 ha (1483 ac) and is used primarily for small game hunting. The Round Island Recreation Area, a site on the Central Loop of the North Alabama Birding Trail, is located approximately 5.6 km (3.5 mi) upstream of BFN on the northern side of the Tennessee River and provides birding opportunities and boat access.

BFN has two active nuclear reactor units (Units 2 and 3) and one currently inactive unit (Unit 1). Each unit includes a boiling-water reactor and a steam-driven turbine generator manufactured by General Electric Company. Each unit originally was licensed for an output of 3293 megawatts-thermal (MWt), with a design net electric rating of 1065 megawatts-electric (MWe). Major construction on BFN, TVA's first nuclear power plant, began in 1967. Commercial operation began in 1974 for Unit 1, in 1975 for Unit 2, and in 1977 for Unit 3. All three units were shut down in 1985 during a review of the TVA nuclear power program. Unit 2 returned to service in May 1991, and Unit 3 resumed operation in November 1995. Work began in 2002 to bring Unit 1 up to current standards, and the reactor is currently scheduled to restart in 2007.

Wheeler Reservoir on the Tennessee River is the source for cooling water and most of the auxiliary water systems for BFN. The intake forebay is separated from Wheeler Reservoir by a structure with three bays each with a gate that can be raised or lowered depending on the operational requirements of the plant. Beyond the forebay are 18 intake pumping station bays (6 per reactor unit) each with traveling screens.

The BFN units are normally cooled by pumping water from Wheeler Reservoir into the turbine generator condensers and discharging it back to the reservoir via three large submerged diffuser pipes that are perforated to maximize uniform mixing into the flow stream. This straight-through flow path is known as ''open cycle'' or ''open mode'' operation. As originally designed, the maximum thermal discharge from the once-through cooling water system is directed into the Wheeler Reservoir, with a temperature increase across the intake and discharge of 13.9 °C (25 °F). The flow exits the diffusers and mixes with the reservoir flow. At the edge of the discharge mixing zone, the water temperature is required to be less than 5.6 °C (10 °F) above ambient water temperature.

Through various gates, some of this cooling water can also be directed through cooling towers to reduce its temperature as necessary to comply with environmental regulations. This flow path is known as the ''helper mode'' operation.

The capability also exists to recycle cooling water from the cooling towers directly back to the intake structure without being discharged to the reservoir. This flow path, known as the ''closed mode'' of operation, has not been used since the restart of Units 2 and 3 because of difficulties in meeting temperature limits in summer months and problems with equipment reliability. TVA does not anticipate using this mode in the future, and no procedures for operating in this mode currently exist.

In recent years, only Units 2 and 3 have been operated, but because of a combination of system upgrades and improved flow calibrations, the measured total per-unit condenser cooling water (CCW) flow rate in open mode (with three CCW pumps per unit) has increased. The condenser tubes were replaced with stainless steel tubing that has a larger internal diameter and lower flow resistance. This modification increased flow through the condenser by approximately 6 percent. TVA estimates total intake for three-unit operation in open mode to be 139 $m^3/s$ (4907 cfs) or 12,000 $m^3/d$ (3171 million gallons per day [MGD]).

Because of various system limitations, BFN cannot pass all the CCW through the cooling towers when operating in the helper mode. The fraction of cooling

water that cannot be passed through the cooling towers is routed directly to the river. Also, almost all of the cooling water that passes through the cooling towers is returned to the river, but a small amount is lost to the atmosphere during operation. If cooling tower capacity is increased due to the EPU, this consumptive use could increase proportionally. The cooling towers are only operated when necessary, typically a few weeks during the hottest part of the summer (typically July and August), to meet thermal discharge temperature limits specified in the National Pollutant Discharge Elimination System (NPDES) permit issued by the Alabama Department of Environmental Management.

The residual heat removal service water (RHRSW) system consists of four pairs of pumps located on the intake structure for pumping river water to the heat exchangers in the RHRSW system and four additional pumps for supplying water to the emergency equipment cooling water (EECW) system. The EECW system distributes cooling water supplied by the RHRSW system to essential equipment during normal and accident conditions.

*Identification of the Proposed Action:*

By letters dated June 25, 2004 and June 28, 2004, TVA proposed amendments to the operating licenses for BFN Units 2 and 3 and for BFN Unit 1, respectively, to increase the maximum thermal power level by approximately 15 percent for Units 2 and 3, from 3458 MWt to 3952 MWt, and by approximately 20 percent for Unit 1, from 3293 MWt to 3952 MWt. The change is considered an EPU because it would raise the reactor core power levels more than 7 percent above the originally licensed maximum power levels. This amendment would allow the heat output of the reactors to increase, which would increase the flow of steam to the turbines. This would increase production of electricity and the amount of waste heat delivered to the condensers, and increase the temperature of the water being discharged into the Wheeler Reservoir. On September 8, 1998, the NRC approved license amendments for power uprates of 5 percent for BFN Units 2 and 3. BFN Units 2 and 3 are currently operating at 105 percent of their originally licensed thermal power (an increase from 3293 MWt to 3458 MWt). Therefore, the proposed EPUs analyzed in this EA are 15 percent for Units 2 and 3 and 20 percent for Unit 1, which is currently licensed to operate at 100 percent of its originally licensed thermal power (3293 MWt).

*The Need for the Proposed Action:*

The proposed action would meet the increasing demand for bulk power resulting from the economic growth in the TVA service area. Such economic growth is forecasted to continue in the Tennessee Valley region resulting in an estimated average annual increase of 1.6 percent in the regional energy demand over the next 20 years. Such demand increases would exceed TVA's capacity to generate electricity for its customers. The proposed EPUs would add approximately 600 MWe to the historical generating capacity of BFN; such additional capacity should provide a cost-effective means of meeting the projected increased demand. The EPUs can be implemented without substantial capital investment and would not cause the environmental impacts that would occur if construction of a new power-generation facility was sought to meet the region's electricity needs.

*Environmental Impacts of the Proposed Action:*

At the time of issuance of the operating licenses for BFN, the NRC staff noted that any activity authorized by the licenses would be encompassed by the overall action evaluated in the Final Environmental Statement (FES) for the operation of BFN that was issued in September 1972. Additionally, the Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Browns Ferry Nuclear Plant, Units 1, 2 and 3 (NUREG–1437, Supplement 21) Final Report evaluating license renewal for BFN assumes operation of all three units operating at 120 percent of the originally licensed power level because it was assumed that the EPU would be approved before the renewed license terms begin. This EA summarizes the non-radiological and radiological impacts in the environment that may result from the proposed action of the EPU.

**Non-Radiological Impacts**

*Land Use Impacts*

The potential impacts associated with land use for the proposed action include effects from construction and plant modifications. While some plant components would be modified, all plant changes related to the EPUs would occur within existing structures, buildings, and fenced equipment yards housing the major unit components. Also, the EPU would use existing parking lots, road access, lay-down areas, offices, workshops, warehouses, and restrooms. Therefore, no land use would change at BFN. Also, no land use would change along transmission lines (no new lines would be required for EPU), transmission corridors, switch yards, or substations.

According to the SEIS for license renewal of BFN, the only significant cultural resources in the proximity of BFN are site 1Li535 and the Cox Cemetery, which was moved to accommodate original construction of the plant. TVA has procedures in place to ensure that the operation of BFN would protect undiscovered historic or archaeological resources, and the proposed action would not change such procedures.

The EPUs and continued operation of BFN Units 1, 2, and 3 would remain in the scope of the original FES, and therefore, the staff concludes potential impacts to land use and to historic and archaeological resources from the proposed action are bounded by the impacts previously evaluated in the FES.

*Cooling Tower Impacts*

In support of the EPUs, operation frequency of the cooling towers would likely increase to approximately 7.2 percent of the time to meet thermal discharge requirements of the NPDES permit. The potential impacts from increased use of the cooling towers would be negligible to minor. The impacts would be increased noise directly proportional to the increased usage frequency. The towers may produce more noise and longer periods of noise due to the increased cooling tower operation, but other background noise, such as traffic, insects, frogs, and air conditioners, dominated TVA's June 2001 background noise survey. There are two neighborhoods in close proximity to BFN. The estimated background noise in the two neighborhoods, Paradise Shores and Lakeview, with six cooling towers operating would be approximately 52 and 48 decibels, respectively. These values are below the U.S. Environmental Protection Agency's (EPA's) recommended level of 55 decibels for the annual equivalent sound level day/night. Therefore, noise increases are not expected to have a noticeable effect on nearby residents.

Conclusions reached in NUREG–1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), apply to the proposed action regarding cooling tower impacts on crops, ornamental vegetation, and native plants. The conclusions state that salt drift, icing, fogging, or increased humidity resulting from cooling tower operation would not be significant. These same conclusions

apply for the period of operation prior to entry into the renewed operating license period. Additionally, as stated in the SEIS, the BFN cooling towers would be operated as helper towers and, therefore, would be operated less frequently than at plants with continuous cooling tower operation. However, since the publication of the NRC's SEIS, TVA has proposed a design change for the future sixth cooling tower, which would result in slightly increased frequency of cooling tower operation than the originally planned 20-cell tower. Nonetheless, cooling tower operation at BFN with all three units operating at EPU levels would still be operated less frequently than at plants with continuous cooling tower operation.

Likewise, the conclusion reached in the GEIS regarding aesthetics of cooling tower operation applies to the BFN helper towers. In addition to increased noise, increased operation of cooling towers may have an aesthetic effect in that a visible plume would be detectable more days of the year. However, the conclusions in the GEIS state that continuously operated cooling towers would not have significant effects on visible and audible aesthetics; therefore, the proposed action, including the increased use of helper towers, would not significantly affect aesthetics. This conclusion also applies to operation both prior to the renewed operating license period and during the renewed operating license period.

The proposed EPU would increase the number of days of operation of the cooling towers, which may increase the number of days experiencing background noise, fogging, icing, increased humidity, and a visible plume. Although the frequency of cooling tower operation would increase, the helper towers would be used only intermittently. Therefore, the staff concludes impacts of operating cooling towers would not be significant for the proposed action.

*Transmission Facility Impacts*

The potential impacts associated with transmission facilities for the proposed action include changes in transmission line corridor right-of-way maintenance and electric shock hazards due to increased current. No change in right-of-way maintenance, including vegetative management, would occur as a result of the EPU. The proposed EPU would increase the current, which would affect the electromagnetic field, but would not increase the voltage. Because the voltage would not change, there would be no change in the potential for electric shock.

The National Electric Safety Code (NESC) provides design criteria that limit hazards from steady-state currents. The NESC limits the short-circuit current to the ground to less than 5 mA. There would be an increase in current passing through the transmission lines associated with the increased power level of the proposed EPU. The increased electrical current passing through the transmission lines would cause an increase in electromagnetic field strength. Transmission lines would continue to meet applicable shock prevention provisions of the NESC. Although the United States has no guidelines for exposure to power frequency electromagnetic fields, Florida and New York have guidelines based on maximum load-carrying conditions. Under conditions of increased EPU currents, TVA transmission lines would continue to meet such guidelines. No data exist to suggest that higher electromagnetic fields adversely affect human health or flora and fauna.

The impacts associated with transmission facilities for the proposed action would not change significantly relative to the impacts from current plant operation. There would be no physical modifications to the transmission lines, transmission line right-of-way maintenance practices would not change, there would be no changes to transmission line rights-of-way or vertical clearances, and electric current passing through the transmission lines would increase only slightly. Therefore, the staff concludes there would be no significant impacts associated with transmission lines for the proposed action.

*Water Use Impacts*

Potential water use impacts from the proposed action include hydrological alterations to the Wheeler Reservoir on the Tennessee River and changes to plant water supply. No changes to the plant intake system are expected due to the proposed action; therefore, the volume of intake water would not change. Therefore, the staff concludes that there would be no significant alteration of the hydrology of the Wheeler Reservoir or the plant's water supply.

In addition to the once-through cooling system, BFN has five mechanical draft cooling towers that operate during helper mode. In conjunction with the restart of Unit 1, TVA has committed to building a replacement for the sixth cooling tower; the replacement tower would have a heat removal capacity greater than or equal to that of existing cooling tower #3. BFN typically enters helper mode during the hot summer months, and the cooling towers are operated only when necessary to meet the NPDES permit's thermal discharge limits. With the restart of Unit 1, if more than six circulating water pumps are operating, some flow must bypass the cooling towers and enter the river directly due to system limitations. Only about 2 percent of the cooling tower flow is not returned to the river due to evaporation and drift. BFN's consumptive water use consists of a negligible, unquantifiable amount that would not change detectably as a result of the EPU. Therefore, the staff concludes there would be no significant impacts to water use in the Wheeler Reservoir or the Tennessee River for the proposed action.

*Discharge Impacts*

Potential impacts to the Wheeler Reservoir from the BFN discharge include increased turbidity, scouring, erosion, and sedimentation. These discharge-related impacts apply to open-cycle flow due to the large volume of water discharged to the reservoir. However, since the EPU at BFN would not alter the intake volume of water, no significant change in discharge volume is anticipated. Therefore, no significant impacts from increased turbidity, scouring, erosion, and sedimentation are expected.

Surface runoff and wastewater discharges at BFN are regulated by the State of Alabama via a NPDES permit (NPDES No. AL0022080). The permit is periodically reviewed and renewed by the Alabama Department of Environmental Management. With the exception of discharge temperature, the EPU would not be expected to alter any other effluents, such as yard drainage, station sumps, and sewage treatment. Increase in discharge temperature in the Wheeler Reservoir would remain within the NPDES permit limits due to the implementation of cooling towers in helping mode or derating the units during hot summer months.

BFN's current NPDES permit limits thermal discharge, as detected at a depth of 5 feet at the end of a 2400-foot mixing zone downstream of the discharge diffusers, to a maximum 1-hour average of 93°F, a maximum 24-hour average of 90°F, and a maximum increase of 10°F over ambient temperatures. Currently, with Units 2 and 3 operating at 105 percent of the originally licensed maximum power level in open mode, the approximate temperature increase at the end of the mixing zone is 5.3°F. Operation of all three units at 120 percent power is

predicted to increase the mean water temperature at the end of the mixing zone by about 0.5°F compared to current operations and only 0.3°F when compared to all three units operating at their original power level as assessed in the FES. Increase in discharge temperature beyond the NPDES limits would trigger operation of the cooling towers in helper mode. If operation of the cooling towers is insufficient to reduce discharge temperature enough to remain within the NPDES compliance, the units would be derated so that the discharge temperature does not exceed the permit's limits. It is estimated that three-unit operation with the EPU would increase cooling-tower-operation frequency to about 7.2 percent and would result in derating approximately 0.29 percent of the time. It is expected that such operational controls would maintain compliance with the NPDES permit. When the plant is operating within the permit limits, it is expected that thermal discharge would not have significant individual or cumulative effects on reservoir stratification, dissolved oxygen concentrations, and eutrophication.

The proposed EPU would not result in changes in any other effluents, which are currently within permit limits. Therefore, the staff concludes that the proposed action would not result in any significant impacts on the Wheeler Reservoir or the Tennessee River from BFN discharge.

*Impacts on Aquatic Biota*

The potential impacts to aquatic biota from the proposed action include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance. The BFN has intake and discharge structures on the Wheeler Reservoir. The aquatic species evaluated in this EA are those in the vicinity of the intake and discharge structures.

Entrainment and impingement of aquatic species at BFN are limited by the NPDES permit. TVA conducted a pre-operational and operational study to collect data describing ichthyoplankton populations in the Wheeler Reservoir from 1971 through 1979. The results of the study indicated that, under open-cycle, three-unit operation, entrainment would not increase mortality significantly beyond the expected levels of natural mortality of fish eggs and larvae and that impingement would not adversely affect the fish community in the Wheeler Reservoir. TVA also conducted flow studies at BFN; the studies indicated that most entrained water originates on the eastern side of the main river channel. This area has lower densities of fish larvae than in overbank areas. Fish eggs (mostly from freshwater drum [*Aplodinotus grunniens*]) are found in the main channel at higher densities, but abundance of freshwater drum has not decreased noticeably. With the return of three-unit operation at 120 percent power for each unit, entrainment and impingement would increase slightly due to the increased flow rate of CCW. TVA's Vital Signs monitoring program currently being conducted would continue after the return of three-unit operation. In addition to assessing impacts from entrainment and impingement of fish populations in the Wheeler Reservoir, the monitoring program addresses effects on fish population dynamics and commercial and recreational fisheries as needed. The staff has determined that slight increases in entrainment and impingement as a result of the proposed action would not have significant impacts on species abundance or on the Wheeler Reservoir fish community.

On July 9, 2004, EPA published a final rule in the **Federal Register** (69 FR 41575) addressing cooling water intake structures at existing power plants whose flow levels exceed a minimum threshold value of 50 MGD. The rule is Phase II in EPA's development of 316(b) regulations that establish national requirements applicable to the location, design, construction, and capacity of cooling water intake structures at existing facilities that exceed the threshold value for water withdrawals. The national requirements, which are imposed with NPDES permits, minimize the adverse environmental impacts associated with the continued use of the intake systems. Licensees are required to demonstrate compliance with the Phase II performance standards to renew their NPDES permits. TVA is currently conducting entrainment and impingement studies at BFN in compliance with the Phase II rule.

Fish have the ability to detect thermal changes and actively avoid areas with elevated water temperature near the BFN diffusers. Thermal modeling shows that the bank opposite the BFN diffusers would not be affected by the thermal plume and, therefore, would allow passage for migrating fish. Known fish hosts for the protected freshwater mussels (see section below describing impacts on threatened and endangered species) are common in the Wheeler Reservoir. Most fish host species in the reservoir have upper lethal temperature limits that are higher than the BFN thermal variance of 90 °F. Studies on the least thermally tolerant species, sauger (*Stizostedion vitreum*) and yellow perch (*Perca flavescens*), showed that BFN had no significant, adverse impacts on reproduction of either species or on the annual sauger migration past BFN for spawning. Most larvae and eggs drifting past BFN are demersal and would have very little exposure to the thermal plume due to rapid mixing with the ambient surface water and rising of the heated water. Therefore, the thermal plume associated with the proposed EPU is not expected to affect adversely any life history stages of freshwater mussels or their host species.

The NPDES permit limits the amount of heat discharged to the Wheeler Reservoir from the operation of BFN. The thermal limits specified in the NPDES permit (as discussed above in discharge impacts section) would not change with implementation of the EPU. Because TVA would continue to meet the thermal limits set in the NPDES permit, whether in open cycle, in helper mode, or via power derating, the proposed action is not expected to result in additional thermal discharge effects on aquatic species in the Wheeler Reservoir.

As discussed in the transmission facility impacts section of this EA, transmission line right-of-way maintenance practices would not change for the proposed action. Therefore, the staff concludes that there would be no significant impacts to aquatic species associated with transmission line right-of-way maintenance for the proposed action.

*Impacts on Terrestrial Biota*

The proposed action would not include any new land disturbance or changes in transmission line right-of-way maintenance. Most areas at BFN are not pristine and continue to provide habitat only for species with widespread distributions; the wildlife diversity at BFN is not great. No rare terrestrial species occur in the vicinity of BFN. Although wetlands do occur at the BFN site (25 acres according to the National Wetlands Inventory and 12 acres according to the Federal jurisdictional criteria), none of the wetlands would be affected by the proposed action. Therefore, the staff concludes that there would be no significant impacts to terrestrial species or their habitat associated with the proposed action, including transmission line right-of-way maintenance.

*Impacts on Threatened and Endangered Species*

Potential impacts to threatened and endangered species from the proposed action include the impacts assessed in

the aquatic and terrestrial biota sections of this environmental assessment. These impacts include impingement, entrainment, thermal discharge effects, and impacts due to transmission line right-of-way maintenance for aquatic and terrestrial species.

There are seven species listed as threatened or endangered under the Federal Endangered Species Act that occur within Limestone County, Alabama. The listed terrestrial species include the endangered gray bat (*Myotis grisescens*) and the endangered Indiana bat (*M. sodalis*). These two species are not known to occur within three miles of BFN. As no significant impacts are expected to terrestrial species or their habitat, the proposed action would not have significant impacts on the gray or Indiana bats or their habitats.

There are five Federally endangered aquatic species that occur within the vicinity of BFN. The rough pigtoe (*Pleurobema plenum*) and the pink mucket (*Lampsilis abrupta*) are freshwater mussels that have been reported to occur in areas upstream from BFN. It is unlikely that these species would occur in areas near the thermal plume or downstream of BFN; therefore, effects on the rough pigtoe, the pink mucket, their habitats, or their fish host species (see aquatic biota section above describing impacts on host species) are not expected to result from the proposed action. The three other Federally listed aquatic species are endangered snails: Armored snail (*Pyrgulopsis pachyta*), slender campeloma (*Campeloma decampi*), and Anthony's river snail (*Athearnia anthonyi*). All three Federally endangered aquatic snails are found only in tributaries to the Wheeler Reservoir that are located upstream of BFN; therefore, no significant impacts on these snails are expected from the proposed action. No Federally listed fish species or critical habitat are known to occur within the vicinity of BFN. TVA's Vital Signs monitoring program and Regional Natural Heritage Program would continue acting as tools for identification of protected species and habitat at BFN. The staff concludes that there would be no significant effects on Federally threatened or endangered species as a result of the proposed action.

*Socioeconomic Impacts*

Potential social and economic impacts due to the proposed action include changes in the payments in lieu of taxes for Limestone County and changes in the size of the workforce at BFN. The NRC staff has reviewed the information provided by the licensee regarding socioeconomic impacts. Because BFN changes in conjunction with the proposed action would occur during a planned outage, the proposed action would not result in any additional changes in the workforce. For all planned outages, which typically last about 35 days, employment at BFN would increase by about 1000 people at most. Due to the short-term need for increased employment, it is not expected that workers would move into the local area for such temporary employment. The maximum employment during an outage would be about 3.1 percent of Limestone County's current labor force, which was about 32,690 in 2003. For the primary labor market area, which includes Huntsville, Decatur, and Florence, BFN outages would employ about 0.3 percent of the labor force, which was about 318,800 in 2003. Therefore, the proposed EPU would not affect significantly the size of the BFN labor force as the modifications would occur during planned outages and would not increase the size of permanent employment at BFN. Accordingly, the proposed action would not have measurable effects on annual earnings and income in Limestone County or on community services due to the very small and insignificant impact on the local population.

The Limestone County population is about 17.6 percent minority, which is well below both the state and national minority populations, 29.7 and 30.9 percent, respectively. The labor market minority population is about 22.1 percent. The poverty rates in Limestone County and the labor market area are 12.3 percent and 12.1 percent, respectively, which are lower than the state's average of 16.1 percent and about the same as the nation's average of 12.4 percent. Therefore, due to the low minority population, low poverty rate, and lack of significant environmental impacts resulting from the proposed action, the proposed EPU would not have disproportionate negative impacts to minority and low-income populations.

In compliance with Section 13 of the TVA Act, TVA makes payments in lieu of property taxes to states and counties in which its power operations occur and in which its acquired properties were subject to state and county taxation previous to their acquisition by TVA. For such payments, TVA pays 5 percent of its gross power revenues to appropriate states and counties, with most of the money paid to the states, which redistribute the payments to local governments. The proposed action would affect the in-lieu-of-tax payments because the total amount of money to be distributed increases as power generation increases and because the EPU would increase BFN's value, thus resulting in a larger allocation of the payment to Limestone County. Because the proposed EPU would increase the economic viability of BFN, the probability of early plant retirement would be reduced. Early plant retirement would be expected to have negative impacts on the local economy and the community by reducing in-lieu-of-tax payments and limiting local employment opportunities for the long term.

While the proposed action would not affect the labor force significantly, there would be no disproportionate impacts on minority or low-income populations. Additionally, the proposed EPU would increase the in-lieu-of-tax payments received by Limestone County, increase the book value of BFN, and increase the long-term viability of BFN. Therefore, the NRC staff concludes that there would be no significant socioeconomic impacts associated with the proposed action.

*Summary*

The proposed EPU would not result in a significant change in non-radiological impacts in the areas of land use, cooling tower operation, transmission facility operation, water use, waste discharges, aquatic and terrestrial biota, or socioeconomic factors. No other non-radiological impacts were identified or would be expected. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at BFN.

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

| | |
|---|---|
| Land Use | No significant land-use modifications. |
| Cooling Tower | No significant aesthetic impacts; slightly larger visible plume and increased noise due to more frequent operation; no significant fogging or icing. |
| Transmission Facilities | No physical modifications to transmission lines; lines meet shock safety requirements; no changes to right-of-ways; small increase in electrical current would cause small increase in electromagnetic field around transmission lines; no changes to voltage. |

TABLE 1.—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS—Continued

| | |
|---|---|
| Water Use | No configuration change to intake structure; no increased volume of water withdrawal; increase in flow rate of condenser cooling water; slight increase in consumptive use due to evaporation; no water use conflicts. |
| Discharge | Increase in discharge water temperature; no increases in other effluents; discharge would remain within NPDES permit limits due to cooling tower operation and derating as necessary. |
| Aquatic Biota | Entrainment and impingement would increase slightly but are not expected to affect the fish community in Wheeler Reservoir. |
| Terrestrial Biota | No land disturbance or changes to transmission line right-of-way maintenance are expected; therefore, there would be no significant effects on terrestrial species or their habitat. |
| Threatened and Endangered Species. | As for aquatic and terrestrial biota, no significant impacts are expected on protected species or their habitat. |
| Socioeconomics | No significant change in size of BFN labor force required for plant operation or for planned outages; proposed EPU would increase in-lieu-of-tax payments to Limestone County and book value of BFN; minority and low-income populations would not be disproportionately affected. |

**Radiological Impacts**

*Radioactive Waste Stream Impacts*

BFN uses waste treatment systems designed to collect, process, and dispose of gaseous, liquid, and solid wastes that might contain radioactive material in a safe and controlled manner such that discharges are in accordance with the requirements of Title 10 of the Code of Federal Regulations Part 20 (10 CFR Part 20), ''Standards for Protection Against Radiation,'' and 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' Appendix I. Although there may be a small increase in the volume of radioactive waste and spent fuel, the proposed EPU would not result in changes in the operation or design of equipment in the gaseous, liquid, or solid waste systems.

*Gaseous Radioactive Waste and Offsite Doses*

During normal operation, the gaseous effluent treatment systems process and control the release of gaseous radioactive effluents to the environment, including small quantities of noble gases, halogens, tritium, and particulate material. The gaseous waste management systems include the offgas system and various building ventilation systems. The proposed EPU is expected to result in a 15–20 percent increase in gaseous effluents, which is still well within regulatory limits of Appendix I to 10 CFR Part 50. Therefore, the increase in offsite dose due to gaseous effluent release following the EPU would not be significant.

*Liquid Radioactive Waste and Offsite Doses*

During normal operation, the liquid effluent treatment systems process and control the release of liquid radioactive effluents to the environment, such that the doses to individuals offsite are maintained within the limits of 10 CFR Part 20 and 10 CFR Part 50, Appendix I. The liquid radioactive waste systems are designed to process the waste and then recycle it within the plant as condensate, reprocess it through the radioactive waste system for further purification, or discharge it to the environment as liquid radioactive waste effluent in accordance with State and Federal regulations. Although no changes to the liquid radioactive waste processing and disposition at BFN are expected to occur with the EPU, TVA does expect a small increase in the volume to be processed. The projected liquid effluents would be well within the regulatory limits under the proposed action. Therefore, there would not be a significant environmental impact from the additional volume of liquid radioactive waste generated following the EPU.

*Solid Radioactive Wastes*

The solid radioactive waste system collects, processes, packages, and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite and permanent disposal. The proposed EPU would generate 15–20 percent more radioactive resin resulting from the increased condensate demineralizer flow. Such an increase would not exceed BFN's capacity for radioactive waste treatment and storage. Modifications associated with the proposed action would generate a small amount of dry radioactive waste, which would remain within the range of solid waste currently generated and would not impact waste generation goals.

The proposed action would increase the average batch size of fuel assemblies for refueling, but it would not affect BFN's schedule for spent fuel storage expansion. The number of dry storage casks required with the proposed EPU would increase by about 7 percent. Therefore, the increase in solid radioactive waste under the proposed action would not have a significant environmental impact.

*In-Plant Radiation Doses*

The proposed EPU would result in the production of more radioactive material and higher radiation dose rates in some areas at BFN. The annual average occupational radiation dose to an individual for BFN during the 1991-to-2000 period was 0.198 rem. The predicted occupational radiation dose for BFN with the proposed EPU could increase to almost 0.24 rem, which is about 5 percent of the 10 CFR Part 20 limit for adult whole body occupational radiation dose. This estimate does not account for potential further reductions in dose due to As Low As Reasonably Achievable program initiatives and administrative dose level controls. Therefore, the proposed action is not expected to impact significantly the in-plant radiation doses.

*Direct Radiation Doses Offsite*

Direct radiation from radionuclides (mainly nitrogen-16) in the reactor water and the turbine building would increase linearly with the EPU. Such increase in radiation would be monitored at the on-site environmental thermoluminescent dosimeter (TLD) stations at BFN. In the past, data from BFN's TLD stations have not indicated that any measurable nitrogen-16 radiation could be detected offsite. Therefore, it is unlikely that the small increase in radiation associated with the EPU would result in any measurable dose to the public.

The annual whole body dose equivalent for liquid effluents to a member of the public beyond the site boundary is limited to 25 mrem (0.25 mSv) by 40 CFR Part 190. The projected maximum direct radiation dose offsite at BFN with the EPU is 0.065 mrem, which is only about 0.3 percent of the limit in 40 CFR 190. The liquid effluent dose limit for any organ is projected to be 0.94 mrem/year, which is only 0.4 percent of the 40 CFR 190 limit. Projected gaseous limits with the EPU would also remain well within limits, with each dose type reaching less than 0.2 percent of the limit. The licensee would continue to perform surveys as the EPU is implemented to ensure continued compliance with 40 CFR 190.

Therefore, the direct radiation dose offsite at BFN with the EPU would not be significant and is not expected to affect human health.

*Postulated Accident Doses*

As a result of implementation of the proposed EPU, there is an increase in the source term used in the evaluation of some of the postulated accidents in the FES. The inventory of radionuclides in the reactor core is dependent upon power level; therefore, the core inventory of radionuclides could increase by as much as 20 percent. The concentration of radionuclides in the reactor coolant may also increase by as much as 20 percent; however, this concentration is limited by the BFN Technical Specifications. Therefore, the reactor coolant concentration of radionuclides would not be expected to increase significantly. This coolant concentration is part of the source term considered in some of the postulated accident analyses. Some of the radioactive waste streams and storage systems evaluated for postulated accidents may contain slightly higher quantities of radionuclides.

In 2002, TVA requested a license amendment to allow the use of Alternate Source Term (AST) methodology for design basis accident analyses for BFN Units 1, 2, and 3. TVA conducted full-scope AST analyses, which considered the core isotopic values for the current and future vendor products under EPU conditions. TVA concluded that the calculated post-accident offsite doses for the EPU using AST methodologies meet all the applicable acceptance criteria of 10 CFR 50.67 and Regulatory Guide 1.183. The NRC staff is reviewing the licensee's analyses and performing confirmatory calculations to verify the acceptability of the licensee's calculated doses under accident conditions. The results of the NRC staff's calculations will be presented in the safety evaluation to be issued with the license amendment, and the EPU would not be approved by NRC unless the NRC staff's independent review of dose calculations under postulated accident conditions determines that dose is within regulatory limits. Therefore, the NRC staff concludes that the EPU would not significantly increase the consequences of accidents and would not result in a significant increase in the radiological environmental impact of BFN from postulated accidents.

*Fuel Cycle and Transportation Impacts*

The environmental impacts of the fuel cycle and transportation of fuels and wastes are described in Tables S–3 and S–4 of 10 CFR 51.51 and 10 CFR 51.52, respectively. An additional NRC generic EA (53 FR 30355, dated August 11, 1988, as corrected by 53 FR 32322, dated August 24, 1988) evaluated the applicability of Tables S–3 and S–4 to higher burn-up cycle and concluded that there is no significant change in environmental impact from the parameters evaluated in Tables S–3 and S–4 for fuel cycles with uranium enrichments up to 5 weight percent uranium-235 and burn-ups less than 60,000 megawatt (thermal) days per metric ton of uranium-235 (MWd/MTU). Resulting from an interagency agreement in 2001 between TVA and the Department of Energy, 33 metric tons of highly enriched uranium will be obtained and blended down to allow use of the low enriched uranium as nuclear reactor fuel for BFN. With the use of blended low enriched uranium fuel, a higher percentage of uranium-236 exists. As a neutron poison, uranium-236 requires greater enrichment to compensate for reactivity loss. The number of fuel assemblies to be shipped would increase as would the associated handling doses. However, the burn-up limit and the uranium enrichment limit would stay within the 5 percent and the 60,000 MWd/MTU limits. Therefore, the environmental impacts of the EPU would remain bounded by the impacts in Tables S–3 and S–4 and would not be significant.

*Summary*

The proposed EPU would not significantly increase the consequences of accidents, would not result in a significant increase in occupational or public radiation exposure, and would not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there would be no significant radiological environmental impacts associated with the proposed action. Table 2 summarizes the radiological environmental impacts of the proposed EPU at BFN.

TABLE 2.—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

| | |
|---|---|
| Gaseous Effluents and Doses. | Slight increase (by about 15–20 percent) in dose due to gaseous effluents; doses to individuals offsite would remain within NRC limits. |
| Liquid Effluents and Doses .. | Volume of liquid effluent generated and amount of radioactivity in the effluent are expected to increase slightly; discharges of liquid effluents would remain within NRC limits; however, no routine discharge of liquid effluent is expected. |
| Solid Radioactive Waste ..... | Volume of solid waste expected to increase slightly due to more frequent change of demineralizer resins; increase in amount of spent fuel assemblies. |
| In-plant Dose ..... | Occupational dose could increase by 20 percent overall; occupational doses would remain well within NRC limits. |
| Direct Radiation Dose ..... | Up to 20 percent increase in production of nitrogen-16; however, dose rate at site boundary due to skyshine is not expected to increase significantly and would remain within NRC and EPA limits. |
| Postulated Accidents ..... | Licensee using AST; doses would remain within NRC limits. |
| Fuel Cycle and Transportation. | Impacts in Tables S–3 and S–4 in 10 CFR 51, ''ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTION'' are bounding. |

*Alternatives to Proposed Action:*

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved, other agencies and electric power organizations may be required to pursue other means of providing electric generation capacity to offset future demand. Fossil fuel plants routinely emit atmospheric pollutants, causing impacts in air quality that are larger than if BFN were to provide the same amount of electric generation. Construction and operation of a fossil fuel plant also create impacts in land use and waste management. Other alternatives, such as purchased electrical power, wind power, and hydropower, were considered during the NRC's review for the BFN license renewal. The proposed EPU, like license renewal, would incur fewer environmental costs than the alternatives considered. While the EPU would produce additional spent fuel, the additional amount of spent fuel

would be stored in a new dry cask storage facility, which would be constructed even if the EPU were not approved. Therefore, the proposed EPU would not have significant environmental impacts.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the SEIS (NRC 2005).

*Agencies and Persons Consulted*

In accordance with its stated policy, on August 7, 2006, the NRC staff consulted with the Alabama State official, Mr. Kirk Whatley, of the Office of Radiation Control, regarding the environmental impacts of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the EA, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

For further details with respect to the proposed action, see the licensee's applications dated June 25 and June 28, 2004, as supplemented by letters dated August 23, 2004, February 23, April 25, June 6, and December 19, 2005, February 1 and 28, March 7, 9, 23, and 31, April 13, May 5 and 11, June 12, 15, 23 and 27, and July 21, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

**DATES:** The comment period expires December 6, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to assure consideration of comments received on or before December 6, 2006.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Room T–6D59, Rockville, Maryland, 20852 from 7:30 a.m. to 4:15 p.m. on Federal workdays. Copies of written comments received will be electronically available at the NRC's Public Electronic Reading Room link, *http://www.nrc.gov/reading-rm/adams.html,* on the NRC Web site or at the NRC's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The NRC is considering issuance of amendments to Facility Operating License Nos. DPR–33, DPR–52, and DPR–68 issued to TVA for operation of BFN Units 1, 2, and 3 located in Limestone County, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret Chernoff, Office of Nuclear Reactor Regulation, Mail Stop O–8G9A, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–2315, or by e-mail at *mhc@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of October 2006.

For the Nuclear Regulatory Commission.

**L. Raghavan,**

*Chief, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6–18623 Filed 11–3–06; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–312]**

### Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Notice of Public Meeting on the License Termination Plan

The Nuclear Regulatory Commission (NRC) is providing notice that the NRC staff will conduct a meeting to discuss and accept public comments on the Rancho Seco Nuclear Generating Station (Rancho Seco) License Termination Plan (LTP) on Tuesday, November 14, 2006, at 7 p.m. in a meeting room at the Marriott Courtyard Hotel, 10683 White Rock Road, Rancho Cordova, California.

Rancho Seco initially went critical on September 16, 1974, and began commercial operation on April 18, 1975. In accordance with the results of a public referendum on June 6, 1989, the Sacramento Municipal Utility District (SMUD) decided to permanently shut down the Rancho Seco Nuclear Generating Station. Accordingly, on August 29, 1989, SMUD notified the NRC of its intent to seek amendments to the Rancho Seco operating license to decommission the facility. On March 20, 1995, the NRC issued Rancho Seco's Decommissioning Order. The Order authorized SMUD to decommission Rancho Seco in accordance with the Decommissioning Plan, submitted to the NRC on May 20, 1991. On March 20, 1997, SMUD submitted its Post Shutdown Decommissioning Activities Report (PSDAR), in accordance with 10 CFR 50.82. The PSDAR superseded the original Decommissioning Plan. On August 21, 2002, Rancho Seco completed placing all 493 spent fuel assemblies in dry storage at the onsite Independent Spent Fuel Storage Installation (ISFSI), licensed under 10 CFR Part 72.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. SMUD submitted the proposed LTP for Rancho Seco with a license amendment application dated April 12, 2006. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the Rancho Seco LTP, will hold a public meeting, and will accept comments from affected parties.

The Rancho Seco LTP is available for public viewing at the NRC's Public Document Room (PDR) or electronically through the NRC Agencywide Documents Access and Management System (ADAMS) at accession number ML061460053. Documents may be examined, and/or copied for a fee, at the PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Comments or questions regarding the Rancho Seco LTP or the public meeting may be addressed to Mr. John B. Hickman, Mail Stop T–7–E18, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3017 or via e-mail *jbh@nrc.gov*.

Dated at Rockville, Maryland, this 31st day of October 2006.

For the Nuclear Regulatory Commission,

**James Shepherd,**

*Acting Branch Chief, Reactor Decommissioning Branch, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. E6–18624 Filed 11–3–06; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meetings

**DATE:** Week of November 6, 2006.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**ADDITIONAL MATTERS TO BE CONSIDERED:** *Week of November 6, 2006:* Thursday, November 9, 2006, 9:25 a.m. Affirmation Session (Public Meeting) (Tentative) a. Pacific Gas & Electric Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, ''Motion by San luis Obispo Mothers for Peace, Sierra Club, and Peg Pinard for Partial Reconsideration of CLI–06–23'' (Tentative) b. System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP) (Tentative).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: November 1, 2006.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 06–9096 Filed 11–2–06; 8:45 am]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### Appointments to Performance Review Boards for Senior Executive Service

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Appointment to Performance Review Boards for Senior Executive Service.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level employees:

Bruce A. Boger, Associate Director for Operating Reactor Oversight and Licensing, Office of Nuclear Reactor Regulation.

R. William Borchardt, Deputy Director, Office of Nuclear Security and Incident Response.

Samuel J. Collins, Regional Administrator, Region I.

Karen D. Cyr, General Counsel.

Jesse L. Funches, Chief Financial Officer.

William F. Kane, Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations.

Bruce S. Mallett, Regional Administrator, Region IV.

Luis A. Reyes, Executive Director for Operations.

Jacqueline E. Silber, Deputy Executive Director for Information Services and Administration and Chief Information Officer.

Jack R. Strosnider, Director, Office of Nuclear Material Safety and Safeguards.

Annette L. Vietti-Cook, Secretary of the Commission.

Martin J. Virgilio, Deputy Executive Director for Materials, Research, State and Compliance Programs.

James T. Wiggins, Deputy Director, Office of Nuclear Regulatory Research.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Stephen G. Burns, Deputy General Counsel, Office of the General Counsel.

Brian W. Sheron, Director, Office of Nuclear Regulatory Research.

Roy P. Zimmerman, Director, Office of Nuclear Security and Incident Response.

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

**DATES:** *Effective Date:* November 6, 2006.

**FOR FURTHER INFORMATION CONTACT:** Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555; (301) 415–7530.

Dated at Rockville, Maryland, this 14th day of August, 2006.

For the Nuclear Regulatory Commission.

**Carolyn J. Swanson,**

*Secretary, Executive Resources Board.*

[FR Doc. E6–18630 Filed 11–3–06; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54678]**

### Order Exempting Certain Sub-Penny Trade-Throughs From Rule 611 of Regulation NMS Under the Securities Exchange Act of 1934

October 31, 2006.

### I. Introduction

Pursuant to Rule 611(d) [1] of Regulation NMS [2] under the Securities Exchange Act of 1934 (''Exchange Act''), the Securities and Exchange Commission (''Commission''), by order, may exempt from the provisions of Rule

[1] 17 CFR 242.611(d).

[2] 17 CFR 242.600 *et seq.*

611 of Regulation NMS (''Rule 611'' or ''Rule''), either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[3] As discussed below, the Commission is exempting from Rule 611 trading centers executing transactions that trade through a low-priced protected quotation by less than $0.01 per share. The exemption is designed to promote more workable and efficient intermarket price priority in NMS stocks with quoted prices of $1.00 or less per share that can be quoted in increments as small as $0.0001.

## II. Background

The Commission adopted Regulation NMS in June 2005.[4] Rule 611(a)(1) requires a trading center to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in the Rule. Rule 611(b)(6) provides an exception for a trade-through transaction effected by a trading center that simultaneously routes an intermarket sweep order (''ISO'') to execute against the full displayed size of any protected quotation in the NMS that was traded through.

Rule 612(a) of Regulation NMS prohibits, among other things, the display of quotations priced in an increment smaller than $0.01 if the quotation is priced equal to or greater than $1.00 per share.[5] Under Rule 612(b), however, it is permissible to display quotations in increments as small as $0.0001 if the quotation is priced less than $1.00 per share. As a result, quotations priced in increments as small as $0.0001 could qualify as ''protected quotations'' under Rule 600(b)(58).[6]

## III. Discussion

The Commission has decided to exempt trading centers from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when: (1) The price of the protected quotation that is traded through is $1.00 or less; and (2) the price of the trade-through transaction is less than $0.01 away from the price of the protected quotation that was traded through (''Sub-Penny Trade-Throughs'').

The Commission believes that granting an exemption for Sub-Penny Trade-Throughs will promote a more workable and efficient trade-through rule in NMS stocks that can be priced in very small increments of less than $0.01. The Regulation NMS Adopting Release notes that implementation of the Rule 611 trade-through provisions is likely to present the greatest challenge for agency markets trading active stocks that handle a large volume of buy and sell orders.[7] These trading centers must assure that such orders interact in an orderly and efficient manner in compliance with all applicable priority rules. The Rule 611(a) requirement of written policies and procedures is designed to achieve the objective of eliminating all trade-throughs that reasonably can be prevented, while also acknowledging the inherent difficulties of eliminating trade-through transactions in active stocks with quotations that change rapidly.[8]

Consistent with this approach, the Commission is adopting an exemption for Sub-Penny Trade-Throughs, particularly to allow active agency trading centers that continuously display quotations and execute orders against such quotations to operate their trading systems efficiently in stocks that can be quoted in increments of as small as $0.0001. Given these small quoting increments for protected quotations priced at less than $1.00 per share, the Commission does not believe it is appropriate to require trading centers to prevent trade-throughs of less than $0.01. In the absence of an exemption, trading centers generally would be required to prevent the execution of incoming orders against their own displayed quotations with prices that could be only $0.0001 away from a protected quotation displayed by another trading center. The Commission does not believe that the very small economic benefit to be gained by protecting such a quotation would justify the practical difficulties faced by trading centers in operating their trading systems efficiently.

For the foregoing reasons, the Commission finds that granting an exemption for Sub-Penny Trade-Throughs is necessary and appropriate in the public interest, and is consistent with the protection of investors.

## IV. Conclusion

*It is hereby ordered*, pursuant to Rule 611(d) of Regulation NMS, that trading centers shall be exempt from the requirement in Rule 611(a) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs when: (1) The price of the protected quotation that is traded through is $1.00 or less; and (2) the price of the trade-through transaction is less than $0.01 away from the price of the protected quotation that was traded through.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–18635 Filed 11–3–06; 8:45 am]

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[3] *See also* 15 U.S.C. 78mm(a)(1) (providing general authority for Commission to grant exemptions from provisions of Exchange Act and rules thereunder).

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[5] 17 CFR 242.612(a).

[6] 17 CFR 242.600(b)(58). A ''protected quotation'' is defined as a protected bid or protected offer. Under Rule 600(b)(57), a ''protected bid'' or ''protected offer'' means a quotation in an NMS stock that: (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange or a national securities association.

[7] 70 FR at 37524.

[8] 70 FR at 37534.

[9] 7 CFR 200.30–3(a)(82).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54675; File No. SR–NYSE–2006–96]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Request to Extend the Pilot Operating During the Exchange's Implementation of NYSE Hybrid Market Phase 3 Until November 30, 2006

October 31, 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 26, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to extend the pilot (''Pilot'')[5] which put into operation certain rule changes pending before the Commission to coincide with the Exchange's implementation of NYSE HYBRID MARKETSM (''Hybrid Market'')[6] Phase 3.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On October 5, 2006, the Commission approved the Pilot to, among other things, put into operation certain proposed modifications to Exchange Rules that are currently pending[7] before the Commission to coincide with the Exchange's implementation of the Hybrid Market Phase 3. The Pilot commenced on October 6, 2006[8] and is scheduled to terminate on the close of business October 31, 2006.

The Exchange proposes to extend the Pilot through November 30, 2006 or the earlier of Commission approval of the Omnibus Filing, Stabilization Filing and the Block Cross Filing while the Commission continues to review the aforementioned pending filings. The approval of any one of the pending filings terminates the operation of the rules associated with the approved filing from the Pilot. The Pilot shall not terminate in its entirety unless and until all pending filings are approved or November 30, 2006.

An extension of the Pilot will allow the Exchange to continue to operate the Hybrid Market Phase 3 and commence implementation of Hybrid Market Phase 4 in a timely manner. The Exchange believes that an extension of the Pilot will also enable the Exchange to be fully Regulation NMS[9]-compliant by February 5, 2007 date and comply with its obligations under the proposed NMS Linkage Plan.[10]

The Exchange further believes that extending the Pilot will allow it to continue identifying and addressing any system problems. The Exchange will continue to identify and incorporate beneficial system changes that become apparent as a result of usage in real time and under real market conditions.

An extension of the Pilot will further the Exchange's ability to have real time user interface which is proving very useful to the Exchange. Moreover, by extending the Pilot, current users will continue gaining the essential practical experience with the new systems and processes in a well-modulated way, in real time and under real market conditions that cannot be completely replicated in the mock-trading environment.

The Exchange is currently in the process of phasing in the securities operating under the Pilot. As expected, the Pilot is operating with minimal problems and the benefits as described above are proving invaluable. Therefore, the Exchange believes it is appropriate to extend the Pilot through November 30, 2006 or the earlier of Commission approval of the pending filings as described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] 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[13] 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.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms, does not 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[14] and Rule 19b–4(f)(6) thereunder.[15]

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] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 54578 (October 5, 2006), 71 FR 60216 (October 12, 2006) and 54610 (October 16, 2006), 71 FR 62142 (October 23, 2006).

[6] The Hybrid Market was approved on March 22, 2006. *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006).

[7] *See*, Securities Exchange Act Release Nos. 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'')); 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'')); and SR–NYSE–2006–73 (filed on September 13, 2006) and Amendment No. 1 thereto (filed on October 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] The changes related to stop orders and stop limit orders proposed in the Omnibus Filing were implemented on October 16, 2006 in order to give customers and member organizations sufficient time to make any changes necessary as a result of the elimination of stop limit orders.

[9] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[10] A ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' to facilitate trades between different market centers. *See* Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006). The Commission published notice of the NMS Linkage Plan on July 28, 2006. *See* Securities Exchange Act Release No. 54239 (July 28, 2006), 71 FR 44328 (August 4, 2006).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

4(f)(6)(iii)[16] 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 notice requirement and the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Pilot to continue without interruption. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission on a pilot basis until November 30, 2006.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–96 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–2006–96. 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–2006–96 and should be submitted on or before November 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Nancy M. Morris,**

*Secretary.*

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**BILLING CODE 8011–01–P**

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54672; File No. SR–NYSEArca–2006–47]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Modify the Voluntary Withdrawal Procedures of Securities From Listing on the Exchange and, for Dually-Listed Issuers Voluntarily Withdrawing Listed Securities on the Exchange, To Eliminate the Requirement To Submit Resolutions by Their Board of Directors

October 30, 2006.

## I. Introduction

On August 4, 2006, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 5.4(b) of NYSE Arca Equities, Inc. (''NYSE Arca Equities''), a wholly-owned subsidiary of the Exchange. The Exchange amended the proposal on August 17, 2006. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 29, 2006.[3] The Commission received no comments on the proposal. On October 17, 2006, the Exchange filed Amendment No. 2 to the proposal.[4] In Amendment No. 2, the Exchange amended the proposed rule text to reflect The Nasdaq Stock Market's change in status as a national securities exchange,[5] and to add that only an authorized executive officer may submit a delisting notice to the Exchange in the case of dually-listed issuers (as defined below). This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. The Commission has accelerated approval of Amendment No. 2 and is also providing notice and soliciting comments on Amendment No. 2 to the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to amend NYSE Arca Equities Rule 5.4(b) to modify the voluntary withdrawal procedures of securities from listing on NYSE Arca, L.L.C. (''NYSE Arca Marketplace''), the equities trading facility of NYSE Arca Equities. For an issuer who wishes to voluntarily withdraw securities listed on NYSE Arca Marketplace, the Exchange proposes to eliminate the requirement that such issuer submit a letter from an authorized officer of the issuer, providing the specific reasons cited by its board of directors for the proposed withdrawal.[6] Further, the Exchange proposes to eliminate the requirement that such issuer, under special

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54348 (August 22, 2006), 71 FR 51264.

[4] *See* Partial Amendment dated October 17, 2006 (" Amendment No. 2'').

[5] *See* Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); 54240 (July 31, 2006), 71 FR 45246 (August 8, 2006); and 54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

[6] Although the provision requiring submission of a letter stating the board of director's specific reasons for delisting would be eliminated from NYSE Arca Equities rules, Rule 12d2–2(c)(2)(ii) under the Act has a similar provision that requires issuers to ''provide written notice to the national securities exchange of its determination to withdraw the class of securities from listing and/or registration on such exchange. Such written notice must set forth a description of the security involved, together with a statement of all material facts relating to the reasons for withdrawal from listing and/or registration.'' 17 CFR 240.12d2–2(c)(2)(ii).

circumstances, submit the proposed withdrawal to its shareholders for their vote at a meeting for which proxies are solicited, provided the security is not also listed on another exchange with similar requirements.

In place of these requirements, the Exchange proposes that an issuer may voluntary delist a security from the Exchange after the issuer's board approves the action and the issuer (i) furnishes the Exchange with a copy of the Board resolution authorizing such delisting certified by the secretary of the issuer and (ii) complies with all of the requirements of Rule 12d2–2(c) under the Act.[7] The issuer must thereafter file a Form 25 with the Commission to withdraw the security from listing on the Exchange and from registration under the Act. In addition, the issuer must provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Commission. In addition, if an issuer delists a class of stock from the Exchange and does not delist other classes of listed securities, the Exchange may consider delisting one or more of such other classes.

Finally, for an issuer whose securities are listed on both the Exchange and another national securities exchange (''dually-listed issuer''), the Exchange proposes to eliminate the requirement that such issuer provide to the Exchange a certified copy of the resolutions of the issuer's board of directors authorizing the withdrawal from listing on the Exchange. Instead, the Exchange proposes to require the submission of a letter signed by an authorized executive officer of the issuer setting forth the reason for the proposed withdrawal.

## III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations applicable to a national securities exchange, and in particular, with the requirements of Section 6(b) of the Act.[8] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[9] in that it is designed 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 securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes the Exchange's proposal to modify voluntary withdrawal procedures is consistent with the requirements of the Act and does not raise any significant regulatory issues. The Exchange proposes to amend the voluntary delisting process by requiring that an issuer may voluntary delist a security from the Exchange after the issuer's board approves the action and the issuer (i) furnishes the Exchange with a copy of the Board resolution authorizing such delisting certified by the secretary of the issuer and (ii) complies with all of the requirements of Rule 12d2–2(c) under the Act.[10] The issuer must thereafter file a Form 25 with the Commission to withdraw the security from listing on the Exchange and from registration under the Act. In addition, the issuer must provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Commission. Further, the Exchange may consider delisting one or more other classes of securities if an issuer delists a class of security and does not delist other classes of listed securities. The Commission notes that the proposed voluntary withdrawal procedures are consistent with the requirements of Rule 12d2–2 under the Act[11] and are virtually identical to the voluntary withdrawal procedures of the New York Stock Exchange LLC (''NYSE'').[12] Further, some of the provisions to be deleted are already imposed on issuers by Rule 12d2–2 under the Act.[13]

Further, the Exchange proposes to eliminate the requirement that a dually-listed issuer provide to the Exchange a certified copy of the resolutions of the issuer's board of directors authorizing the withdrawal from listing on the Exchange. The proposed rule requires that each dually-listed issuer provide a letter signed by an authorized executive officer of the issuer setting forth the reasons for the proposed withdrawal.[14] Dually-listed issuers also must still comply with all the other requirements of NYSE Arca Equities Rule 5.4(b) and Rule 12d2–2 under the Act,[15] which specifically requires, among other things, that issuers comply with all applicable laws in effect in the state in which they are incorporated.

The elimination of the board certification requirement may ease the burden on dually-listed issuers who wish to voluntarily withdraw securities from listing on the Exchange. Moreover, the security of a dually-listed issuer would continue to be listed and traded on a registered national securities exchange. As noted by the Exchange, this should ensure that transparent last sale information will continue to be disseminated on the delisted security on an uninterrupted basis. It would also ensure the other protections for trading a security on a national securities exchange remain, such as the periodic reporting obligations under the Act. Based on the above reasons, the Commission finds that the proposal is consistent with the requirements of the Act.

## IV. Accelerated Approval of Amendment No. 2

Pursuant to Section 19(b)(2) of the Act,[16] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

In Amendment No. 2, the Exchange proposed to amend the proposed rules to reflect the change in status of the Nasdaq Stock Market to a national securities exchange, and to add that only an authorized executive officer may submit a delisting notice to the Exchange in the case of dually-listed issuers. The Commission finds good cause to accelerate approval of these changes prior to the 30th day after publication in the **Federal Register**. The revisions made to the proposal in Amendment No. 2 accurately reflect the Nasdaq Stock Market's status as a national securities exchange, and clarify that only an authorized executive officer of a dually-listed issuer may submit a delisting notice to the Exchange. The Commission believes that accelerating approval of Amendment No. 2 is appropriate because these revisions do not raise any new regulatory issues and make the proposal more accurate and clearer.

[7] 17 CFR 240.12d2–2(c).

[8] 15 U.S.C. 78f(b). In approving the proposed rule change, as amended, the Commission considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 240.12d2–2(c).

[11] 17 CFR 240.12d2–2.

[12] *See* NYSE Listed Company Manual Section 806.02. NYSE and the Exchange are both owned by the NYSE Group, Inc. as a result of a merger between the Archipelago Holdings, Inc. and the New York Stock Exchange, Inc. on March 7, 2006.

[13] 17 CFR 240.12d2–2(c)(2)(ii).

[14] *See* proposed NYSE Arca Equities Rule 5.4(b); *see also supra* note 6.

[15] *See* 17 CFR 240.12d2–2(c)(2).

[16] 15 U.S.C. 78s(b)(2).

## V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 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–NYSEArca–2006–47 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–NYSEArca–2006–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–47 and should be submitted on or before November 27, 2006.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEArca–2006–47), as amended, is hereby approved, and that Amendment No. 2 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–18631 Filed 11–3–06; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54673; File No. SR–NYSEArca–2006–78]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Market Maker Transaction Fees and Credits

October 30, 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 23, 2006, NYSE Arca, Inc. (the ''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the ''Fee Schedule'') that applies to Market Maker[5] fees and charges. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the section of its Fee Schedule that applies to Market Maker fees and charges.

*Market Maker Transaction Fees and Credits—Round Lots.* The Fee Schedule currently provides that Market Makers are entitled to a $0.001 per share credit for round-lot transactions in NYSE-listed securities. This credit is applicable to Q orders executed against other participants' orders. The Exchange proposes to amend the Fee Schedule to increase this credit to $0.002 per share and to clarify that it will apply to orders that provide liquidity to the NYSE Arca Book (the ''Book'') in securities for which the Market Makers are registered as Market Makers. The Exchange proposes this change so that the credit given to Market Makers is consistent with the $0.002 per share credit given to all ETP Holders[6] executing round-lot transactions in NYSE-listed securities in the Book against inbound orders. The Exchange further proposes this change so that the credit given to Market Makers submitting such orders in NYSE-listed securities is the same as the credit given to Market Makers submitting such orders in other listed securities and Nasdaq securities.

The Fee Schedule currently provides that the $.002 per share credit that Market Makers are entitled to for round-lot transactions in listed securities (other than NYSE-listed securities) and Nasdaq securities applies to Q orders executed against other participants' orders. The Exchange proposes to amend this language to clarify that the credit applies to orders that provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* NYSE Arca Equities Rule 1.1(u).

[6] *See* NYSE Arca Equities Rule 1.1(n).

liquidity to the Book in securities for which the Market Makers are registered as Market Makers. The Exchange proposes this language so that the application of this credit is consistent with the application of the credit for Market Makers and other ETP Holders executing round-lot transactions in NYSE-listed securities.

The Fee Schedule currently does not specifically set forth a fee for Market Maker round-lot transactions in NYSE-listed securities, other listed securities or Nasdaq securities that take liquidity from the Book. The Exchange proposes to amend the Fee Schedule to set forth a $.003 per share fee for all such orders. The Exchange proposes this change so that it is clear that Market Makers are subject to the same $.003 per share fee that is charged to all ETP Holders executing round-lot transactions in NYSE-listed securities, other listed securities, and Nasdaq securities that take liquidity from the Book.

*Market Maker Transaction Fees and Credits—Odd Lots.* The Fee Schedule currently provides that Market Makers are entitled to a $0.02 per share credit for transactions in Nasdaq securities that execute against odd-lot orders in the Odd Lot Tracking Order Process, as defined in NYSE Arca Equities Rule 7.31(g). The Exchange proposes to eliminate this credit because the Exchange no longer wishes to provide the additional financial incentive to Market Makers for providing liquidity in Nasdaq odd-lot transactions.

*Lead Market Maker Transaction Fees and Credits—Odd Lots.* The Fee Schedule currently provides that Lead Market Makers [7] executing odd-lot transactions in NYSE Arca Marketplace primary listed securities are entitled to a $0.02 per share credit for such transactions. The Exchange proposes to amend the Fee Schedule to clarify that such credit applies to orders that provide liquidity to the Book in securities for which the Lead Market Maker is registered as the Lead Market Maker. The Exchange proposes this change in order to make the application of this credit consistent with the application of the transaction credits to Market Makers and ETP Holders generally.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–78 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–78 and should be submitted on or before November 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–18632 Filed 11–3–06; 8:45 am]

**BILLING CODE 8011–01–P**

[7] *See* NYSE Arca Equities Rule 1.1(ccc).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54664; File No. SR–NYSEArca–2006–72]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Revision of Certain Equity Transaction and Market Data Revenue Sharing Credits

October 27, 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 5, 2006, NYSE Arca, Inc. (''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I, II and III below, which Items have been prepared by the Exchange. On October 26, 2006, the Exchange filed Amendment No. 1. The Exchange has designated this proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) 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, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') that applies to certain ETP Holder [5] transaction credits and market data revenue sharing credits. While changes to the Fee Schedule pursuant to this proposed rule change are effective upon filing with the Commission, the new rates will become operative on October 9, 2006. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nysearca.com,* at the Exchange's Office of the Secretary, and in 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, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the section of the Fee Schedule that applies to certain ETP Holder transaction credits and market data revenue sharing credits in order to incorporate the Exchange's recently approved new order type, the Passive Liquidity Order,[6] into the Fee Schedule in the same manner as Tracking Orders. While changes to the Fee Schedule pursuant to this proposed rule change are effective upon filing with the Commission, the new rates will become operative on October 9, 2006.

The Fee Schedule currently provides in footnote 5 that Tracking Orders will not be eligible for ETP Holder transaction credits. The Exchange proposes to amend footnote 5 to the Fee Schedule to provide that Passive Liquidity Orders also will not be eligible for ETP Holder transaction credits.

The Fee Schedule currently provides in footnote 6 that an ETP Holder that submits a Tracking Order instruction that subsequently matches against an inbound marketable order will not be entitled to receive the Liquidity Provider Credit. The Exchange proposes to amend footnote 6 to the Fee Schedule to provide that an ETP Holder submitting a Passive Liquidity Order instruction also will not be entitled to receive the Liquidity Provider Credit.

The Exchange is not providing credits to ETP Holders entering Passive Liquidity Orders because it has no reason at this time to create incentives for the entry of such orders.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to section Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder [11] because it establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2006–72 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2006–72. 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

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* NYSE Arca Equities Rule 1.1(n).

[6] The Commission recently approved the use of Passive Liquidity Orders on the NYSE Arca Marketplace. *See* Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460 (October 3, 2006)(SR–PCX–2005–53).

[7] Amendment No. 1.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to have commenced on October 26, 2006, the date on which the Exchange filed Amendment No. 1.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2006–72 and should be submitted on or before November 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–18633 Filed 11–3–06; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #10680 and #10681]**

### Florida Disaster # FL–00016

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of FLORIDA dated 10/27/2006.

*Incident:* Tornadoes.

*Incident Period:* 10/07/2006.

*Effective Date:* 10/27/2006.

*Physical Loan Application Deadline Date:* 12/26/2006.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/27/2007.

**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:* Orange.

*Contiguous Counties:* Florida, Brevard, Lake Osceola, Polk, Seminole, Volusia.

*The Interest Rates are:*

| | |
|---|---|
| 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 10680 C and for economic injury is 106810.

The States which received an EIDL Declaration # are Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 26, 2006.

**Steven C. Preston,**

*Administrator.*

[FR Doc. E6–18597 Filed 11–3–06; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 10686 and # 10687]**

### Indiana Disaster # IN–00010

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Indiana dated 10/27/2006.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 08/28/2006.

*Effective Date:* 10/27/2006.

*Physical Loan Application Deadline Date:* 12/26/2006.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/27/2007.

**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:* Wayne.

*Contiguous Counties:* Indiana, Fayette, Henry, Randolph, Union, Ohio, Darke, Preble.

*The Interest Rates are:*

| | |
|---|---|
| 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. |

[13] 17 CFR 200.30–3(a)(12).

The number assigned to this disaster for physical damage is 10686 6 and for economic injury is 10687 0. The States which received an EIDL Declaration # are Indiana, Ohio. (Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 26, 2006.

**Steven C. Preston,**

*Administrator.*

[FR Doc. E6–18599 Filed 11–3–06; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Audit and Financial Management Advisory (AFMAC) Committee Meeting

The U.S. Small Business Administration, Audit and Financial Management Advisory Committee (AFMAC) will host a public meeting on Thursday, November 9, 2006 at 9am. The meeting will take place at the U.S. Small Business Administration, 409 3rd Street, SW., Office of the Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416.

The purpose of the meeting is to discuss the SBA's FY 2006 Financial Reporting and FY 2006 Audit.

Anyone wishing to attend must contact Jennifer Main in writing or by fax. Jennifer Main, Chief Financial Officer, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, *phone:* (202) 205–6449, *fax:* (202) 205–6969, *e-mail: Jennifer.main@sba.gov.*

**Thomas M. Dryer,**

*Acting Committee Management Officer.*

[FR Doc. E6–18601 Filed 11–3–06; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 5604]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''James 'Athenian' Stuart, 1713–1788: The Rediscovery of Antiquity''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''James 'Athenian' Stuart, 1713–1788: The Rediscovery of Antiquity'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Bard Graduate Center, New York, New York, from on or about November 16, 2006, until on or about February 13, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: November 1, 2006.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. E6–18729 Filed 11–3–06; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Eighth Meeting: FTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

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

**ACTION:** Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

**DATES:** The meeting will be held November 28–30, 2006. On November 28th, the meeting will start at 11 a.m. and November 29–30, the meeting will start at 8 a.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**Note:** Workgroup 1 and 3 will convene on Friday, December 1, 2006, from 8 a.m. to 12 p.m., or at the adjournment of the Plenary, whatever comes first. Workgroup 2 will convene on Friday, December 1, 2006, from 8 a.m. to 5 p.m. or at the adjournment of the Plenary, whatever comes first. Dress is Business Casual.

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. The agenda will include:

- November 28:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approval of Seventh Plenary Summary).
  - Review SC–203 Progress Since Seventh Plenary: Status from Workgroups 1, 2 and 3.
  - Resolve Final Review and Comment (FRAC) comments on draft document Guidance Material and Considerations for Unmanned Aircrafts Systems, (GM) document.
- November 29:
  - Continue resolution of FRAC comments on draft GM document.
  - Plenary considers GM document for approval. If approved forward draft GM document to the RTCA Program Management Committee (PMC) for consideration.
  - Closing Plenary Session (Action Item Review, Other Business, Date, Place and Time of Next Plenary, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statement or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on October 27, 2006.

**Francisco Estrada C.,**

*RTCA Advisory Committee.*

[FR Doc. 06–9072 Filed 11–3–06; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals.

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In October 2006, there were six applications approved. This notice also includes information on one application, approved in September 2006, inadvertently left off the September 2006 notice. Additionally, 10 approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Huntsville-Madison County Airport Authority, Huntsville, Alabama.

*Application Number:* 06–15–C–00–HSV.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $5,182,158.

*Earliest Charge Effective Date:* April 1, 2008.

*Estimated Charge Expiration Date:* May 1, 2010.

*Classes of Air Carriers Not Required to Collect PFC's:* (1) Air taxi/commercial operators having fewer than 500 annual passengers; (2) certified air carriers having fewer than 500 annual passengers; and (3) certified route air carriers having fewer than 500 annual passengers.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Huntsville International Airport.

*Brief Description of Project Approved for Collection and Use:* Taxiway L crossfield connector.

*Decision Date:* September 28, 2006.

*For Further Information Contact:* Rod Nicholson, Jackson Airports District Office, (601) 664–9884.

*Public Agency:* Golden Triangle Regional Airport Authority, Columbus, Mississippi.

*Application Number:* 06–05–C–00–GTR.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $1,106,280.

*Earliest Charge Effective Date:* October 1, 2009.

*Estimated Charge Expiration Date:* October 1, 2015.

*Class of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Project Approved for Collection and Use:* Acquire property.

*Decision Date:* October 3, 2006.

*For Further Information Contact:* David Shumate, Jackson Airports District Office, (601) 664–9882.

*Public Agency:* City of Fargo Municipal Airport Authority, Fargo, North Dakota.

*Application Number:* 06–07–C–00–FAR.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision::* $8,580,678.

*Earliest Charge Effective Date:* May 1, 2017.

*Estimated Charge Expiration Date:* August 1, 2023.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Hector International Airport.

*Brief Description of Projects Approved for Collection and Use:*

PFC application.
PFC annual audits.
PFC administrative costs.
South general aviation lighting.
Ticket counter modifications.
South general aviation manhole repair and drainage improvements.
West terminal and south general aviation gate modification and terminal fence modifications.
Terminal area signage rehabilitation.
Airfield sweeper.
Land acquisition—parcel 1.
Terminal security door modifications.
Snow removal equipment truck replacement.
Passenger terminal study.
Passenger terminal expansion.
Taxiways A and D shoulder rehabilitation; taxiways A and D lighting.
South general aviation concrete rehabilitation.

*Decision Date:* October 11, 2006.

*For Further Information Contact:* Thomas Schauer, Bismarck Airports District Office, (701) 323–7383.

*Public Agency:* City of Springfield, Missouri.

*Application Number:* 06–06–C–00–SGF.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $83,651,097.

*Earliest Charge Effective Date:* January 1, 2007.

*Estimated Charge Expiration Date:* January 1, 2036.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi/commercial operators.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Springfield Branson National Airport.

*Brief Description of Project Approved for Collection and Use:* Midfield replacement terminal.

*Decision Date:* October 17, 2006.

*For Further Information Contact:* Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

*Public Agency:* City of Tallahassee, Florida.

*Application Number:* 06–06–C–00–TLH.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $25,280,000.

*Charge Effective Date:* February 1, 2007.

*Estimated Charge Expiration Date:* October 1, 2015.

*Class of Air Carriers Not Required to Collect PFC's:* Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Tallahassee Regional Airport.

*Brief Description of Projects Approved for Collection and Use:*

Cargo apron expansion.
Cargo apron access.
Commercial runway/taxiway storm water management.
Terminal graphics (wayfinding) improvements.
Terminal improvements.
General aviation access road improvements.
Landside directional guidance improvements.
In-line baggage handling system.
Terminal rehabilitation—phase II.
Acquire replacement aircraft rescue and firefighting vehicle.

Acquire runway vacuum truck.
Electronic airport layout plan.
Runway 9/27 pre-design (refurbishment/reconstruction analysis).
Taxiway Z rehabilitation design.
Taxiway S rehabilitation design.
Taxiway M by pass design.
South apron expansion design.
Airfield signage improvements design.
Airfield lighting improvements design.
Airport access control and monitoring system upgrades design.

*Brief Description of Withdrawn Project:* Runway 18/36 rehabilitation design.

*Date of Withdrawal:* October 13, 2006.

*Decision Date:* October 19, 2006.

*For Further Information Contact:* Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 120.

*Public Agency:* City of St. George, Utah.

*Application Number:* 06–04–U–00–SGU.

*Application Type:* Use PFC revenue.

*PFC Level:* $4.50.

*Total PFC Revenue to Be Used in This Decision:* $839,500.

*Charge Effective Date:* July 1, 2004.

*Estimated Charge Expiration Date:* April 1, 2007.

*Class of Air Carriers Not Required to Collect PFC's:* No change from previous decision.

*Brief Description of Project Approved for Use:* Construct replacement airport.

*Decision Date:* October 24, 2006.

*For Further Information Contact:* John Bauer, Denver Airports District Office, (303) 342–1259.

*Public Agency:* County of Albany and City of Laramie, Laramie, Wyoming.

*Application Number:* 06–02–C–00–LAR.

*Application Type:* Impose and use a PFC.

*PFC Level:* $4.50.

*Total PFC Revenue Approved in This Decision:* $252,009.

*Earliest Charge Effective Date:* December 1, 2006.

*Estimated Charge Expiration Date:* April 1, 2013.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Laramie Regional Airport.

*Brief Description of Projects Approved for Collection and Use:*
Construct electrical equipment building.
Rehabilitate access taxiway.
Construct access taxiway.
Extend runway 3 (design and phases 1 and 2).
Install runway 3/21 distance-to-go signs.
Install runway 3 precision approach path indicator.
Rehabilitate runway lighting system.
Rehabilitate taxiway lighting system.
Install runway 12 precision approach path indicator.
Update airport layout plan.
Rehabilitate taxiways A, B, D, E, F, G, and H.
Construct taxiway F2.
Construct taxiway G (phases 1, 2 and 3).
Acquire aircraft rescue and firefighting vehicle.
Design of apron rehabilitation and construction of taxiway and apron.
PFC administration.

*Decision Date:* October 25, 2006.

*For Further Information Contact:* Chris Schaffer, Denver Airports District Office, (303) 342–1258.

AMENDMENTS TO PFC APPROVALS

| Amendment No. City, State | Amendment approved date | Original approved net PFC revenue (dollars) | Amended approved net PFC revenue (dollars) | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 01–03–C–02–GCC Gillette, WY | 09/27/06 | 178,537 | 162,537 | 06/01/04 | 07/01/05 |
| 99–03–C–04–DRO Durango, CO | 09/29/06 | 729,451 | 695,885 | 03/01/03 | 03/01/03 |
| 02–04–U–01–DRO Durango, CO | 09/29/06 | NA | NA | 03/01/03 | 03/01/03 |
| 00–03–C–01–AZO Kalamazoo, MI | 09/29/06 | 3,298,376 | 3,232,429 | 12/01/03 | 12/01/03 |
| 99–04–C–06–BGM Binghamton, NY | 10/02/06 | 1,204,917 | 1,109,497 | 01/01/01 | 01/01/01 |
| 02–05–C–06–BGM Binghamton, NY | 10/02/06 | 1,451,670 | 1,057,019 | 04/01/03 | 04/01/03 |
| 03–06–C–03–BGM Binghamton, NY | 10/02/06 | 7,996 | 7,601 | 05/01/03 | 05/01/03 |
| 02–05–C–07–BGM Binghamton, NY | 10/03/06 | 1,057,019 | 1,229,462 | 04/01/03 | 04/01/03 |
| 04–07–C–02–BGM Binghamton, NY | 10/03/06 | 337,624 | 337,624 | 04/01/04 | 04/01/04 |
| 04–07–C–03–BGM Binghamton, NY | 10/19/06 | 337,624 | 559,849 | 04/01/04 | 04/01/04 |

Dated: Issued in Washington, DC, on November 1, 2006.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 06–9071 Filed 11–3–06; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2006–23687]**

### Notice of Petition for Approval

In accordance with Title 49 Code of Federal Regulations (CFR) 236.913(e)(1), notice is hereby given that the Federal Railroad Administration (FRA) has received a petition for approval of a Product Safety Plan (PSP) submitted pursuant to 49 CFR part 236, subpart H. The individual petition is described below, including the party seeking approval, the requisite docket number, and a brief summary of the petition.

**BNSF Railway Company**

The BNSF Railway Company (BNSF) submitted a petition for approval of a PSP for its Electronic Train Management System (ETMS). BNSF asserts that the PSP demonstrates ETMS has been designed in a safe manner and that it supports BNSF's assessment that railroad operations with ETMS are as safe as, or safer than, railroad operations without ETMS. The PSP provides descriptions of the ETMS itself, ETMS safety process and analyses, validation and verification processes used during development of ETMS, and operational and support requirements and procedures.

Interested parties are invited to participate in this safety review by providing written information or comments pertinent to FRA's consideration of the above petition for approval of the PSP. All communications concerning this approval should identify the appropriate docket number (FRA–2006–23687) and may be submitted by any of the following methods:

• Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket;

• Fax: 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; or

• Hand delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 1, 2006.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. E6–18619 Filed 11–3–06; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

**[Waiver Petition Docket Number FRA–2006–25705]**

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**CSX Transportation**

The CSX Transportation Company (CSXT) seeks a waiver of compliance with the *Locomotive Safety Standards,* 49 CFR 229.23, 229.27, and 229.29, as they pertain to the requirement to maintain the locomotive repair record form FRA 6180.49A, commonly referred to as the Blue Card, in the cab of their locomotives. If granted, CSXT would maintain locomotive inspection information in a secure database. The database would be maintained as the required office copy of form FRA 6180.49A. A computer-generated form that is similar to and contains all information currently contained on the required FRA 6180.49A would be maintained onboard the locomotive. In place of required signatures of the persons performing inspections and tests, CSXT employees would be provided a unique login identification number and a secure password to access the system and verify performance of inspections. In place of signatures, a computer-generated report would print the name of the employee performing a required inspection and print the employee's supervisor who is certifying that all inspections have been made and all repairs have been completed. Required filing of the previous inspection record will be maintained through the database.

Interested parties are invited to participate in these proceedings by submitting written opinions, data, or comments. FRA does not anticipate the need to schedule a public hearing in connection with these proceedings since the facts do not appear to warrant holding one. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–25705) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the aforementioned facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transporation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 1, 2006.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator, for Safety Standards and Program Development.*

[FR Doc. E6–18617 Filed 11–3–06; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

**[Docket No. FRA–2006–25980]**

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Applicant: Springfield Terminal Railway Company, Mr. T. Kunzler, Chief Engineer, C&S, Iron Horse Park, North Billerica, Massachusetts 01862–1688.

The Springfield Terminal Railway Company seeks approval of the proposed modification of the traffic control system on the Boston and Maine Corporation's single main track ''Freight Main Line,'' consisting of the relocation of the back-to-back intermediate signal Nos. 1628 and 1629, located near milepost K–443, to a new location approximately 3,700 feet westward, near milepost K–444, in Hoosick, New York.

The reason given for the proposed change is to eliminate the need for multiple tunable couplers that could adversely affect AHCP reliability.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds

upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All communications concerning these proceedings should identify the appropriate docket number (Docket No. FRA–2006–25980) and may be submitted by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 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.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by evidence that the party is unable to adequately present his or her position in writing, an application may be set for a public hearing.

Issued in Washington, DC on November 1, 2006.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety, Standards and Program Development.*

[FR Doc. E6–18618 Filed 11–3–06; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[USCG–2006–26009]**

### Calypso LNG LLC, Calypso Liquefied Natural Gas Deepwater Port License Application

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice of application.

**SUMMARY:** The Coast Guard and the Maritime Administration (MARAD) announce that they have received an application for the licensing of a natural gas deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

**DATES:** The Deepwater Port Act of 1974, as amended, requires any public hearing on this application to be held not later than 240 days after this notice, and requires a decision on the application to be made not later than 90 days after the final public hearing.

**ADDRESSES:** The public docket for USCG–2006–26009 is maintained by the: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

Docket contents are available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mary K. Jager, U.S. Coast Guard, telephone: 202–372–1454, e-mail: *Mary.K.Jager@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, *telephone:* 202–493–0402.

**SUPPLEMENTARY INFORMATION:**

### Receipt of Application

On March 1, 2006, the Coast Guard and MARAD received an application from Calypso LNG LLC, 1990 Post Oak Boulevard, Suite 1900, Houston, Texas 77056 for all Federal authorizations required for a license to own, construct, and operate a deepwater port governed by the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* (the Act). On October 27, 2006, we determined that the application appears to contain all information required by the Act.

### Background

According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed by the Maritime Administrator (by delegated authority of the Secretary of Transportation, published on June 18, 2003 (68 FR 36496)). Statutory and regulatory requirements for licensing appear in 33 U.S.C. 1501 *et seq.* and in 33 CFR Part 148. Under delegations from and agreements between the Secretary of Transportation and the Secretary of Homeland Security, applications are processed by the Coast Guard and MARAD. Each application is considered on its merits.

The Act requires adherence to a strict timeline for processing an application. Once we determine that an application contains the required information, we must hold public hearings on the application within 240 days, and the Maritime Administrator must render a decision on the application within 330 days. We will publish additional **Federal Register** notices to inform you of these public hearings and other procedural milestones, including environmental review. The Maritime Administrator's decision, and other key documents, will be filed in the public docket.

At least one public hearing must take place in each adjacent coastal State. For purposes of the Act, Florida is the adjacent coastal State for this application. Other States can apply for adjacent coastal State status in accordance with 33 U.S.C. 1508(a)(2).

### Summary of the Application

Calypso LNG LLC, proposes to own, construct, and operate a deepwater port, named Calypso, in the Federal waters of the Outer Continental Shelf in the OCS NG 17–06 (Bahamas) lease area, approximately 8 to 10 miles off the east coast of Florida to the northeast of Port Everglades, in a water depth of approximately 800 to 950 feet. Calypso would consist of a permanently moored unloading buoy system with two (2) submersible buoys separated by a distance of approximately three (3) miles. Each unloading buoy would be permanently secured to eight or nine mooring lines, consisting of wire rope, chain, and buoyancy elements, each attached to anchor points on the seabed. Anchor points would consist of a

combination of suction piles and gravity anchors.

The buoys would be designed to moor and unload two (2) types of LNG vessels: a transport and regasification vessel (TRV) of approximately 140,000 cubic meter capacity and a storage and regasification ship (SRS) of approximately 250,000 cubic meter capacity. Both vessels would be equipped to vaporize LNG cargo to natural gas through an onboard closed loop vaporization system, and to odorize and meter gas for send-out by means of the unloading buoy to conventional subsea pipelines. The TRVs would moor to the westernmost buoy, and the SRS to the easternmost buoy. The mooring buoys would be connected through the vessels' hulls to specially designed turrets that would enable the vessel to weathervane or rotate in response to prevailing wind, wave, and current directions. When the vessels are not present, the buoys would be submerged approximately 100 feet below the sea surface.

The unloading buoys would connect through flexible risers and two (2) approximately 2.5 mile long 30-inch flowlines located on the seabed that would connect directly to the Calypso pipeline, a Federal Energy Regulatory Commission (FERC) permitted pipeline.

Three types of vessels would be associated with the port: the TRV drawn from the existing and future global fleet of specialized LNG carriers compatible with Calypso's unloading buoy system; the SRS, a specialized, purpose-built modified LNG carrier, designed to accept, regasify, odorize and meter LNG from conventional LNG carriers and deliver it to the pipeline through Calypso's unloading buoy system; and conventional LNG carriers. When empty the TRV would disconnect from the buoy and leave the port, followed by another full TRV that would arrive and connect to the buoy. The SRS would normally remain attached to its mooring buoy. To sustain continuous vaporization, the SRS' cargo tanks would be refilled approximately every two (2) to four (4) days by standard LNG carriers drawn from the global fleet. The SRS would be capable of detaching from the buoy if threatened by a severe storm, such as a hurricane, and move under its own power to safety; then return and reconnect to the buoy and continue operations once the storm danger passed.

Calypso would be capable of delivering natural gas in a continuous flow by having at least one TRV or SRS regasifying at all times. The system would be designed so that a TRV and SRS can be moored simultaneously for concurrent unloading of natural gas. Calypso would have an average throughput capacity of approximately 1.1 billion standard cubic feet per day and a peak delivery capacity of 1.9 Bcsfd.

No onshore pipelines or LNG storage facilities are associated with the proposed deepwater port application. A shore based facility would be used to facilitate movement of personnel, equipment, supplies, and disposable materials between the port and shore.

Construction of the deepwater port would be expected to take three (3) years; with startup of commercial operations following construction, should a license be issued. The deepwater port would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 25 years.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

(Authority 49 CFR 1.66)

Dated: October 31, 2006.

By order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. E6–18598 Filed 11–3–06; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of 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 Community Development Financial Institutions Fund (the Fund) of the Department of the Treasury is soliciting comments concerning an information collection required by the allocation agreement that will be entered into by the Fund and allocatees of the New Markets Tax Credit (NMTC) Program. The specific information collection relates to the section of the allocation agreement that requires an allocatee to provide notice to the Fund of the receipt of a Qualified Equity Investment. The Fund will publish a separate notice seeking public comments regarding other information collections contained in the allocation agreement (e.g., use of QEI proceeds).

**DATES:** Written comments should be received on or before January 5, 2007 to be assured of consideration.

**ADDRESSES:** Direct all comments to Yoo Jin Na, Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

**FOR FURTHER INFORMATION CONTACT:** A draft of the information collection may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Yoo Jin Na, Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–8226.

**SUPPLEMENTARY INFORMATION:**

*Title:* New Markets Tax Credit (NMTC) Program Allocation Tracking System.

*OMB Number:* 1559–0024.

*Abstract:* Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. Pursuant to IRC section 45D, the Department of the Treasury, through the Fund, administers the NMTC Program, which will provide an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity and submit an

allocation application to the Fund. Upon receipt of such applications, the Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations. Entities receiving an NMTC allocation must enter into an allocation agreement with the Fund. The allocation agreement contains the terms and conditions, including all reporting requirements, associated with the receipt of a NMTC allocation. The Fund will require each allocatee to use an electronic data collection and submission system, known as the allocation tracking system, to report on the information related to its receipt of a Qualified Equity Investment.

The Fund has developed the allocation tracking system to, among other things: (1) Enhance the allocatee's ability to report to the Fund timely information regarding the issuance of its Qualified Equity Investments; (2) enhance the Treasury Department's ability to monitor the issuance of Qualified Equity Investments to ensure that no allocatee exceeds its allocation authority, and to ensure that Qualified Equity Investments are issued within the timeframes required by the allocation agreement and the NMTC Program regulations; and (3) provide the Treasury Department with basic investor data which may be aggregated and analyzed in connection with NMTC Program evaluation efforts.

*Current Actions:* Selected allocatees for the NMTC Program.

*Type of Review:* Renewal.

*Affected Public:* Business or other for-profit institutions, not-for-profit institutions and State, local and Tribal entities.

*Estimated Number of Respondents:* 170.

*Estimated Annual Time per Respondent:* 12 hour.

*Estimated Total Annual Burden Hours:* 2040 hours.

*Requests 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. The specific section of the allocation agreement for which comments are sought is the reporting requirement that allocatees provide notice to the Fund, through the Fund's allocation tracking system, of the receipt of a Qualified Equity Investment. 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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

**Authority:** Consolidated Appropriations Act of 2001, Public Law 106–554; 31 U.S.C. 321.

Dated: October 31, 2006.

**Arthur A. Garcia,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E6–18649 Filed 11–3–06; 8:45 am]

**BILLING CODE 4810–70–P**

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## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Community Development Financial Institutions Fund (the Fund), a government corporation within 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 Fund is soliciting comments concerning the Fund's conflict of interest reporting requirements for contract readers of applications submitted for funding under the Fund's various programs.

**DATES:** Written comments must be received on or before January 5, 2007 to be assured of consideration.

**ADDRESSES:** All comments must be submitted in writing and sent to Jeffrey C. Berg, Legal Counsel, as follows: (i) by mail to: Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (ii) by e-mail to: *conflictofinterestcomments @cdfi.treas.gov;* or (iii) by fax to: 202/622–8244.

**FOR FURTHER INFORMATION CONTACT:** A copy of the conflict of interest information collection or requests for additional information may be obtained by contacting Ashanti McCallum, Paralegal Specialist, as follows: (i) By mail to: Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (ii) by e-mail to: *mccallluma@cdfi.treas.gov;* or (iii) by fax to: 202/622–8244.

**SUPPLEMENTARY INFORMATION:**

*Title:* The Community Development Financial Institutions Fund—Conflict of Interest Package for Non-Federal Readers.

*OMB Number:* 1559–0011.

*Abstract:* Through its programs the Fund supports financial institutions around the country that are specifically dedicated to financing and supporting community and economic development activities. This strategy builds strong institutions that make loans and investments and provide financial services in markets (including economically distressed investments areas and targeted populations) whose needs for loans, investments, and financial services have not been fully met by traditional financial institutions, particularly in the areas of promoting homeownership, developing of affordable housing, and stimulating small business development, as well as providing financial services to those that have not previously accessed financial institutions.

Consistent with the Federal Acquisition Regulations provisions on conflicts of interest, the Fund has applied, and will continue to apply, a conflict of interest policy with respect to its contract (non-Federal employee) readers that avoids a reader's participation in the evaluation or process of selection of applications where such participation creates a conflict of interest or an appearance of a conflict of interest. The conflict of interest review materials are used by the Fund to determine whether or not a contractor's financial interest, or that of the contractor's spouse, parent, dependent child, or member of household, may result in a conflict, or apparent conflict of interest with the individual's duties and responsibilities as a contractor evaluating applications. The completion of the package is mandatory for all contractors prior to their selection as readers.

*Current Action:* Extension.

*Type of Review:* Renewal.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 150.

*Estimated Annual Time per Respondent:* 45 minutes (0.75 hours).

*Estimated Total Annual Burden Hours:* 112.5 hours.

*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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

**Authority:** 12 U.S.C. 4703(c) and 48 CFR subpart 9.5.

Dated: October 31, 2006.

**Arthur A. Garcia,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E6–18650 Filed 11–3–06; 8:45 am]

**BILLING CODE 4810–70–P**

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## DEPARTMENT OF THE TREASURY

### Community Development Financial Institutions Fund

### Proposed Collection; Comment Request

**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 Fund within the Department of the Treasury is soliciting comments concerning the NMTC Program allocation agreement for NMTC Program allocatees.

**DATES:** Written comments should be received on or before January 5, 2007 to be assured of consideration.

**ADDRESSES:** Direct all comments on the information collections related to the specified sections of the NMTC Program Allocation Agreement to: Jeffrey C. Berg, Legal Counsel, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, *allocationagreementcomments @cdfi.treas.gov*, Facsimile Number (202) 622–8244.

**FOR FURTHER INFORMATION CONTACT:** A copy of the allocation agreement information collection may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information regarding the specified sections of the NMTC Program Allocation Agreement should be directed to Jeffrey C. Berg, Legal Counsel: (i) By mail to: Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (ii) by e-mail to: *allocationagreementcomments @cdfi.treas.gov*; or (iii) by fax to: (202) 622–8244.

**SUPPLEMENTARY INFORMATION:**

*Title:* NMTC Program Allocation Agreement—Disclosure, Audited Financial Statements.

*OMB Number:* 1559–0023.

*Abstract:* In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity and submit an allocation application to the Fund. Upon receipt of such applications, the Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations. Entities receiving an NMTC allocation must enter into an allocation agreement with the Fund. The allocation agreement contains the terms and conditions associated with the receipt of an NMTC allocation. Comments are requested on certain disclosure requirements contained in the allocation agreement as well as the requirement for the submission of a copy of the allocatee's audited financial statements. The specific sections of the allocation agreement for which comments are sought may be obtained from the Fund's Web site at *http://www.cdfifund.gov.*

*Current Action:* Extension.

*Type of Review:* Renewal.

*Affected Public:* Businesses or other for-profit institutions; not-for-profit institutions, and tribal entities.

*Estimated Number of Respondents:*

Allocation Agreement (§§ 6.2 and 6.9): 5.

Allocation Agreement (§ 6.10): 62.

*Estimated Annual Time Per Respondent:*

Allocation Agreement (§§ 6.2 and 6.9): 2 hours.

Allocation Agreement (§ 6.10): 1 hour.

*Estimated Total Annual Burden Hours:*

Allocation Agreement (§§ 6.2 and 6.9): 10 hours.

Allocation Agreement (§ 6.10): 62 hours.

*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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Comments are also requested on §§ 6.2, 6.5(c), 6.9 and 6.10 of the NMTC Program Allocation Agreement (please note that there is no burden anticipated for § 6.5(c) since this collection of information is usual and customary for the respondents).

**Authority:** Consolidated Appropriations Act of 2001, Public Law 106–554; 31 U.S.C. 321.

Dated: October 31, 2006.

**Arthur A. Garcia,**

*Director, Community Development Financial Institutions Fund.*

[FR Doc. E6–18651 Filed 11–3–06; 8:45 am]

**BILLING CODE 4810–70–P**

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| 140–199 | (869–060–00042–9) | 30.00 | Jan. 1, 2006 |
| 200–1199 | (869–060–00043–7) | 50.00 | Jan. 1, 2006 |
| 1200–End | (869–060–00044–5) | 45.00 | Jan. 1, 2006 |
| **15 Parts:** | | | |
| 0–299 | (869–060–00045–3) | 40.00 | Jan. 1, 2006 |
| 300–799 | (869–060–00046–1) | 60.00 | Jan. 1, 2006 |
| 800–End | (869–060–00047–0) | 42.00 | Jan. 1, 2006 |
| **16 Parts:** | | | |
| 0–999 | (869–060–00048–8) | 50.00 | Jan. 1, 2006 |
| 1000–End | (869–060–00049–6) | 60.00 | Jan. 1, 2006 |
| **17 Parts:** | | | |
| 1–199 | (869–060–00051–8) | 50.00 | Apr. 1, 2006 |
| 200–239 | (869–060–00052–6) | 60.00 | Apr. 1, 2006 |
| 240–End | (869–060–00053–4) | 62.00 | Apr. 1, 2006 |
| **18 Parts:** | | | |
| 1–399 | (869–060–00054–2) | 62.00 | Apr. 1, 2006 |
| 400–End | (869–060–00055–1) | 26.00 | [6]Apr. 1, 2006 |
| **19 Parts:** | | | |
| 1–140 | (869–060–00056–9) | 61.00 | Apr. 1, 2006 |
| 141–199 | (869–060–00057–7) | 58.00 | Apr. 1, 2006 |
| 200–End | (869–060–00058–5) | 31.00 | Apr. 1, 2006 |
| **20 Parts:** | | | |
| 1–399 | (869–060–00059–3) | 50.00 | Apr. 1, 2006 |
| 400–499 | (869–060–00060–7) | 64.00 | Apr. 1, 2006 |
| 500–End | (869–060–00061–5) | 63.00 | Apr. 1, 2006 |
| **21 Parts:** | | | |
| 1–99 | (869–060–00062–3) | 40.00 | Apr. 1, 2006 |
| 100–169 | (869–060–00063–1) | 49.00 | Apr. 1, 2006 |
| 170–199 | (869–060–00064–0) | 50.00 | Apr. 1, 2006 |
| 200–299 | (869–060–00065–8) | 17.00 | Apr. 1, 2006 |
| 300–499 | (869–060–00066–6) | 30.00 | Apr. 1, 2006 |
| 500–599 | (869–060–00067–4) | 47.00 | Apr. 1, 2006 |
| 600–799 | (869–060–00068–2) | 15.00 | Apr. 1, 2006 |
| 800–1299 | (869–060–00069–1) | 60.00 | Apr. 1, 2006 |
| 1300–End | (869–060–00070–4) | 25.00 | Apr. 1, 2006 |
| **22 Parts:** | | | |
| 1–299 | (869–060–00071–2) | 63.00 | Apr. 1, 2006 |
| 300–End | (869–060–00072–1) | 45.00 | [10]Apr. 1, 2006 |
| **23** | (869–060–00073–9) | 45.00 | Apr. 1, 2006 |
| **24 Parts:** | | | |
| 0–199 | (869–060–00074–7) | 60.00 | Apr. 1, 2006 |
| 200–499 | (869–060–00075–5) | 50.00 | Apr. 1, 2006 |
| 500–699 | (869–060–00076–3) | 30.00 | Apr. 1, 2006 |
| 700–1699 | (869–060–00077–1) | 61.00 | Apr. 1, 2006 |
| 1700–End | (869–060–00078–0) | 30.00 | Apr. 1, 2006 |
| **25** | (869–060–00079–8) | 64.00 | Apr. 1, 2006 |
| **26 Parts:** | | | |
| §§ 1.0–1–1.60 | (869–060–00080–1) | 49.00 | Apr. 1, 2006 |
| §§ 1.61–1.169 | (869–060–00081–0) | 63.00 | Apr. 1, 2006 |
| §§ 1.170–1.300 | (869–060–00082–8) | 60.00 | Apr. 1, 2006 |
| §§ 1.301–1.400 | (869–060–00083–6) | 47.00 | Apr. 1, 2006 |
| §§ 1.401–1.440 | (869–060–00084–4) | 56.00 | Apr. 1, 2006 |
| §§ 1.441–1.500 | (869–060–00085–2) | 58.00 | Apr. 1, 2006 |
| §§ 1.501–1.640 | (869–060–00086–1) | 49.00 | Apr. 1, 2006 |
| §§ 1.641–1.850 | (869–060–00087–9) | 61.00 | Apr. 1, 2006 |
| §§ 1.851–1.907 | (869–060–00088–7) | 61.00 | Apr. 1, 2006 |
| §§ 1.908–1.1000 | (869–060–00089–5) | 60.00 | Apr. 1, 2006 |
| §§ 1.1001–1.1400 | (869–060–00090–9) | 61.00 | Apr. 1, 2006 |
| §§ 1.1401–1.1550 | (869–060–00091–2) | 58.00 | Apr. 1, 2006 |
| §§ 1.1551–End | (869–060–00092–5) | 50.00 | Apr. 1, 2006 |
| 2–29 | (869–060–00093–3) | 60.00 | Apr. 1, 2006 |
| 30–39 | (869–060–00094–1) | 41.00 | Apr. 1, 2006 |
| 40–49 | (869–060–00095–0) | 28.00 | Apr. 1, 2006 |
| 50–299 | (869–060–00096–8) | 42.00 | Apr. 1, 2006 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 300–499 | (869–060–00097–6) | 61.00 | Apr. 1, 2006 |
| 500–599 | (869–060–00098–4) | 12.00 | [5]Apr. 1, 2006 |
| 600–End | (869–060–00099–2) | 17.00 | Apr. 1, 2006 |
| **27 Parts:** | | | |
| 1–399 | (869–060–00100–0) | 64.00 | Apr. 1, 2006 |
| 400–End | (869–060–00101–8) | 18.00 | Apr. 1, 2006 |
| **28 Parts:** | | | |
| 0–42 | (869–060–00102–6) | 61.00 | July 1, 2006 |
| 43–End | (869–060–00103–4) | 60.00 | July 1, 2006 |
| **29 Parts:** | | | |
| 0–99 | (869–060–00104–2) | 50.00 | July 1, 2006 |
| 100–499 | (869–060–00105–1) | 23.00 | July 1, 2006 |
| 500–899 | (869–060–00106–9) | 61.00 | July 1, 2006 |
| 900–1899 | (869–060–00107–7) | 36.00 | [7]July 1, 2006 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–060–00108–5) | 61.00 | July 1, 2006 |
| 1910 (§§ 1910.1000 to end) | (869–060–00109–3) | 46.00 | July 1, 2006 |
| 1911–1925 | (869–060–00110–7) | 30.00 | July 1, 2006 |
| 1926 | (869–060–00111–5) | 50.00 | July 1, 2006 |
| 1927–End | (869–060–00112–3) | 62.00 | July 1, 2006 |
| **30 Parts:** | | | |
| 1–199 | (869–060–00113–1) | 57.00 | July 1, 2006 |
| 200–699 | (869–060–00114–0) | 50.00 | July 1, 2006 |
| 700–End | (869–060–00115–8) | 58.00 | July 1, 2006 |
| **31 Parts:** | | | |
| 0–199 | (869–060–00116–6) | 41.00 | July 1, 2006 |
| 200–499 | (869–060–00117–4) | 46.00 | July 1, 2006 |
| 500–End | (869–060–00118–2) | 62.00 | July 1, 2006 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–060–00119–1) | 61.00 | July 1, 2006 |
| 191–399 | (869–060–00120–4) | 63.00 | July 1, 2006 |
| 400–629 | (869–060–00121–2) | 50.00 | July 1, 2006 |
| 630–699 | (869–060–00122–1) | 37.00 | July 1, 2006 |
| 700–799 | (869–060–00123–9) | 46.00 | July 1, 2006 |
| 800–End | (869–060–00124–7) | 47.00 | July 1, 2006 |
| **33 Parts:** | | | |
| 1–124 | (869–060–00125–5) | 57.00 | July 1, 2006 |
| 125–199 | (869–060–00126–3) | 61.00 | July 1, 2006 |
| 200–End | (869–060–00127–1) | 57.00 | July 1, 2006 |
| **34 Parts:** | | | |
| 1–299 | (869–060–00128–0) | 50.00 | July 1, 2006 |
| 300–399 | (869–060–00129–8) | 40.00 | July 1, 2006 |
| 400–End & 35 | (869–060–00130–1) | 61.00 | July 1, 2006 |
| **36 Parts:** | | | |
| 1–199 | (869–060–00131–0) | 37.00 | July 1, 2006 |
| 200–299 | (869–060–00132–8) | 37.00 | July 1, 2006 |
| 300–End | (869–060–00133–6) | 61.00 | July 1, 2006 |
| **37** | (869–060–00134–4) | 58.00 | July 1, 2006 |
| **38 Parts:** | | | |
| 0–17 | (869–060–00135–2) | 60.00 | July 1, 2006 |
| 18–End | (869–060–00136–1) | 62.00 | July 1, 2006 |
| **39** | (869–060–00137–9) | 42.00 | July 1, 2006 |
| **40 Parts:** | | | |
| 1–49 | (869–060–00138–7) | 60.00 | July 1, 2006 |
| 50–51 | (869–060–00139–5) | 45.00 | July 1, 2006 |
| 52 (52.01–52.1018) | (869–060–00140–9) | 60.00 | July 1, 2006 |
| 52 (52.1019–End) | (869–060–00141–7) | 61.00 | July 1, 2006 |
| 53–59 | (869–060–00142–5) | 31.00 | July 1, 2006 |
| 60 (60.1–End) | (869–060–00143–3) | 58.00 | July 1, 2006 |
| 60 (Apps) | (869–060–00144–7) | 57.00 | July 1, 2006 |
| 61–62 | (869–060–00145–0) | 45.00 | July 1, 2006 |
| 63 (63.1–63.599) | (869–060–00146–8) | 58.00 | July 1, 2006 |
| 63 (63.600–63.1199) | (869–060–00147–6) | 50.00 | July 1, 2006 |
| 63 (63.1200–63.1439) | (869–060–00148–4) | 50.00 | July 1, 2006 |
| 63 (63.1440–63.6175) | (869–060–00149–2) | 32.00 | July 1, 2006 |
| 63 (63.6580–63.8830) | (869–060–00150–6) | 32.00 | July 1, 2006 |
| 63 (63.8980–End) | (869–060–00151–4) | 35.00 | [7]July 1, 2006 |
| 64–71 | (869–060–00152–2) | 29.00 | July 1, 2006 |
| 72–80 | (869–060–00153–1) | 62.00 | July 1, 2006 |
| 81–85 | (869–060–00154–9) | 60.00 | July 1, 2006 |
| 86 (86.1–86.599–99) | (869–060–00155–7) | 58.00 | July 1, 2006 |
| 86 (86.600–1–End) | (869–060–00156–5) | 50.00 | July 1, 2006 |
| 87–99 | (869–060–00157–3) | 60.00 | July 1, 2006 |
| 100–135 | (869–060–00158–1) | 45.00 | July 1, 2006 |
| 136–149 | (869–060–00159–0) | 61.00 | July 1, 2006 |
| 150–189 | (869–060–00160–3) | 50.00 | July 1, 2006 |
| 190–259 | (869–060–00161–1) | 39.00 | July 1, 2006 |
| 260–265 | (869–060–00162–0) | 50.00 | July 1, 2006 |
| 266–299 | (869–060–00163–8) | 50.00 | July 1, 2006 |
| 300–399 | (869–060–00164–6) | 42.00 | July 1, 2006 |
| 400–424 | (869–060–00165–4) | 56.00 | [8]July 1, 2006 |
| 425–699 | (869–060–00166–2) | 61.00 | July 1, 2006 |
| 700–789 | (869–060–00167–1) | 61.00 | July 1, 2006 |
| 790–End | (869–060–00168–9) | 61.00 | July 1, 2006 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–060–00169–7) | 24.00 | July 1, 2006 |
| 101 | (869–060–00170–1) | 21.00 | [11] July 1, 2006 |
| 102–200 | (869–060–00171–9) | 56.00 | July 1, 2006 |
| 201–End | (869–060–00172–7) | 24.00 | July 1, 2006 |
| **42 Parts:** | | | |
| 1–399 | (869–056–00173–8) | 61.00 | Oct. 1, 2005 |
| 400–429 | (869–056–00174–6) | 63.00 | Oct. 1, 2005 |
| 430–End | (869–056–00175–4) | 64.00 | Oct. 1, 2005 |
| **43 Parts:** | | | |
| 1–999 | (869–056–00176–2) | 56.00 | Oct. 1, 2005 |
| 1000–end | (869–056–00177–1) | 62.00 | Oct. 1, 2005 |
| **44** | (869–056–00178–9) | 50.00 | Oct. 1, 2005 |
| **45 Parts:** | | | |
| 1–199 | (869–056–00179–7) | 60.00 | Oct. 1, 2005 |
| 200–499 | (869–056–00180–1) | 34.00 | Oct. 1, 2005 |
| 500–1199 | (869–056–00171–9) | 56.00 | Oct. 1, 2005 |
| 1200–End | (869–056–00182–7) | 61.00 | Oct. 1, 2005 |
| **46 Parts:** | | | |
| 1–40 | (869–056–00183–5) | 46.00 | Oct. 1, 2005 |
| 41–69 | (869–056–00184–3) | 39.00 | [9]Oct. 1, 2005 |
| 70–89 | (869–056–00185–1) | 14.00 | [9]Oct. 1, 2005 |
| 90–139 | (869–056–00186–0) | 44.00 | Oct. 1, 2005 |
| 140–155 | (869–056–00187–8) | 25.00 | Oct. 1, 2005 |
| 156–165 | (869–056–00188–6) | 34.00 | [9]Oct. 1, 2005 |
| 166–199 | (869–056–00189–4) | 46.00 | Oct. 1, 2005 |
| 200–499 | (869–056–00190–8) | 40.00 | Oct. 1, 2005 |
| 500–End | (869–056–00191–6) | 25.00 | Oct. 1, 2005 |
| **47 Parts:** | | | |
| 0–19 | (869–056–00192–4) | 61.00 | Oct. 1, 2005 |
| 20–39 | (869–056–00193–2) | 46.00 | Oct. 1, 2005 |
| 40–69 | (869–056–00194–1) | 40.00 | Oct. 1, 2005 |
| 70–79 | (869–056–00195–9) | 61.00 | Oct. 1, 2005 |
| 80–End | (869–056–00196–7) | 61.00 | Oct. 1, 2005 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–056–00197–5) | 63.00 | Oct. 1, 2005 |
| 1 (Parts 52–99) | (869–056–00198–3) | 49.00 | Oct. 1, 2005 |
| 2 (Parts 201–299) | (869–056–00199–1) | 50.00 | Oct. 1, 2005 |
| 3–6 | (869–056–00200–9) | 34.00 | Oct. 1, 2005 |
| 7–14 | (869–056–00201–7) | 56.00 | Oct. 1, 2005 |
| 15–28 | (869–056–00202–5) | 47.00 | Oct. 1, 2005 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 29–End | (869–056–00203–3) | 47.00 | Oct. 1, 2005 |
| **49 Parts:** | | | |
| 1–99 | (869–056–00204–1) | 60.00 | Oct. 1, 2005 |
| 100–185 | (869–056–00205–0) | 63.00 | Oct. 1, 2005 |
| 186–199 | (869–056–00206–8) | 23.00 | Oct. 1, 2005 |
| 200–299 | (869–056–00207–6) | 32.00 | Oct. 1, 2005 |
| 300–399 | (869–056–00208–4) | 32.00 | Oct. 1, 2005 |
| 400–599 | (869–056–00209–2) | 64.00 | Oct. 1, 2005 |
| 600–999 | (869–056–00210–6) | 19.00 | Oct. 1, 2005 |
| 1000–1199 | (869–056–00211–4) | 28.00 | Oct. 1, 2005 |
| 1200–End | (869–056–00212–2) | 34.00 | Oct. 1, 2005 |
| **50 Parts:** | | | |
| 1–16 | (869–056–00213–1) | 11.00 | Oct. 1, 2005 |
| 17.1–17.95(b) | (869–056–00214–9) | 32.00 | Oct. 1, 2005 |
| 17.95(c)–end | (869–056–00215–7) | 32.00 | Oct. 1, 2005 |
| 17.96–17.99(h) | (869–056–00215–7) | 61.00 | Oct. 1, 2005 |
| 17.99(i)–end and 17.100–end | (869–056–00217–3) | 47.00 | Oct. 1, 2005 |
| 18–199 | (869–056–00218–1) | 50.00 | Oct. 1, 2005 |
| 200–599 | (869–056–00218–1) | 45.00 | Oct. 1, 2005 |
| 600–End | (869–056–00219–0) | 62.00 | Oct. 1, 2005 |
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| Complete set (one-time mailing) | | 325.00 | 2004 |

[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.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2004, through October 1, 2005. The CFR volume issued as of October 1, 2004 should be retained.

[10] 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, 2005 should be retained.

[11] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.