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U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

11–16–06 Thursday
Vol. 71 No. 221 Nov. 16, 2006

Pages 66643–66824

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Conference Room, Suite 700
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Washington, DC 20002

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Printed on recycled paper.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. FV06–983–3 FR]

Pistachios Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the Administrative Committee for Pistachios (committee) for the 2006–07 and subsequent production years from $0.0014 to $0.0007 per pound of assessed-weight pistachios. The committee, which locally administers the marketing order regulating the handling of pistachios grown in California (order), made this recommendation to help reduce the monetary reserve and ensure that it remains at a level consistent with order requirements. Assessments upon pistachio handlers are used by the committee to fund reasonable and necessary expenses of the program. The production year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 17, 2006.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906, or E-mail: *Terry.Vawter@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC, 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 983, regulating the handling of pistachios grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California pistachio handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable pistachios beginning September 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the committee for the 2006–07 and subsequent production years from $0.0014 to $0.0007 per pound of assessed-weight pistachios. The assessment obligation for each handler is computed by applying the assessment rate to each handler's assessed weight, computed pursuant to § 983.6 of the order.

Sections 983.52 and 983.53 of the order provide authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and to collect assessments from handlers to administer the program. In addition, the order authorizes the use of a monetary reserve to cover program expenses (§ 983.56). The monetary reserve may not exceed approximately two production years' budgeted expenses. That section also requires the committee to reduce future assessments so that the reserve funds are less than or equal to two production years' budgeted expenses.

The members of the committee are producers and handlers of California pistachios. They are familiar with the committee's needs and with the costs for goods and services in their local area, and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Therefore, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 production year, the committee recommended, and USDA approved, an assessment rate of $0.0014 per pound of assessed-weight pistachios (§ 983.253). The assessment rate would continue in effect from production year to production year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on May 23, 2006, and unanimously recommended 2006–07 expenditures of $340,906 and an assessment rate of $0.0007 per pound of assessed-weight pistachios received for processing. By comparison, expenses for the 2005–06 production year totaled $324,403 and the assessment rate was $0.0014 per pound of assessed-weight pistachios received for processing. The $0.0007 assessment rate is one-half of the $0.0014 assessment rate. Reducing the assessment rate will help reduce the reserve and ensure that it remains at a level consistent with order requirements.

The major expenditures recommended by the committee for the

2006–07 production year include: $80,952 for administrative expenses; $10,000 for compliance expenses; $149,954 for salaries; and $100,000 for a contingency reserve. In comparison, major expenditures for the 2005–06 production year included: $85,046 for administrative expenses; $10,000 for compliance expenses; $129,357 for salaries; and $100,000 for a contingency reserve.

The committee believes that maintaining the current assessment rate could eventually result in a financial reserve balance beyond order requirements that the reserve not exceed approximately two production years' expenses. Based on this, the committee determined that decreasing the assessment rate at this time will help to reduce the monetary reserve and ensure the reserve is maintained at a level consistent with order requirements.

The assessment rate recommended by the committee was derived by dividing anticipated expenses minus the reserve funds that will be utilized to meet expenses by expected receipts (the assessed weight) of California pistachios during the 2006–07 season ($340,906 minus $200,906 divided by 200,000,000 pounds = $0.0007 per pound). With pistachio receipts for the year estimated at 200,000,000 pounds, assessment income is expected to total $140,000.

If the assessment rate remained at $0.0014 per pound (estimated $280,000 assessment income), the estimated reserve on August 31, 2007, would be $448,741. Although this amount would still be within the order's reserve requirements, the committee believes it should reduce the reserve in the event that some of the variable components, such as crop estimate, are understated.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each production year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2006–07 budget and those for subsequent production years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of California pistachios subject to regulation under the order and approximately 740 producers in the production area. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000, and defines small agricultural service firms as those whose annual receipts are less than $6,500,000. Of the 740 producers, approximately 722 have annual receipts of less than $750,000. Eight of the 50 handlers subject to regulation have annual pistachio receipts of at least $6,500,000. Thus, the majority of handlers and producers of California pistachios may be classified as small entities.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2006–07 and subsequent production years from $0.0014 to $0.0007 per pound of assessed-weight pistachios received for processing. The committee unanimously recommended 2006–07 expenditures of $340,906 and an assessment rate of $0.0007 per pound of assessed-weight pistachios. The recommendation was made to reduce the monetary reserve to ensure that it remains at a level consistent with order requirements. The quantity of assessed-weight pistachios anticipated for the 2006–07 production year is estimated at 200,000,000 pounds. The total assessments collected are estimated to be $140,000. Assessment income coupled with funds on hand at the beginning of the production year of nearly $500,000 should provide the committee with adequate funds to meet its 2006–07 expenses and maintain an adequate reserve that is within the requirements of the order.

The major expenditures recommended by the committee for the 2006–07 production year include: $80,952 for administrative expenses; $10,000 for compliance expenses; $149,954 for salaries; and $100,000 for a contingency reserve. In comparison, major expenditures for the 2005–06 production year included: $85,046 for administrative expenses; $10,000 for compliance expenses; $129,357 for salaries; and $100,000 for a contingency reserve.

The assessment rate recommended by the committee was derived by dividing anticipated expenses minus the reserve funds that will be utilized to meet expenses by expected receipts (the assessed weight) of California pistachios during the 2006–07 season ($340,906 minus $200,906 divided by 200,000,000 pounds = $0.0007 per pound). With pistachio receipts for the year estimated at 200,000,000 pounds, assessment income is expected to total $140,000.

If the assessment rate remained at $0.0014 per pound (estimated $280,000 assessment income), the estimated reserve on August 31, 2007, would be $448,741. Although this amount would still be within the order's reserve requirements, the committee believed it should reduce the reserve in the event that some of the variable components, such as crop estimate, are understated.

At its meeting on May 23, 2006, the committee discussed the alternative levels of assessments it believed would provide both adequate funding of expenses and result in a reduced financial reserve. The committee also reviewed information from its Executive Subcommittee, which met on March 1, 2006. Some committee members believed that the reserve funds alone would be adequate to sustain committee operations in the absence of any assessment rate. Others believed a smaller assessment rate was prudent, thus keeping consistent assessment collections from one production year to the next. That way, the committee reasoned, handlers would be in a better position to plan for assessments from year to year. After deliberating the value of both proposals, the committee ultimately unanimously recommended a reduced assessment rate of $0.0007 per pound of assessed-weight pistachios and expenses totaling $340,906.

A review of historical information and preliminary information pertaining to the production year indicates that the grower price for the 2006–07 production year could range between $1.65 and $1.75 per pound of assessed-weight pistachios. Therefore, the estimated

assessment revenue for the 2006–07 production year as a percentage of total grower revenue could range between .040 and .042 percent.

While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, decreasing the assessment rate will reduce the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California pistachio industry and all interested persons were invited to attend the meeting and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the May 23, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting and recordkeeping on either small or large pistachio handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

A proposed rule concerning this action was published in the **Federal Register** on August 25, 2006 (71 FR 50374). Copies of the proposed rule were also mailed or sent via facsimile to all pistachio handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending September 25, 2006, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2006–07 production year began on September 1, 2006, and pistachio handlers are already receiving 2006–07 crop pistachios from growers. The decreased assessment rate applies to all pistachios received during the 2006–07 year and subsequent seasons. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 983 is amended as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 983 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 983.253 is amended by revising paragraph (a) to read as follows:

§ 983.253 Assessment rate.

(a) On and after September 1, 2006, a continuing assessment rate of $0.0007 per pound of assessed-weight pistachios is established for California pistachios. The assessment obligation of each handler shall be computed by applying the assessment rate to the assessed weight computed pursuant to § 983.6.

* * * * *

Dated: November 14, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9252 Filed 11–14–06; 1:09 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV06–984–2 IFR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule increases the assessment rate established for the Walnut Marketing Board (Board) for the 2006–07 and subsequent marketing years from $0.0096 to $0.0101 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: November 17, 2006. Comments received by January 16, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov*, or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Shereen.Marino@usda.gov* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2006–07 and subsequent marketing years from $0.0096 to $0.0101 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0096 per kernelweight of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 8, 2006, and unanimously recommended 2006–07 expenditures of $3,222,860 and an assessment rate of $0.0101 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,937,600. The assessment rate of $0.0101 per kernelweight pound of assessable walnuts is $0.0005 per pound higher than the rate currently in effect. The higher assessment rate is necessary to cover increased expenses including increased salaries, operating expenses and research for the 2006–07 marketing year.

The following table compares major budget expenditures recommended by the Board for the 2005–06 and 2006–07 marketing years:

Budget expense categories	2005–06	2006–07
Administrative Staff/Field Salaries & Benefits	$360,000	$415,000
Travel/Board Expenses	80,000	75,000
Office Costs/Annual Audit	132,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	85,000	.....
Crop Estimate	95,000	100,000
Production Research Director	75,000	75,000
Production Research	500,000	650,000
Domestic Market Development	1,550,000	1,750,000
Reserve for Contingency	55,100	10,360

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 318,600,000 kernelweight pounds which should provide $3,217,860 in assessment income. Assessment income combined with interest income should allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

The estimate for merchantable shipments is based on the California Agricultural Statistics Service's crop estimate for the crop year of 354,000 tons (inshell). Pursuant to § 981.51(b) of the order, this figure was converted to a merchantable kernelweight basis using a factor of .45 (354,000 tons × 2,000 pounds/ton × .45).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express

their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2006–07 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are currently 44 handlers of California walnuts subject to regulation under the marketing order and approximately 5,150 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $6,500,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Current industry information suggests that 16 of the 44 handlers (36 percent) shipped over $6,500,000 of merchantable walnuts and could be considered large handlers by the SBA. Twenty-eight of the 44 walnut handlers (64 percent) shipped under $6,500,000 of merchantable walnuts and could be considered small handlers.

The number of large walnut growers (annual walnut revenue greater than $750,000) can be estimated as follows. According to the National Agricultural Statistics Service (NASS), the average yield per acre for 2003–05 is 1.567 tons. A grower with 353 acres with average yields would produce approximately 553 tons. The average of grower prices for 2003–05 (published by NASS) is $1,357 per ton. At that average price, the 553 tons produced on 353 acres would yield approximately $750,000 in annual revenue. The 2002 Agricultural Census indicated 56 walnut farms (just under one percent of the 7,025 walnut farmers in 2002) were 500 acres or larger. The 500 acre threshold in the census data is somewhat larger than the 353 acres that would produce $750,000 in revenue with average yields and average prices. Thus, it can be concluded that the number of large walnut farms in 2006 is still likely to be not much above one percent. Based on the foregoing, it can be concluded that the majority of California walnut handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2006–07 and subsequent marketing years from $0.0096 to $0.0101 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2006–07 expenditures of $3,222,860 and an assessment rate of $0.0101 per kernelweight pound of assessable walnuts. The assessment rate of $0.0101 is $0.0005 higher than the 2005–06 rate. The quantity of assessable walnuts for the 2006–07 marketing year is estimated at 318,600,000 merchantable kernelweight pounds. Thus, the $0.0101 rate should provide $3,217,860 in assessment income. Assessment income combined with interest income should be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2005–06 and 2006–07 marketing years:

Budget expense categories	2005–06	2006–07
Administrative Staff/Field Salaries & Benefits	$360,000	$415,000
Travel/Board Expenses	80,000	75,000
Office Costs/Annual Audit	132,500	142,500
Program Expenses Including Research:		
Controlled Purchases	5,000	5,000
Crop Acreage Survey	85,000	
Crop Estimate	95,000	100,000
Production Research Director	75,000	75,000
Production Research	500,000	650,000
Domestic Market Development	1,550,000	1,750,000
Reserve for Contingency	55,100	10,360

Prior to arriving at this budget, the Board considered alternative expenditure levels, but ultimately decided that the recommended levels were reasonable to properly administer the order. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69.

According to NASS, the season average grower prices for years 2004 and 2005 were $1,390 and $1,520 per ton, respectively. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of between $.70 and $.76. Adjusting by a few cents above and below those prices ($0.67 to $0.79 per inshell pound) provides a reasonable price range within which the 2006–07 season average price is likely to fall. Dividing these inshell prices per pound by the 0.45 conversion factor designated in the order yields a 2006–07 price range estimate of $1.49 and $1.76 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of $0.0101 (per kernelweight pound) is divided by the low and high estimates of the price range and then multiplied by 100. The estimated assessment revenue for the 2006–07 marketing year as a percentage of total grower revenue would likely range between .7 and .6 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the

California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C 553, it also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers have begun shipping walnuts for the 2006–07 marketing year. The marketing year began on August 1, 2006, and the assessment rate applies to all walnuts shipped during the 2006–07 and subsequent seasons. With the assessment rate in effect prior to publication of this rule, the Board would not generate sufficient revenue to meet its budgeted expenses for the 2006–07 marketing year. The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in prior years. This interim final rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 984

Marketing agreements, Walnuts, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 984.347 is revised to read as follows:

§ 984.347 Assessment rate.

On and after August 1, 2006, an assessment rate of $0.0101 per kernelweight pound is established for California merchantable walnuts.

Dated: November 14, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9251 Filed 11–14–06; 1:09 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH95

Criticality Control of Fuel Within Dry Storage Casks or Transportation Packages in a Spent Fuel Pool

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations that govern domestic licensing of production and utilization facilities so that the requirements governing criticality control for spent fuel pool storage racks do not apply to the fuel within a spent fuel transportation package or storage cask when a package or cask is in a spent fuel pool. These packages and casks are subject to separate criticality control requirements. This action is necessary to avoid applying two different sets of criticality control requirements to fuel within a package or cask in a spent fuel pool.

DATES: *Effective Date:* The final rule will become effective January 30, 2007, unless significant adverse comments are received by December 18, 2006. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change (refer to ''Procedural Background'' in the Supplementary Information section of this document for further details). If the rule is withdrawn, timely notice will be published in the **Federal Register**. Comments received after December 18, 2006 will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH95 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher at (301) 415–5905; e-mail cag@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document

Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: George M. Tartal, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–0016, e-mail *gmt1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Storage of spent fuel can be done safely in a water filled spent fuel pool under 10 CFR Part 50, a transportation package under 10 CFR Part 71, or a dry storage cask under 10 CFR Part 72. The primary technical challenges involve removing the heat generated by the spent fuel (decay heat), storing the fuel in an arrangement that avoids an accidental criticality, and providing radiation shielding. Removing the decay heat keeps the spent fuel from becoming damaged due to excessive heatup. Transportation packages and dry storage casks are designed to be capable of removing the decay heat generated by the fuel when filled with water or when dry without the need for active heat removal systems. Avoiding an accidental criticality is important to preclude the possibility of overheating the spent fuel and damaging the fuel. When dry, transportation packages and dry storage casks are subcritical by the absence of water as a neutron moderator, as well as by geometric design, and through the use of neutron poison materials such as boral and poison plates. When the packages and casks are flooded with water, they may also rely on soluble boron to maintain the subcritical condition. Therefore, a boron dilution event is the scenario that could result in an accidental criticality with the possibility of excessive fuel temperature and subsequent fuel damage. Radiation shielding, provided by the water in a spent fuel pool or the container material in a transportation package or dry storage cask, is important to protect people that may be near the spent fuel from unacceptable exposure to radiation. The NRC has promulgated regulations governing the capability of both spent fuel pools (10 CFR Parts 50 and 70), dry storage casks (10 CFR Part 72) and transportation packages (10 CFR Part 71) to address these technical challenges for the protection of public health and safety.

10 CFR 50.68 requires that spent fuel pools remain subcritical in an unborated, maximum moderation condition. Implementation of this regulation also allows credit for the operating history of the fuel (fuel burnup) when analyzing the storage configuration of the spent fuel. 10 CFR Parts 71 and 72 approve the use of spent fuel transportation packages and storage casks, respectively. 10 CFR Part 71 requires that transportation packages be designed assuming they can be flooded with fresh water (unborated), and thus are already analyzed in a manner that complies with the 10 CFR 50.68 assumption. However, 10 CFR Part 72 was, in part, predicated on the assumption that spent fuel (without any burnup) would remain subcritical when stored dry in a cask and remain subcritical when placed in a cask in a spent fuel pool at a commercial power reactor. Implementation of 10 CFR Part 72 relies on soluble boron, rather than on burnup, to assure subcriticality when the fuel is in a cask in a spent fuel pool.

On March 23, 2005, the NRC issued Regulatory Issue Summary (RIS) 2005–05 addressing spent fuel criticality analyses for spent fuel pools under 10 CFR 50.68 and Independent Spent Fuel Storage Installations (ISFSI) under 10 CFR Part 72. The intent of the RIS was to advise reactor licensees that they must meet both the requirements of 10 CFR 50.68 and 10 CFR Part 72 with respect to subcriticality during storage cask loading in spent fuel pools. The need to meet both regulations and the differences in the assumptions described above create an additional burden on licensees to show that credit for soluble boron is not required to preclude an accidental criticality in a water-filled, high-density dry storage cask used for storing fuel. In order to satisfy both of these requirements, a site-specific analysis that demonstrates that the casks would remain subcritical for the specific irradiated fuel loading planned, without credit for soluble boron, as described in 10 CFR 50.68 is required. This analysis relies on the fuel burnup to determine the margin to criticality for the specific cask loading. The analysis is similar to that conducted for the spent fuel pool itself, but takes into account the unique design features of the cask when determining the minimum burnup required for spent fuel storage in the specific cask. This issue only applies to pressurized water reactors (PWR) because boiling water reactor (BWR) spent fuel pools do not contain soluble boron and the casks that are used to load BWR fuel do not rely on soluble boron to maintain subcriticality.

The regulations, as currently written, create an unnecessary burden for both industry and the NRC, of performing two different analyses with two different sets of assumptions for the purpose of preventing a criticality accident, with no associated safety benefit. This burden is considered unnecessary because the conditions which could dilute the boron concentration within a transportation package or dry storage cask (hereinafter ''package or cask'') in a spent fuel pool, and cause fuel damage with the release of radioactive material, are highly unlikely. The NRC evaluated the two scenarios in which a boron dilution could occur: (1) A rapid drain down and subsequent reflood of the spent fuel pool, or (2) a slow boron dilution of the spent fuel pool. The result of the NRC evaluation is that the possibility of each scenario is highly unlikely (see Appendix A for additional details). Therefore, there is no safety benefit from requiring the licensee to conduct a site specific analysis to comply with 10 CFR 50.68(b) while fuel is within a package or cask in a spent fuel pool.

As a result, a revision to the Commission's regulations is necessary to eliminate the requirement for separate criticality analyses using different methodologies and acceptance criteria for fuel within a package or cask in a spent fuel pool. This direct final rule will eliminate the need to comply with the criticality control requirements in § 50.68 if fuel is within a package or cask in a spent fuel pool. Instead, the criticality requirements of 10 CFR Parts 71 and 72, as applicable, would apply to fuel within packages and casks in a spent fuel pool. For fuel in the spent fuel pool but outside the package or cask, the criticality requirements of 10 CFR 50.68 would apply.

II. Section-by-Section Analysis of Substantive Changes

Section 50.68 Criticality Accident Requirements

Section 50.68 describes the requirements for maintaining subcriticality of fuel assemblies in the spent fuel pool. New paragraph (c) of this section states that the criticality accident requirements of 10 CFR 50.68(b) do not apply to fuel within a package or cask in a spent fuel pool. Rather, the criticality accident requirements of 10 CFR Part 71 or 72, as applicable, apply to fuel within a package or cask in a spent fuel pool. This new paragraph provides the regulatory boundary between § 50.68(b) and 10 CFR Part 71 or 72 for performing criticality analyses. A licensee moving fuel between the spent fuel pool and a package or cask need only analyze fuel within the package or cask according to 10 CFR Part 71 or 72, as applicable, and is not required to analyze fuel within the package or cask using § 50.68(b) requirements.

For the purpose of this paragraph, any package or cask that is in contact with the water in a spent fuel pool is considered ''in'' the spent fuel pool. Also, once any portion of the fuel (fuel assembly, fuel bundle, fuel pin, or other device containing fuel) enters the physical boundary of the package or cask, that fuel is considered ''within'' that package or cask. When a package or cask is in a spent fuel pool, the criticality requirements of 10 CFR Part 71 or 72, as applicable, and the requirements of the Certificate of Compliance for that package or cask, apply to the fuel within that package or cask. Criticality analysis for the fuel in that package or cask in accordance with § 50.68(b) is not required. For fuel in the spent fuel pool and not within a package or cask, the criticality requirements of § 50.68(b) apply.

III. Procedural Background

The NRC is using the ''direct final rule procedure'' to issue this amendment because it is not expected to be controversial. The amendment to the rule will become effective on January 30, 2007. However, if the NRC receives significant adverse comments by December 18, 2006, then the NRC will publish a document that withdraws this action. In that event, the comments received in response to this amendment would then be considered as comments on the companion proposed rule published elsewhere in this **Federal Register**, and the comments will be addressed in a later final rule based on that proposed rule. Unless the modifications to the proposed rule are significant enough to require that it be republished as a proposed rule, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. This direct final rule eliminates duplication of criticality control requirements for fuel within a package or cask in the spent fuel pool. These packages and casks have separate requirements for criticality control during loading, storage and unloading operations. This rulemaking does not involve the establishment or use of technical standards, and hence this act does not apply to this direct final rule.

V. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the NRC on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

VI. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

VII. Finding of No Significant Environmental Impact: Environmental Assessment

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is set forth below.

This direct final rule eliminates duplication of criticality control requirements for fuel within a package or cask in the spent fuel pool. These packages and casks are required to meet the licensing requirements, defined in 10 CFR Part 71 or 72, as applicable, and the applicable Certificate of Compliance (CoC), which currently provide criticality control requirements for fuel loading, storage and unloading. This rulemaking will preclude the necessity for nuclear power plant licensees to meet the criticality control requirements for both regulations (for 10 CFR Part 50 and for 10 CFR Part 71 or 72) while fuel is within a package or cask in a spent fuel pool. The regulations in 10 CFR Parts 71 and 72, as applicable, coupled with the package or cask CoC, provide adequate assurance that there are no inadvertent criticality events while fuel is within a package or cask in a spent fuel pool. Experience over 20 years has demonstrated that the regulations in 10 CFR Parts 71 and 72 have been effective in preventing inadvertent criticality events, and the NRC concludes that as a matter of regulatory efficiency, there is

no purpose to requiring licensees to apply for and obtain exemptions from requirements of § 50.68(b) if they adhere to the regulations in 10 CFR Part 71 or 72 as applicable. Since the regulations in 10 CFR Parts 71 and 72 and the CoC provide safe and effective methods for preventing inadvertent criticality events in nuclear power plants, the NRC concludes that this direct final rule will not have any significant impact on the quality of the human environment. Therefore, an environmental impact statement has not been prepared for this direct final rule.

The foregoing constitutes the environmental assessment for this direct final rule.

VIII. Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0011, 3150–0008 and 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

Statement of the Problem and Objectives

As described in the Background section of this document, the need to meet the criticality accident requirements of 10 CFR 50.68 and of 10 CFR Part 71 or 72, and the differences in their assumptions, create an additional burden on licensees to show that credit for soluble boron is not required to preclude an accidental criticality in a water-filled package for transporting fuel or a water-filled, high-density dry storage cask used for storing fuel. In order to satisfy both of these requirements, a site-specific analysis that demonstrates that the fuel in the package or cask would remain subcritical for the specific irradiated fuel loading planned, without credit for soluble boron, would be required. In the § 50.68 analysis, the licensee would rely on the fuel burnup to determine the margin to criticality for the specific package or cask loading. The § 50.68 analysis would be similar to that conducted for the spent fuel pool itself, but would take into account the unique design features of the package or cask when determining the minimum burnup required for spent fuel storage in the specific package or cask. This issue only applies to PWRs because BWR spent fuel pools do not contain soluble boron and the packages and casks that are used to load BWR fuel do not rely on soluble boron to maintain subcriticality. As currently written, these regulations create an unnecessary burden for both industry and the NRC with no associated safety benefit.

The objective of this rulemaking activity is to revise 10 CFR 50.68 to eliminate the requirement for licensees to perform a separate criticality analysis based on the requirements of 10 CFR 50.68 for fuel within a package or cask in a spent fuel pool. As a result, any fuel that is in the spent fuel pool and not within the physical boundary of a package or cask remains subject to the criticality requirements of § 50.68. Once the fuel enters the physical boundary of the package or cask, it is then subject to the criticality requirements of 10 CFR Part 71 or 72, as applicable, and no longer subject to the criticality requirements of § 50.68.

Alternative Approaches and Their Values and Impacts

Another option to this amendment is for the NRC to make no changes and allow the licensees to continue requesting exemptions. If no changes are made, the licensees will continue to incur the costs of submitting exemptions (approximately $300k) and NRC will incur the costs of reviewing them (approximately $150k). Under this rule, an easing of the burden on licensees results from not having to request exemptions. Similarly, the NRC's burden will be reduced by avoiding the need to review and evaluate these exemption requests. Another downfall to this option is that licensees may not apply 10 CFR 50.59 to exemptions, instead necessitating a new exemption for future modifications to package or cask design. Furthermore, licensees would not be in compliance with existing regulations, and that the NRC would then be regulating by exemption rather than by rule.

A final option is for the NRC to make no change and licensees to request a license amendment to add a Technical Specification which restricts the burnup of spent fuel assemblies loaded into the package or cask. This license amendment would only be required once, putting the licensee into compliance with NRC regulations, and would then permit licensees to make modifications using 10 CFR 50.59. However, the burden of producing and approving an amendment on both the licensee (approximately $300k) and the NRC (approximately $100k) is quite significant, with no safety benefit.

Decision Rationale for the Selected Regulatory Action

Based on the evaluation of values and impacts of the alternative approaches, the NRC has decided to revise 10 CFR 50.68 to eliminate the requirement for licensees to perform a separate criticality analysis based on the requirements of 10 CFR 50.68 for fuel within a package or cask in a spent fuel pool. This rule revision is an easing of burden action which results in increased regulatory efficiency. The rule does not impose any additional costs on existing licensees and has no negative impact on public health and safety. The rule will provide savings to licensees that transfer fuel from the spent fuel pool to a dry storage cask or transportation package. There will also be savings in resources to the NRC as well.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 10 CFR 2.810.

XI. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR 50.109. Reactor licensees are currently required to meet both the requirements of 10 CFR 50.68 and 10 CFR Part 71 or 72, as applicable, with respect to subcriticality during package or cask loading or unloading in spent fuel pools. The need to meet both regulations creates an additional burden on licensees to show that credit for soluble boron is not required to preclude an accidental criticality in a package or cask when filled with water. In order to satisfy both of these requirements, a site specific analysis that demonstrates that the fuel in the package or cask would remain subcritical for the specific irradiated

fuel loading planned, without credit for boron, would be required. This action amends 10 CFR 50.68 so that the criticality accident requirements for spent fuel pool storage racks do not apply to the fuel within a package or cask in a spent fuel pool. This rule constitutes a voluntary relaxation of requirements, and as a result, a backfit analysis is not required.

During the 535th meeting of the Advisory Committee for Reactor Safeguards on September 7, 2006, a concern was raised regarding any actions that would be required for licensees who have previously requested and been granted either: (1) a license amendment to modify the plant technical specifications to comply with the criticality accident requirements of 10 CFR 50.68 for fuel in a 10 CFR Part 72 licensed cask in their spent fuel pool, or (2) an exemption from the criticality accident requirements of 10 CFR 50.68 for fuel in a 10 CFR Part 72 licensed cask in their spent fuel pool. The NRC position is that this rulemaking activity does not constitute a backfit. The following discussion in the Backfit Analysis clarify this NRC position for the amendment or exemption cases described above.

For licensees with an approved license amendment, no action is required by the licensee. The license amendment modified the licensee's 10 CFR Part 50 technical specifications by adding minimum fuel burnup limits to the fuel being loaded into a licensed dry storage cask. This direct final rule does not affect the licensee's ability to load spent fuel into the cask in accordance with the amended technical specifications, nor does it create any conflict with the amended technical specifications. Therefore, a licensee may choose to continue to comply with the requirements of their amended 10 CFR Part 50 license and with the requirements of 10 CFR Part 71 or Part 72, as applicable, while loading or unloading a package or cask in the spent fuel pool. However, for those licensees who have amended their 10 CFR Part 50 license to comply with 10 CFR 50.68 and have included minimum fuel burnup limits, and choose to take advantage of this voluntary relaxation of requirements, they must request removal of the previously amended portions of the 10 CFR Part 50 technical specifications as a conforming change consistent with the amended rule.

For licensees with an approved exemption, no action is required by the licensee. The exemption permitted licensees to be exempt from the criticality accident requirements of 10 CFR 50.68 for fuel being loaded into a licensed dry storage cask. These licensees can continue operating under their approved exemption. However, a licensee may instead choose to comply with the amended rule. Operating under the exemption or the amended rule have effectively the same criticality accident requirements for fuel within a package or cask in a spent fuel pool, namely only those of 10 CFR Part 71 or Part 72, as applicable.

XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. Section 50.68 is amended by adding a new paragraph (c) to read as follows:

§ 50.68 Criticality accident requirements.

* * * * *

(c) While a spent fuel transportation package approved under Part 71 of this chapter or spent fuel storage cask approved under Part 72 of this chapter is in the spent fuel pool:

(1) The requirements in § 50.68(b) do not apply to the fuel located within that package or cask; and

(2) The requirements in Part 71 or 72 of this chapter, as applicable, and the requirements of the Certificate of Compliance for that package or cask, apply to the fuel within that package or cask.

Dated at Rockville, Maryland, this 31st day of October, 2006.

For the Nuclear Regulatory Commission.

William F. Kane,

Deputy Executive Director for Reactor and Preparedness Programs Office of the Executive Director for Operations.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A: Technical Basis Document for RIN 3150–AH95 (RN 678)

I. Background

In the production of electricity from commercial power reactors, spent fuel that is generated needs to be stored and safely managed. As part of the design of all commercial power reactors, spent fuel storage pools (SFP) were included to provide for the safe storage of spent fuel for a number of years. For many years there was sufficient room in the original spent fuel pools to continually store spent fuel without space restrictions being an immediate concern. In the 1960's and 1970's, when the spent fuel pools currently in use were designed and built, it was anticipated that the spent fuel would be moved off the reactor site for further processing and/or permanent disposal. The planned long-term approach is for disposal of this spent fuel in a permanent geological repository.

As delays were encountered with the development of the permanent geological disposal site, the spent fuel pools began to fill up and space restrictions became a concern. Since the 1970's licensees, with NRC approval, have increased the storage capacity of the spent fuel pools by changing the designs of the storage racks to allow the fuel to be safely stored closer together. This was recognized as a short term solution, with the assumption that permanent disposal would be made available within a reasonable period. As additional delays were encountered with the permanent geological disposal of the spent fuel, the nuclear power industry, in conjunction with the NRC,

developed alternative storage solutions, including storing the spent fuel in dry storage casks on their sites.

Maintaining the capacity to store spent fuel in a spent fuel pool is important for safety. Being able to store the spent fuel in a water filled spent fuel pool allows the fuel that is removed from the reactor core at the start of a refueling outage to be safely cooled at the time it is generating the greatest decay heat. Also, the water provides shielding for the workers involved in conducting maintenance on the various systems and components necessary to safely operate the reactor. During a refueling outage, inspection and maintenance activities need to be performed on the systems and components that would normally protect the fuel from damage as a result of the operation of the reactor. These inspections and maintenance activities can be accomplished more effectively and efficiently by draining the water from the reactor coolant and other supporting systems. Placing the fuel assemblies in the spent fuel pool during this period allows the reactor coolant and other systems to be drained while keeping the spent fuel safe (covered with water). Therefore, it is important to maintain the capability to completely remove all of the fuel assemblies from the reactor vessel during a refueling outage (full core offload capability). From an operational perspective, additional capacity should be maintained to accommodate a full core offload as well as the storage of new fuel that replaces the spent fuel permanently removed from the reactor core.

Storage of spent fuel can be done safely in a water filled spent fuel pool under 10 CFR Part 50, a transportation package under 10 CFR Part 71, or a dry storage cask under 10 CFR Part 72. The primary technical challenges involve removing the heat generated by the spent fuel (decay heat), storing the fuel in an arrangement that avoids an accidental criticality, and providing radiation shielding. Removing the decay heat keeps the spent fuel from becoming damaged due to excessive heatup. Dry storage casks are designed to be capable of removing the decay heat generated by the fuel when filled with water or when dry without the need for active heat removal systems. Avoiding an accidental criticality is important to preclude the possibility of overheating the spent fuel and damaging the fuel. When dry, casks are subcritical by the absence of water as a neutron moderator, as well as by geometric design, and for some cask designs through the use of neutron poison materials such as boral and poison plates. When the casks are flooded with water, they may also rely on soluble boron to maintain the subcritical condition. Therefore, a boron dilution event is the scenario that could result in an accidental criticality with the possibility of excessive fuel temperature and subsequent fuel damage. Radiation shielding, provided by the water in a spent fuel pool or the container material in a dry storage cask, is important to protect people that may be near the spent fuel from unacceptable exposure to radiation. The NRC has promulgated regulations governing the capability of both spent fuel pools (10 CFR Parts 50 and 70), dry storage casks (10 CFR Part 72) and transportation packages (10 CFR Part 71) to address these technical challenges for the protection of public health and safety.

Since the original design of commercial reactors included spent fuel pools, the spent fuel is stored in these pools when it initially comes out of the reactor. Decay heat from this spent fuel is primarily produced by the radioactive decay of fission products generated during the period the fuel is in the reactor core. As the fission products decay, the amount of decay heat generated in the spent fuel also decreases. So, over time the spent fuel becomes cooler, requiring less heat removal capability. Since the decay heat is higher when the spent fuel is removed from the reactor, it is more efficient to cool the fuel in a spent fuel pool where the fuel is surrounded by water. This allows the heat to be transferred to the water in the pool. The spent fuel pool requires a dedicated cooling system to maintain the temperature of the water in the pool cool enough to prevent the water from boiling. The spent fuel is allowed to cool down in the spent fuel pool for several years before it is placed in a dry cask storage cask or transportation package. When placed in a dry storage cask or transportation package, the amount of heat generated by the spent fuel is low enough that the fuel can be cooled by the gas surrounding the fuel with the heat being transferred through the cask or package to the surrounding air. Once placed in the dry storage cask or transportation package, the fuel will remain cool enough to prevent fuel damage without the need for an auxiliary cooling system.

Spent fuel pools, dry storage casks and transportation packages are designed to preclude an accidental criticality primarily by relying on the geometrical configuration of how the spent fuel is stored. Both wet and dry storage may rely on material that absorbs the neutrons necessary for the fission process to occur (fixed neutron poisons, such as boral, poison plates, etc.). This material is inserted when building the storage racks or when building the cask/package. This material is integral to the storage racks in the spent fuel pool and in the cask/package used to physically hold the spent fuel in place. This establishes the geometrical configuration of how the spent fuel is stored. Criticality is of a greater concern when the fuel is stored in a spent fuel pool because the water used to cool the fuel is also a very effective moderator that facilitates the nuclear fission process. In dry storage, the spent fuel is surrounded by a gas that does not act as a moderator, therefore, criticality is a significantly smaller concern and the spent fuel can be safely stored closer together than in a spent fuel pool.

Transfer of the spent fuel from the spent fuel pool to the cask/package is performed while the cask/package is submerged in the spent fuel pool. When the cask/package is in the spent fuel pool, the fuel stored in the cask/package is surrounded by water, making an accidental criticality a concern. To preclude an accidental criticality in this circumstance, other physical processes or systems are used, primarily by putting a neutron poison (boron) in the water. Before any spent fuel is placed in either a spent fuel pool or a cask/package, a detailed analysis is conducted that demonstrates that the geometrical configuration and other physical systems or processes provide reasonable assurance that an accidental criticality will be prevented.

It is also possible that the spent fuel would need to be transferred out of a dry storage cask and back in to the spent fuel pool. This might arise in one of two situations. The first situation is that it might be necessary to inspect the spent fuel or the dry storage cask itself. This would necessitate transferring some or all of the spent fuel in the dry storage cask back into the spent fuel pool. The second and more probable situation that would require unloading the spent fuel from the dry storage cask back into the spent fuel pool, would be in preparation for shipment of the spent fuel. Before the spent fuel in a dry storage cask licensed pursuant to 10 CFR Part 72 only (not also licensed pursuant to 10 CFR Part 71) can be shipped, it must first be transferred to an approved transportation package licensed pursuant to 10 CFR Part 71. In order to place the spent fuel into the transportation package, it must first be unloaded from the dry storage cask back into the spent fuel pool. The dry storage cask is then removed from the spent fuel pool and is replaced by the transportation package. The spent fuel is then loaded into the transportation package.

As described in more detail below, there are sufficient regulatory controls in place to provide reasonable assurance that spent fuel can be safely stored both in spent fuel pools and in dry storage casks or transportation packages. The purpose for the change to 10 CFR 50.68 is to reduce the regulatory burden imposed on licensees by removing a requirement for an unnecessary criticality analysis. This change clarifies that, when loading spent fuel into a dry storage cask or transportation package while in the spent fuel pool, the license requirements and controls (including the physical processes and systems) relied on by the NRC in its determination that a specific dry storage cask or transportation package is acceptable shall be followed and provide the basis for the NRC concluding that public health and safety are maintained.

II. Regulatory Evaluation

The regulation at 10 CFR 50.68 requires that pressurized water reactor (PWR) SFPs remain subcritical in an unborated, maximum moderation condition. To demonstrate that the fuel in the SFP remains subcritical in this condition, 10 CFR 50.68 allows credit for the operating history of the fuel (fuel burnup) when analyzing the storage configuration of the spent fuel. Taking the burnup of the spent fuel into consideration reduces the reactivity of the fuel and reduces the need for soluble boron to demonstrate subcriticality. Meeting the unborated condition requirement provides reasonable assurance that potential boron dilution events that could occur during the storage period of spent fuel in the SFP would not result in an accidental criticality. Boron dilution events could occur due to leakage from the spent fuel pool requiring replenishment from an unborated water source. For example, a SFP liner rupture due

to an earthquake could result in a rapid drain down of the SFP as could a rupture of the SFP cooling system. Dilution could also result from the introduction of unborated water in the vicinity of the SFP, such as from a fire suppression system. For the rapid drain down scenario, the SFP might be replenished with unborated sources of water in an effort to quickly reestablish spent fuel cooling and to provide shielding. It is necessary to reestablish spent fuel cooling during a rapid drain down event to preclude the possibility of the elevated cladding temperature that could cause overheating of the fuel and a loss of fuel cladding integrity. Because of the very low likelihood of a rapid drain down event, it is not considered part of the licensing basis for commercial nuclear power reactors.

Storage casks are approved for use by the NRC by the issuance of specific and general licenses pursuant to 10 CFR Part 72. Transportation packages for spent fuel are licensed pursuant to 10 CFR Part 71. 10 CFR Part 71 currently requires that the criticality safety system for transportation packages be designed with the assumption that a package can be flooded with fresh water (i.e., no soluble boron). Therefore, the transportation packages are already analyzed in a manner that complies with the 10 CFR 50.68 assumption. The following discussions will then focus only on storage casks. However, the transportation packages are included in the proposed change in order to allow loading/unloading operation of a transportation package into a 10 CFR Part 50 facility (i.e., spent fuel pool) without the need for a specific license or exemption considerations under 10 CFR Part 50.

The certificates and licenses issued by the NRC for these storage casks and the requirements of 10 CFR Part 72 include controls for fuel loading, storage, and unloading that provide reasonable assurance that spent fuel cooling is maintained and an accidental criticality is avoided. These controls are not identical to the requirements contained in 10 CFR 50.68, but instead allow for an alternate means of assuring safety by providing additional requirements that are not present in 10 CFR 50.68. NRC approval of the storage cask designs was, in part, predicated on the assumption that unirradiated commercial nuclear fuel (fresh fuel) of no more than 5 weight percent enrichment would remain subcritical when stored in its dry configuration and that it would remain subcritical with a sufficient boron concentration (if any boron was required) when stored in a water filled configuration, such as when it is in a SFP at a commercial power reactor. Under 10 CFR Part 72, reliance is placed on soluble boron to assure subcriticality when the cask is full of water, rather than relying on fuel burnup. The fresh fuel assumption allowed the NRC to generically approve storage casks without regard to the operating history of the fuel from a criticality perspective by establishing a bounding case for the various fuel types that could be stored in the approved storage casks. If generic fuel burnup data were available, the NRC may have been able to approve storage cask designs without the need for boron to assure subcriticality, but would have put in place a minimum fuel burnup requirement instead. By having the 10 CFR Part 72 controls in place, loading, storage, and unloading of spent fuel can be accomplished in a manner that precludes an accidental criticality while maintaining sufficient fuel cooling capabilities.

III. Problem Statement

On March 23, 2005, the NRC issued Regulatory Issue Summary (RIS) 2005–05 addressing spent fuel criticality analyses for SFPs under 10 CFR 50.68 and Independent Spent Fuel Storage Installations (ISFSI) under 10 CFR Part 72. The intent of the RIS was to inform reactor licensees that they must meet both the requirements of 10 CFR 50.68 and 10 CFR Part 72 with respect to subcriticality during storage cask loading in SFPs. Different assumptions are relied on under these regulations to achieve the same underlying purpose, namely to place spent fuel in a condition such that it remains cooled and to preclude an accidental criticality.

The need to meet both regulations and the differences in the assumptions creates an additional burden on licensees to show that credit for boron is not required to preclude an accidental criticality in a storage cask when filled with water. This condition exists for NRC approved high density storage casks used for storing PWR fuel. As permitted under 10 CFR Part 72, boron can be relied on at PWR SFPs to maintain subcriticality during storage cask loading or unloading. However, 10 CFR 50.68 requires that spent fuel assemblies be subcritical with unborated water in SFPs. In order to satisfy both of these requirements, a site specific analysis that demonstrates that the storage casks would remain subcritical for the specific irradiated fuel loading planned, without credit for boron, would be required. In this analysis, the licensee would rely on the fuel burnup to determine the margin to criticality for the specific cask loading. The analysis would be similar to that conducted for the SFP itself, but would take into account the unique design features of the storage cask when determining the minimum burnup required for spent fuel storage in the specific cask.

In a July 25, 2005, letter to the NRC, the Nuclear Energy Institute (NEI) indicated that the implementation of the RIS recommendations would ''create an unnecessary burden for both industry and the NRC with no associated safety benefit for public.'' In other words, preparing an amendment application by performing a redundant criticality analysis consistent with 10 CFR 50.68 would cause ''an unnecessary administrative burden for licensees with no commensurate safety benefits'' because the dry storage cask had already been approved based on the criticality analysis and assumptions required by 10 CFR Part 72, i.e., boron credit with no burnup credit. NEI reiterated its position at a meeting with the NRC staff on November 10, 2005.

Subsequent to the November 10, 2005 meeting, the NRC decided to examine the likelihood of criticality in casks while submerged in SFPs during loading or unloading in the event of a boron dilution in SFPs due to natural phenomena and other scenarios. Based on the low likelihood of such an event, NRC has determined that a revision to 10 CFR 50.68 clarifying that the requirements of 10 CFR Part 71 or 72, as appropriate, apply to transportation packages and storage casks during loading and unloading operations while submerged in a PWR SFP. This issue does not apply to boiling water reactors (BWR) because BWR SFPs do not contain boron and dry storage casks that are used to load BWR fuel do not rely on boron to maintain subcriticality. As discussed below, there is no safety benefit from requiring the licensee to conduct a site specific analysis to comply with 10 CFR 50.68(b) in support of dry storage cask loading, fuel storage, or unloading activities.

IV. Technical Evaluation

In assessing the proposed change to 10 CFR 50.68, the staff considered what type of events could lead to damage of the fuel in a storage cask as a result of the proposed change. Since the central issue in the application of the regulations is whether boron is credited as a control for avoiding an accidental criticality, events that reduce the boron concentration in the storage cask were considered the only events that would be affected by the proposed change. There are two types of scenarios in which a boron dilution could occur. A rapid drain down and subsequent reflood of the SFP or in leakage from the SFP cooling system or from an unborated water source in the vicinity of the SFP (i.e., fire suppression system) that would go undetected by normal licensee activities (slow boron dilution event). Each of these scenarios are addressed below.

a. Slow Boron Dilution Event

The possibility of a slow boron dilution event resulting in an accidental criticality event in a storage cask in a SFP is highly unlikely based on the requirements contained in the technical specifications attached to the Certificate of Compliance issued under 10 CFR Part 71 or 72 for the specific cask design.

The storage cask technical specifications require measurements of the concentration of dissolved boron in a SFP before and during cask loading and unloading operations. At a point a few hours prior to insertion of the first fuel assembly into a storage cask, independent measurements of the dissolved boron concentration in the SFP are performed. During the loading and unloading operation, the dissolved boron concentration in the water is confirmed at intervals that do not exceed 72 hours. The measurements of the dissolved boron in the SFP are performed independently by two different individuals gathering two different samples. This redundancy reduces the possibility of an error and increases the accuracy of the measurement that is used to confirm that the boron concentration is in compliance with the storage cask's technical specifications. These measurements are continued until the storage cask is removed from the SFP or the fuel is removed from the cask.

In addition to the storage cask technical specification boron concentration sampling requirements, 10 CFR Part 72 also requires criticality monitoring. As stated in 10 CFR

72.124(c), a criticality monitoring system is required for dry storage cask loading, storage, or unloading operations:

''A criticality monitoring system shall be maintained in each area where special nuclear material is handled, used, or stored which will energize clearly audible alarm signals if accidental criticality occurs. Underwater monitoring is not required when special nuclear material is handled or stored beneath water shielding. Monitoring of dry storage areas where special nuclear material is packaged in its stored configuration under a license issued under this subpart is not required.''

Although 10 CFR 72.124(c) states ''underwater [criticality] monitoring is not required,'' criticality monitoring is required when special nuclear material is handled, used, or stored at facilities where the requirements of 10 CFR Part 72 apply. The point being made in 10 CFR 72.124(c) is that the criticality monitors are not required to be located under the water, but rather that criticality monitors can be located above the water to satisfy this requirement. The facilities to which this requirement applies include 10 CFR Part 50 SFPs when loading, storing, or unloading fuel in storage casks licensed under 10 CFR Part 72. The underlying intent of 10 CFR 72.124(c) is that criticality monitors are required under circumstances where an accidental criticality could occur as the result of changes in the critical configuration of special nuclear material. As such, storage cask loading and unloading activities need to be monitored to provide reasonable assurance that these fuel handling activities (changes in the critical configuration) do not result in an accidental criticality.

When storing fuel in a storage cask that requires boron to remain subcritical while submerged in the SFP, the critical configuration can be affected by changes to the moderation (temperature changes of the water) or boron concentration. The primary concern during storage under these circumstances is the dilution of the boron concentration. Therefore, to meet the underlying intent of 10 CFR 72.124(c) either criticality monitors are required to detect an accidental criticality or controls are necessary to preclude a boron dilution event that could lead to an accidental criticality. As previously discussed, periodic sampling (at intervals no greater than 72 hours) of the boron concentration is required when fuel is stored in storage casks in the SFP. The requirement to periodically sample the boron concentration provides reasonable assurance that should a slow boron dilution event occur, it would be identified such that actions could be taken to preclude an accidental criticality and thereby meet the underlying intent of 10 CFR 72.124(c).

A slow boron dilution event would require that an unborated source of water be injected into the SFP and be undetected by normal plant operational activities for sufficient duration to allow the boron concentration to drop below the level required to maintain a storage cask subcritical. First, consider the nature of the boron dilution event that would be required to dilute the SFP boron concentration from the storage cask technical specification concentration level (typically about 2200 ppm) to the critical boron concentration value (typically around 1800 ppm). The in-leakage rate would have to be large enough to dilute the entire volume of the pool between the time of the initial boron concentration sample and the time of the subsequent boron concentration sample and yet be small enough to remain undetected. Cask loading and unloading are conducted by licensed operators or certified fuel handlers who are present during any fuel movement. It is reasonable to conclude that these operators or handlers would detect all but the smallest increases in SFP level that would be indicative of a slow boron dilution event. Second, consider the storage casks loading and unloading operation frequency and duration. The frequency and duration depend on the dry storage needs and the reactor facility design. Based on historical average data, only a few casks (on the order of about 5 casks) are loaded each year at an operating reactor that is in need of dry storage. Third, consider that the time a storage cask is actually loaded with fuel while in the SFP is typically between 24 and 72 hours. When all of these factors are considered, it is clear that the likelihood of an undetected slow boron dilution event occurring during the time that a storage cask is loaded with fuel in the SFP is very remote.

Another scenario that could result in a slow boron dilution event is the intentional injection of unborated water into the storage cask while loaded with fuel. A person would need access to a source of unborated water and a means for injecting the water directly into the cask (e.g., using a fire hose). While it is possible that someone could intentionally inject unborated water into the cask, it is highly unlikely that this could be done without being promptly detected by other licensee personnel monitoring cask loading or unloading activities. This scenario would result in a localized dilution of boron concentration in the storage cask. As the soluble boron concentration decreased in the storage cask, the fuel in the cask could become critical. The inadvertent criticality would be detected by the criticality monitors required by 10 CFR 72.124 during cask loading and unloading operations. As such, the licensee would be notified of the inadvertent criticality and could take action to stop the intentional injection of unborated water into the cask, re-establish a subcritical boron concentration in the cask, and terminate the inadvertent criticality event. This scenario is essentially the same as any other slow boron dilution event in that it requires an undetected injection of unborated water into a cask that is loaded with fuel.

With the controls of the storage cask technical specifications related to monitoring boron concentration, the requirements of 10 CFR 72.124(c) for criticality monitoring to detect and avoid an accidental criticality, and the very remote likelihood of an undetected slow boron dilution event occurring at the time a storage cask is being loaded, it is reasonable to conclude that considering a slow boron dilution event there is no safety benefit in requiring a licensee to conduct a site specific analysis to demonstrate that a dry storage cask will remain subcritical in an unborated condition as required by 10 CFR 50.68(b).

b. Rapid Drain Down Event

A rapid drain down event could be postulated if there were an event that caused a catastrophic failure of the SFP liner and supporting concrete structure. If there were a catastrophic failure of the SFP liner that resulted in a rapid drain down while a storage cask was in the SFP, the borated water in the storage cask would likely remain in the storage cask providing reasonable assurance that the fuel would be cooled and remain subcritical. However, if the storage cask were to become dry, the design of the storage cask would allow the fuel to remain cooled, and without water as a moderator the fuel in the storage cask would be significantly subcritical.

To assess whether there is a safety benefit from requiring licensees to conduct an analysis of storage casks assuming no boron as the result of a rapid SFP drain down event three factors were considered in the NRC's assessment. The first factor is the probability that a storage cask will be in the SFP, loaded with fuel. The second factor is whether there are credible scenarios that could result in the rapid drain down of the SFP. The third factor is whether a boron dilution event would occur in the storage casks if the rapid SFP drain down event were to occur. As described below, when taken together, it is clear that it is not necessary to require licensees to conduct additional criticality analyses to demonstrate that the storage casks will remain subcritical assuming no boron as required by 10 CFR 50.68 in response to a SFP rapid drain down event due to its highly unlikely occurrence.

For the first factor, historical data suggests that approximately five storage casks are loaded on a annual basis at those facilities that need dry storage. The casks are typically in the SFP with fuel installed for as long as 72 hours. Using 72 hours and the historical data as initial assumptions, the probability of a storage cask loaded with spent fuel being in a SFP is about 4E–2/yr. Licensees only have the capability of moving one storage cask at a time into or out of the SFP. The total time it typically takes to bring a storage cask into the SFP, load it with fuel, and remove it from the SFP area for transport to the ISFSI is between 3 and 5 days. If a licensee were to continuously load storage casks, assuming the shortest duration to complete the transfer cycle (24 hours to transfer the cask from outside the building into the spent fuel pool; loading two to three assemblies per hour, or 12 hours to load the cask to capacity; and 36 hours for removing the cask from the spent fuel pool, sealing the cask and removing it from the building), the licensee would be able to load approximately 120 storage casks per year. Under these assumptions, the probability of having a storage cask loaded with fuel in the SFP would increase to 1.6E–1/year. If one assumes that it is possible to load 1 storage cask a week (for a total of 52 casks a year) this would result in a probability of having a cask that is loaded with fuel physically in the pool of 4E–1/year.

For the second factor, the NRC has assessed the possibility of rapid drain down

events at SFPs. From NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,'' phenomena that could cause such a catastrophic failure include a storage cask drop (event frequency of about 2E–7/year), an aircraft impact (event frequency of about 2.9E–9/year), a tornado missile (event frequency of <1E–9/year) or a seismic event. A dropped storage cask does not affect the proposed change to 10 CFR 50.68 because the dilution of boron in the cask is the issue of interest. When moving a storage cask, it is either empty (no fuel) or has fuel stored in it with a closure lid installed. In each case a boron dilution event that could result in an accidental criticality in a dry storage cask would be precluded. The aircraft impact and tornado missile events are of such a low frequency that they do not need to be considered within the scope of the proposed change. However, the consequences of the aircraft and tornado events would be similar to a SFP liner rupture due to other events (such as an earthquake). This leaves a seismic event as the only initiating event for a rapid drain down of a SFP that may be credible.

In Sections 3.5.1 and 3.7.2 of NUREG–1738, the NRC describes the beyond design basis seismic event that would have to occur to result in a rapid drain down of a SFP. Given the robust structural design of the spent fuel pools, the NRC expects that a seismic event with a peak spectral acceleration several times larger than the safe shutdown earthquake (SSE) would be required to produce a catastrophic failure of the structure.

There are two information sources that the NRC relies upon to provide reasonable estimates of seismic event frequency: (1) Lawrence Livermore National Laboratory (LLNL) seismic hazard curves, published in NUREG–1488, ''Revised Livermore Seismic Hazard Estimates for Sixty-Nine Nuclear Power Plant Sites East of the Rocky Mountains;'' and (2) Electric Power Research Institute (EPRI) seismic hazard curves, published in EPRI NP–4726, ''Seismic Hazard Methodology for the Central and Eastern United States.'' Both the LLNL and EPRI hazard estimates were developed as best estimates based on data extrapolation and expert opinion and are considered valid by the NRC.

In NUREG–1738, a general high confidence with a low probability of failure (HCLPF) capacity of 1.2g peak spectral acceleration (PSA), which is equivalent to about 0.5g peak ground acceleration (PGA), is established for SFPs. Under 10 CFR Part 100, ''Seismic and Geologic Siting Criteria for Nuclear Power Plants,'' the minimum SSE seismic PGA value is 0.1g. Typical PGA values for plants east of the Rocky Mountains range from 0.1g to 0.25g and the PGA values for plants west of the Rocky Mountains range from 0.25g to 0.75g. Using the LLNL seismic hazard curves, with a SFP HCLPF capacity of 1.2g PSA, the mean frequency of a seismically-induced rapid drain down event is estimated to be about 2E–6/year, ranging from less than 1E–7/year to 1.4E–5/year, depending on the site-specific seismic hazard. The EPRI seismic hazard curves provide a mean frequency of a seismically-induced rapid drain down event of about 2E–7/year, ranging from less than 1E–8/year to about 2E–6/year, depending on the site-specific seismic hazard.

For sites west of the Rocky Mountains, the SFP HCLPF capacity would be site-specific, but would be at least equal to the SSE. The SSE for Columbia is 0.25g PGA and has an annual probability of exceedance (APE) of 2E–4. However, it is important to note that a seismic event capable of rupturing the SFP would have to be much greater than the SSE. Therefore, it is reasonable to conclude that mean frequency of a seismically-induced rapid drain down event at Columbia is bounded by the analysis for plants East of the Rocky Mountains.

Diablo Canyon's SSE is 0.75g PGA with an APE of 2.5E–4. San Onofre's SSE is 0.5g PGA with an APE of 5E–4. An SSE is the earthquake that is expected to occur that produces the maximum ground motion for which certain structures must remain capable of performing their safety function. SFPs are designed to remain functional following an SSE. Further, as noted for all of the other SFPs, the as-designed and as-built structures have significant margin to failure and are capable of remaining functional (not subject to a rapid drain down event) for earthquakes well above the SSE. Both the Diablo Canyon and San Onofre SFPs were designed and constructed in a manner that provides significant structural margin. Therefore, it is reasonable to conclude that the probability of an earthquake causing a rapid drain down event would be similar to the probabilities determined for plants East of the Rocky Mountains. As such, the NRC concluded that for these two plants, specific SFP failure probabilities where not a factor that would have an adverse affect on its determination with regard to the acceptability of the proposed change to 10 CFR 50.68.

Based on the above, it would take a seismic event significantly greater than the design basis SSE to credibly cause a SFP rapid drain down event. Using the most conservative results for a seismically-induced SFP rapid drain down event (1.4E–5) and the probability of having a storage cask with fuel installed in the pool (4E–1), the probability of having a SFP rapid drain down event when a storage cask is in the pool would likely be significantly less than 5.6E–6. This is a low probability of SFP failure when a dry storage cask is in the SFP. Coupled with the fact that to reach this low probability would require a seismic event well in excess of the SSE, the NRC concludes there is no safety benefit from requiring the licensee to conduct a site specific analysis in support of storage cask loading, fuel storage, or unloading activities.

For the third factor, a rapid drain down event is considered to be a gross, rapid loss of the water that provides cooling for the spent fuel. This event is beyond the licensing basis for PWR plants. Minor leakage is not considered to constitute failure. As such, a rapid drain down event would have to exceed the makeup capability of the normal and alternative water supplies by a significant amount to drain the pool in a short period. The makeup capacities available to refill the SFPs typically range from about 20 gallons per minute (gpm) for normal makeup to around 1000 gpm for alternative makeup supplies such as the fire suppression system. Many sites have the capability to supply borated water to refill the spent fuel pool. However, to assess the affect of a rapid drain down event on a boron dilution event in a dry storage cask, the NRC assumed that the makeup would be from an unborated water source such as a fire suppression system. The main concern with a rapid drain down event as it affects a dry storage cask is subsequently diluting the boron concentration in the cask during the attempt to refill the SFP to keep the fuel stored in the pool cooled to preclude overheating the fuel and a loss of fuel cladding integrity. Therefore, the assumption that a licensee would use an unborated source of water, such as the fire suppression system, with the largest capacity available to provide cooling water in its attempt to reflood the SFP following a rapid drain down event is reasonable given the importance of quickly re-establishing cooling of the fuel stored in the SFP. The need to establish alternative means for cooling the fuel stored in the SFP during a rapid drain down event is independent of whether a storage cask is located in the SFP and therefore, has no relation to the proposed change to 10 CFR 50.68.

The NRC considered four scenarios when assessing the affect of a rapid drain down event on diluting the boron concentration in a dry storage cask. First, the cask might drain as the SFP drains (some older cask designs have drain ports at the bottom of the cask) and the licensee is unable to reflood the SFP because the leak rate is well in excess of the normal or alternate makeup capacity available to reflood the SFP. This scenario results in the fuel stored in the dry storage cask in essentially the same condition under which it would be permanently stored. The geometrical configuration of the dry storage casks are such that without the water, the fuel will remain subcritical. Further, the dry storage cask is designed to remove the decay heat from the fuel in this configuration, so excessive cladding temperatures would not be reached and there would be no fuel damage.

The second scenario involves those storage casks that do not have drain ports at the bottom of the cask and therefore would remain filled with water as the SFP experiences the rapid drain down event. In this scenario, the licensee would likely use the largest capacity, unborated source of cooling water to keep the spent fuel in the SFP storage racks cooled. As noted before, a rapid drain down event would significantly exceed the makeup capacity of available water systems and the licensee would need to use an alternative means, such as spraying the fuel stored in the SFP racks to keep the fuel cool. In this scenario, the water that remains in the dry storage cask would still be borated and would maintain the fuel storage in the cask subcritical. The fuel in the cask would remain cooled by the water surrounding it and the heat transfer through the cask consistent with the cask design. Again, in this situation, the fuel in the cask would be adequately cooled and maintained

in a subcritical configuration providing reasonable assurance that excessive fuel cladding temperatures and subsequent fuel damage would not occur.

The third scenario involves those dry storage casks that would remain filled with borated water. The possibility exists for a licensee to cause a boron dilution event in the dry storage cask when spraying the fuel stored in the SFP racks. The location of the dry storage cask might be close enough to the SFP storage racks that it could inadvertently be sprayed at the same time as the SFP racks, overfilling the dry storage cask, and eventually diluting the boron. Under these conditions, the boron concentration would slowly decrease and this scenario becomes very similar to a slow boron dilution event as discussed previously. The criticality monitors required for dry cask loading would still be available and would provide indication of an accidental criticality. With indication of an accidental criticality, it is reasonable to assume that the licensee would take action to stop the boron dilution from continuing and restore the dry storage cask to a subcritical configuration.

Actions the licensee could take to return the dry storage cask to a subcritical configuration could include:

1. Stop spraying unborated water into the dry storage cask and allow the water in the cask to heat up with a subsequent reduction in the moderation provided by the water that would eventually re-establish a subcritical configuration at a higher water temperature. In this condition, the temperature of the water may be high enough that the water would eventually boil off (be higher than 212 degrees F at atmospheric conditions). If this were to occur, the cask would eventually become dry and the fuel would be in a subcritical configuration and cooled consistent with the design of the cask. As the water boiled off, it would continue to provide cooling to the fuel such that the fuel would not experience significantly elevated temperatures and there would be no fuel damage; or

2. Spray water into the cask from a borated water source to increase the boron concentration, re-establishing a subcritical configuration and keeping the fuel cooled.

In each case, the fuel would not be subject to excessive temperatures and therefore, there would be no fuel damage that could impact public health and safety.

Under this third scenario there is also the possibility that the licensee might intentionally spray water into the dry storage cask in an attempt to keep the fuel in the cask cool. Given that the cask will already be filled with water and the importance of cooling the fuel in the SFP storage racks (where there is no water following a rapid drain down event), the NRC considers the possibility of the intentional diversion of cooling water from the fuel stored in the SFP racks to the fuel stored in the dry storage cask to be very remote. Therefore, the NRC does not consider this as a factor that would have an adverse affect on its determination with regard to the acceptability of the proposed change to 10 CFR 50.68. However, even if the licensee intentionally diverted water from cooling the fuel in the SFP racks to the fuel in the dry storage cask, there would be a slow boron dilution event, a slow approach to criticality, and indication of an accidental criticality from the required criticality monitors. As such, this case would be very similar to the unintentional dilution case described above.

In the fourth scenario, the NRC assumed that the licensee was able to repair the damage to the SFP and reflood the pool. In this scenario as the licensee reflooded the SFP the dry storage cask would either reflood as the SFP was filled (for those casks with drain ports at the bottom); if the cask had dried out it would reflood once the water level in the SFP reached the top of the cask and water began spilling into the cask; or if the cask remained flooded following the rapid drain down event, there would be a slow dilution of the boron in the water in the cask as the SFP level continued to rise. In each of these cases, as the cask was filled with water or as the boron dilution of the water in the cask occurred, the possibility increases that an accidental criticality might occur. However, because of the relatively slow reactivity addition that would occur during each of these cases, the approach to criticality would be reasonably slow. As noted previously, the licensee is required to have criticality monitors in place during dry storage cask loading (or unloading) activities. These criticality monitors would provide indication that an accidental criticality had occurred. Once identified, it is reasonable that the licensee would take action to re-establish a subcritical configuration. However, as discussed above for the third scenario, even if there were an accidental criticality, the likelihood of fuel damage is very remote.

The possibility of an accidental criticality in the fourth scenario is even less likely given the following factors:

1. Dry storage casks are typically loaded with fuel that has significant burnup that reduces the reactivity of the assembly. As such, it is reasonable to conclude that even in an unborated condition, the fuel stored in the cask would remain subcritical.

2. As the licensee refilled the SFP, it is reasonable to assume that it would be injecting borated water to re-establish the boron concentration level required by plant technical specifications as soon as practical.

Based on the above, even if there were an event that caused a rapid drain down of a SFP while a dry storage cask was in the SFP, the likelihood of a boron dilution event causing fuel damage is very remote. Therefore, the NRC concludes there is no safety benefit from requiring the licensee to conduct a site specific analysis in support of dry storage cask loading, fuel storage, or unloading activities.

V. Conclusion

As discussed above the NRC assessed the safety benefit of requiring licensees to conduct an additional criticality analysis to meet the requirements of 10 CFR 50.68 while loading a transportation package or dry storage cask in the SFP. The NRC determined that the controls required by 10 CFR Part 71 or 72 for the associated package or cask provide reasonable assurance that a slow boron dilution event would not result in elevated fuel temperature and subsequent fuel damage. Therefore, for a slow boron dilution event, there is no benefit to the additional criticality analysis. The NRC further determined that the probability of having a rapid drain down event result in elevated fuel temperatures and subsequent fuel damage was highly unlikely. Based on its analysis, the NRC concludes there is no safety benefit from requiring a licensee to conduct a site specific analysis in support of storage cask loading, fuel storage, or unloading activities and that the proposed rule change is therefore acceptable.

[FR Doc. E6–19372 Filed 11–15–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23734; Directorate Identifier 2005–NM–174–AD; Amendment 39–14827; AD 2006–23–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This AD requires installing a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41; doing a functional test and adjustment of the new installation; and doing related investigative/corrective actions if necessary. For certain airplanes, this AD also requires doing an additional adjustment test of the re-located control wheel position sensor, and an operational test of the flight data recorder and the digital flight data acquisition unit. This AD also requires installing vortex generators (vortilons) on the leading edge of the outboard main flap on certain airplanes. This AD results from several reports that flightcrews experienced unintended roll oscillations during final approach, just before landing. We are issuing this AD to prevent unintended roll oscillations near touchdown, which could result in loss of directional control of the airplane, and consequent airplane damage and/or injury to flightcrew and passengers.

DATES: This AD becomes effective December 21, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 21, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: John Neff, Aerospace Engineer, Flight Test Branch, ANM–160S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6521; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757 airplanes. That NPRM was published in the **Federal Register** on January 31, 2006 (71 FR 5021). That NPRM proposed to require installing a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41; doing a functional test and adjustment of the new installation; and doing related investigative/corrective actions if necessary. For certain airplanes, that NPRM also proposed to require doing an additional adjustment test of the re-located control wheel position sensor, and an operational test of the flight data recorder and the digital flight data acquisition unit. That NPRM also proposed to require installing vortex generators (vortilons) on the leading edge of the outboard main flap on certain airplanes.

Comments

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

Support for the NPRM

American Airlines supports the NPRM.

Requests To Change Compliance Time

Air Line Pilots Association (ALPA) supports the intent of the NPRM, but feels that the 24-month compliance time should be reduced. ALPA states that, given the serious consequences of unintended roll oscillations near the ground, a shorter compliance time should be imposed.

Air Transport Association (ATA), on behalf of US Airways and United Airlines, requests that we lengthen the compliance time from 24 months to the later of 36 months or the next heavy maintenance check. ATA states that the NPRM would impose more work and elapsed hours than stated in the preamble of the NPRM and would require operational tests after certain modifications, and that the accomplishment would be constrained by long production lead times for vortex generators. Further, ATA states that the manufacturer's service instructions recommend compliance within 36 months. US Airways comments that a longer compliance time is appropriate because of the long lead time for getting the vortex generator installation kits (40 weeks, as stated in Boeing Alert Service Bulletin 757–57A0058, Revision 1, dated January 10, 2002).

We disagree. In developing the compliance time for this AD action, we considered not only the safety implications of the identified unsafe condition, but also the average utilization rate of the affected fleet, the practical aspects of an orderly modification of the fleet, the availability of required parts, and the time necessary for the rulemaking process. After the release of Boeing Alert Service Bulletin 757–57A0058, Revision 1 (which was referenced in the NPRM as an appropriate source of service information for accomplishing certain required actions), we came to an agreement with Boeing that a compliance time of 24 months was appropriate. When we notified Boeing of this NPRM, Boeing increased the procurement of the vortex generator installation kits to ensure an adequate supply to support the proposed compliance time. Therefore, we have determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to safely operate before the installations are done. In addition, since maintenance schedules vary among operators, we could not assure that the airplanes would be modified during that maximum interval if we changed the compliance time to incorporate the heavy maintenance visit. We have not changed the AD in this regard.

Request To Include Part Number (P/N) Change for Vortex Generators

America West states that the NPRM does not include a change in P/N after installation of vortex generators in accordance with paragraph (f)(2) of the NPRM. America West points out that this could result in the installation of pre-modification outboard main flaps on post-modification airplanes. America West recommends that Boeing revise Boeing Alert Service Bulletin 757–57A0058, Revision 1, to include a change in P/N; and that the NPRM be revised to prohibit installation of pre-modification flaps on an airplane after it has been brought into compliance with the AD.

We disagree. Determining whether or not an airplane is in compliance with the vortex generator installation can be confirmed easily by visual inspection, on or off the wing. Therefore, we determined that renumbering the flap assembly is an unnecessary burden to the manufacturer and to the operators of the affected airplanes, as the part marking, drawings, and other documentation would have to be revised as well. Boeing agrees that the renumbering is unnecessary. In addition, section 39.7 of the Federal Aviation Regulations (14 CFR 39.7) prohibits operation of an aircraft that is not in compliance with an AD. Therefore, it is not necessary to include the specified prohibition in the AD. We have not changed the AD in this regard.

Request To Clarify Differences Paragraph

Boeing and UPS both request that we clarify the third paragraph in the section of the NPRM titled ''Differences Between the Proposed AD and the Service Bulletins.'' That paragraph states:

> ''Although Boeing Alert Service Bulletin 757–27A0146 and Boeing Alert Service Bulletin 757–27A0147 specify that operators may contact the manufacturer if a just-installed (new) wheel damper does not function properly, this proposed AD would require operators to correct that condition according to a method approved by the FAA.''

Boeing also states that clarification is needed because customers have asked if Boeing is about to revise the existing service bulletins referenced in the NPRM to incorporate possible

alternative modifications. Other customers have asked Boeing if the FAA will be adding another requirement to the AD that is not currently in the NPRM regarding the replacement of a damper assembly.

UPS asks that, if possible, we provide additional information on the approved method that we are considering to correct any problems with the newly installed damper. UPS suggests that, if we are considering a requirement to install a new damper and/or flight tests to certify the installation, we include these specifics and have a new comment period after the specific actions have been defined.

We agree that the paragraph Boeing quoted needs clarification. However, since that section of the preamble does not reappear in the final rule, we have instead changed the following to provide clarification:

- We have changed the ''Interim Action'' section of the AD to specify that no additional fixes have been identified; however, as investigation into the unsafe condition continues, additional fixes may be deemed necessary in the future.
- We have revised paragraph (f)(1) of the AD to specify that, if a just-installed (new) wheel damper does not function properly, operators should correct the condition in accordance with the procedures specified in paragraph (i) of the AD, Alternative Methods of Compliance (AMOCs). An AMOC for this condition could include removing the defective part and returning the airplane to the original configuration, or securing the installation in a method acceptable to us until the affected part can be replaced or repaired within the compliance time of the AD.

Request To Revise Parts Installation Paragraph

Boeing requests that we change paragraph (g), ''Parts Installation,'' of the NPRM to allow operators that have not yet performed the new damper installation to replace any part for the existing control wheel position installation during the initial 24-month compliance time. Boeing explains that if an operator needs to replace an existing control wheel position sensor installation before the service bulletin kit can be delivered, they would appear to be out of compliance in just repairing the airplane to the as-delivered condition. Boeing suggests revising paragraph (g) to include these words, ''After the incorporation of the wheel damper assembly to comply with this AD * * *.''

We agree that operators may continue to install the existing affected parts and assemblies until the airplane is modified to bring it into compliance with this AD. Therefore, we find that the Parts Installation paragraph is not necessary, and we have removed that paragraph and reidentified the following paragraphs accordingly.

Request To Include Cost for ''Lost Time''

United Airlines states that Boeing Alert Service Bulletins 757–27A0146, dated October 14, 2004; and 757–57A0058, Revision 1, dated January 10, 2002, state that no ''lost time'' work hours are included in the cost estimates in the NPRM. United Airlines states that, if the tasks specified in the service bulletins are accomplished during non-routine maintenance, then lost-time hours must be included in the cost estimates, and unscheduled downtime must also be considered in those cost estimates. If lost time is included, United Airlines states that the total work hours would increase to approximately 31 total work hours and 19 elapsed-time hours. In addition, United Airlines states that unscheduled downtime for accomplishing the required tasks is estimated to cost $35,000 per day. United Airlines estimates the additional cost for accomplishing both service bulletins during an unscheduled maintenance visit to be $36,000 per day. Therefore, United Airlines requests that the cost estimates be updated to reflect the work accomplished for both service bulletins.

We disagree. The cost information below describes only the direct costs of the specific actions required by the AD. The manufacturer provided us with the number of work hours necessary to do the required actions based on the best data available. This number represents the time necessary to perform only the actions actually required by the AD. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. We have not changed the AD in this regard.

Conclusion

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

Interim Action

We consider this AD interim action. The manufacturer is currently investigating an additional modification that may further reduce or eliminate the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking. Should any additional modification be required as a result of further rulemaking activities, that modification would be in addition to, not a replacement for, the modifications required by this AD.

Costs of Compliance

There are about 1,036 airplanes of the affected design in the worldwide fleet and about 629 U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this AD. Not all of the required actions must be done on all U.S.-registered airplanes.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Install control wheel damper assembly, and do functional test (Model 757–200, –200PF, and –200CB series airplanes).	9 to 11 ...	$65	$7,640 to $10,550.	$8,225 to $11,265.	578	$4,754,050 to $6,511,170.
Install control wheel damper assembly, and do functional test (Model 757–300 series airplanes).	15	65	$10,550	$11,525	51	$587,775.

ESTIMATED COSTS—Continued

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Install vortex generators (Model 757–200, –200PF, and –200CB series airplanes).	10	65	$3,336	$3,986	527	$2,100,622.

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):

2006–23–15 Boeing: Amendment 39–14827. Docket No. FAA–2006–23734; Directorate Identifier 2005–NM–174–AD.

Effective Date

(a) This AD becomes effective December 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category; as identified in the applicable service bulletin or bulletins in Table 1 of this AD.

TABLE 1.—BOEING SERVICE BULLETINS

Boeing Alert Service Bulletin	Revision	Date	Model
757–27A0146	Original	October 14, 2004	757–200, –200PF, and –200CB series airplanes.
757–27A0147	Original	October 14, 2004	757–300 series airplanes.
757–57A0058	1	January 10, 2002	757–200, –200PF, and –200CB series airplanes.

Unsafe Condition

(d) This AD results from several reports that flightcrews experienced unintended roll oscillations during final approach, just before landing. We are issuing this AD to prevent unintended roll oscillations near touchdown, which could result in loss of directional control of the airplane, and consequent airplane damage and/or injury to flightcrew and passengers.

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.

Installations

(f) Within 24 months after the effective date of this AD, do the actions in paragraphs (f)(1) and (f)(2) of this AD, as applicable.

(1) For all airplanes: Install a control wheel damper assembly at the first officer's drum bracket assembly and aileron quadrant beneath the flight deck floor in section 41; and do all applicable functional and operational tests and adjustments of the new installation, and all applicable related investigative/corrective actions before further flight after the installation. Do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0146, dated October 14, 2004 (for Model 757–200, –200PF, and –200CB series airplanes); or Boeing Alert Service Bulletin 757–27A0147, dated October 14, 2004 (for Model 757–300 series airplanes). Where Boeing Alert Service Bulletin 757–27A0146 specifies to contact Boeing if a just-installed (new) wheel damper does not function properly, correct that condition in accordance with the procedures in paragraph (i) of this AD.

(2) For Model 757–200, –200PF, and –200CB series airplanes: Install vortex generators (vortilons) on the leading edge of the outboard main flap in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–57A0058, Revision 1, dated January 10, 2002.

Actions Accomplished in Accordance With Previous Revision of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–57–0058, dated March 9, 2000, are acceptable for

compliance with the actions in paragraph (f)(2) of this AD.

No Reporting Required

(h) Although the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0146 and Boeing Alert Service Bulletin 757–27A0147, both dated October 14, 2004, describe procedures for submitting a sheet recording accomplishment of the service bulletin, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

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

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

Material Incorporated by Reference

(j) You must use the service information in Table 2 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Boeing Alert Service Bulletin	Revision level	Date
757–27A0146	Original	October 14, 2004.
757–27A0147	Original	October 14, 2004.
757–57A0058	1	January 10, 2002.

Issued in Renton, Washington, on October 31, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19164 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25260; Directorate Identifier 2006–CE–37–AD; Amendment 39–14826; AD 2006–23–14]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–502, AT–502A, AT–502B, AT–602, AT–802, and AT–802A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Air Tractor, Inc. (Air Tractor) Models AT–502, AT–502A, AT–502B, AT–602, AT–802, and AT–802A airplanes. This AD requires you to repetitively visually inspect the rudder and vertical fin hinge attaching structure (vertical fin skins, spars, hinges, and brackets) for loose fasteners, cracks, and/or corrosion. This AD also requires you to replace any damaged parts found as a result of the inspection and install an external doubler at the upper rudder hinge. This AD results from two reports of in-flight rudder separation from the vertical fin at the upper attach hinge area, and other reports of airplanes with loose hinges, skin cracks, or signs of repairs to the affected area. We are issuing this AD to detect and correct loose fasteners; any cracks in the rudder or vertical fin skins, spars, hinges or brackets; and/or corrosion of the rudder and vertical fin hinge attaching structure. Hinge failure adversely affects ability to control yaw and has led to the rudder folding over in flight. This condition could allow the rudder to contact the elevator and affect ability to control pitch with consequent loss of control.

DATES: This AD becomes effective on December 21, 2006.

As of December 21, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–25260; Directorate Identifier 2006–CE–37–AD.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On August 3, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Air Tractor Models AT–502, AT–502A, AT–502B, AT–602, AT–802, and AT–802A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 3, 2006 (71 FR 45451). The NPRM proposed to require you to repetitively visually inspect the rudder and vertical fin hinge attaching structure for loose fasteners, any cracks in the rudder or vertical fin skins, spars, hinges or brackets, or corrosion. The AD would also require you to replace any damaged parts found as a result of the inspection and install an external doubler at the upper rudder hinge. Installation of the external doubler at the upper rudder hinge is terminating action for the repetitive inspection requirements.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Availability of Manufacturer Service Information for the Proposed AD

Jack Buster with the Modification and Replacement Parts Association (MARPA) provides comments on the AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD action. Mr. Buster states that the proposed rule attempts to

require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). Mr. Buster would like the FAA to incorporate by reference (IBR) Snow Engineering Co. Service Letter #247, dated August 14, 2005, revised May 17, 2006; and Snow Engineering Co. Process Specification Number 145, dated December 6, 1991.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, the previously-referenced Snow Engineering Co. documents are incorporated by reference.

Comment Issue No. 2: Availability of Manufacturer Service Information in the ***Federal Register*** *or the Docket Management System (DMS)*

Mr. Buster also requests IBR documents be made available to the public by publication in the **Federal Register** or in the DMS.

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Conclusion

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

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

Costs of Compliance

We estimate that this AD affects 945 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. Operators
1 work-hour × $80 per hour = $80	Not Applicable	$80	$75,600

Any required ''upon-condition'' repairs will vary depending upon the damage found, and any replacements required will vary based on the results of the inspection. Based on this, we have no way of determining the potential repair and/or replacement costs for each airplane or the number of airplanes that will need the repairs and/or replacements based on the result of the inspections.

We estimate the following costs to do the installation of the external doubler at the upper rudder hinge:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work-hours × $80 per hour = $400	$217	$617	$583,065

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–25260; Directorate Identifier 2006–CE–37–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2006–23–14 Air Tractor, Inc.: Amendment 39–14826; Docket No. FAA–2006–25260; Directorate Identifier 2006–CE–37–AD.

Effective Date

(a) This AD becomes effective on December 21, 2006.

Affected ADs

(b) None.

Applicability

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

Model	Serial Nos.
(1) AT–502 and AT–502B	502/502B–0003 through 502/502B–2600.
(2) AT–502A	502A–0003 through 502A–2582.
(3) AT–602	602–0337 through 602–1138.
(4) AT–802 and AT–802A	802/802A–0001 through 802/802A–0215.

Unsafe Condition

(d) This AD results from two reports (one Model AT–602 airplane and one Model AT–802A airplane) of in-flight rudder separations at the upper attach hinge area and other reports of Models AT–502B, AT–602, and AT–802/802A airplanes with loose hinges, skin cracks, or signs of repairs to the affected area. We are issuing this AD to detect and correct loose fasteners; any cracks in the rudder or vertical fin skins, spars, hinges or brackets; and/or corrosion of the rudder and vertical fin hinge attaching structure. Hinge failure adversely affects ability to control yaw and has led to the rudder folding over in flight. This condition could allow the rudder to contact the elevator and affect ability to control pitch with consequent loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Inspect visually the rudder and vertical hinge attachment for loose fasteners; and inspect the rudder or vertical fin skins, spars, hinges or brackets for cracks and/or corrosion.	Initially inspect upon reaching 3,500 hours time-in-service (TIS), or within the next 100 hours TIS after December 21, 2006 (the effective date of this AD), whichever occurs later, unless already done. Thereafter, repetitively inspect every 100 hours TIS. Installation of the external doubler at the upper rudder hinge required by paragraph (e)(2)(ii) or (e)(3) of this AD is terminating action for the repetitive inspections required by this AD.	Follow Snow Engineering Co. Service Letter #247, dated August 14, 2005, revised May 17, 2006.
(2) If you find any damage as a result of any inspection required by paragraph (e)(1) of this AD, you must: (i) Replace any damaged parts with new parts; and (ii) Do the installation of the external doubler at the upper rudder hinge.	Before further flight after any inspection required by paragraph (e)(1) of this AD where you find any damaged parts. The installation of the external doubler at the upper rudder hinge required by paragraph (e)(2)(ii) or (e)(3) of this AD is the terminating action for the repetitive inspections required by this AD.	Follow Snow Engineering Co. Service Letter #247, dated August 14, 2005, revised May 17, 2006, and Snow Engineering Co. Process Specification Number 145, dated December 6, 1991.
(3) Do the installation of the external doubler at the upper rudder hinge.	Upon accumulating 5,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already done. The installation of the external doubler at the upper rudder hinge required by paragraph (e)(2)(ii) or (e)(3) of this AD is the terminating action for the repetitive inspections required by this AD.	Follow Snow Engineering Co. Service Letter #247, dated August 14, 2005, revised May 17, 2006, and Snow Engineering Co. Process Specification Number 145, dated December 6, 1991.
(4) Do not install any rudder without the external doubler at the upper rudder hinge required by paragraph (e)(3) of this AD.	As of December 21, 2006 (the effective date of this AD).	Not Applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Aircraft Certification Office, FAA, ATTN: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(g) You must use Snow Engineering Co. Service Letter #247, dated August 14, 2005, revised May 17, 2006; and Snow Engineering Co. Process Specification Number 145, dated December 6, 1991, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; fax: (940) 564–5612.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_ regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on November 3, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19153 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25970; Directorate Identifier 99–NE–12–AD; Amendment 39–14829; AD 2006–23–17]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Turmo IV A and IV C Series Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Turbomeca Turmo IV A and IV C series turboshaft engines. That AD currently requires borescope and eddy current inspections or ultrasonic inspections of centrifugal compressor intake wheel blades for cracks and evidence of corrosion pitting, and replacement with serviceable parts. This AD requires the same actions, but would require borescope inspections at more frequent intervals for certain engines. This AD results from Turbomeca's review of the engines' service experience that determined more frequent borescope inspections are required on engines not modified to the TU 191, TU 197, or TU 224 standard. We are issuing this AD to prevent centrifugal compressor intake wheel blade cracks, which can result in engine in-flight power loss, engine shutdown, or forced landing.

DATES: This AD becomes effective December 21, 2006. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 21, 2006.

ADDRESSES: You can get the service information identified in this AD from Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to Turbomeca Turmo IV A and IV C series turboshaft engines. We published the proposed AD in the **Federal Register** on February 9, 2006 (71 FR 6691). That action proposed to require initial and repetitive borescope and eddy current inspections or ultrasonic inspections of centrifugal compressor intake wheel blades for cracks and evidence of corrosion pitting, and, if found cracked or if there is evidence of corrosion pitting, replacement with serviceable parts. Additionally, it proposed to require borescope inspections at more frequent intervals for certain engines.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Docket Number Change

We are transferring the docket for this AD to the Docket Management System as part of our on-going docket management consolidation efforts. The new Docket No. is FAA–2006–25970. The old Docket No. became the Directorate Identifier, which is 99–NE–12–AD. This final rule might get logged into the DMS docket, ahead of the proposed AD and comments received, as we are in the process of sending those items to the DMS.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect 36 Turbomeca Turmo IV A and IV C series turboshaft engines installed on helicopters of U.S. registry. We also estimate that it will take about 41 work-hours per engine to perform the inspections, including disassembling and assembling engines, and that the average labor rate is $65 per work-hour. A replacement centrifugal compressor assembly costs about $21,651. Based on these figures, the cost per inspection and replacement is estimated to be $24,316. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $875,390.

Special Flight Permits Paragraph Removed

Paragraph (e) of the current AD, AD 2003–11–09, contains a paragraph pertaining to special flight permits. Even though this AD does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the helicopter to a repair facility to do the work required by this AD. In July 2002, we published a new Part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA–2004–8460, Amendment 39–9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–13168 (68 FR 31970, May 29, 2003) and by adding a new airworthiness directive, Amendment 39–14829, to read as follows:

2006–23–17 Turbomeca: Amendment 39–14829. Docket No. FAA–2006–25970; Directorate Identifier 99–NE–12–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 21, 2006.

Affected ADs

(b) This AD supersedes AD 2003–11–09, Amendment 39–13168.

Applicability

(c) This AD applies to Turbomeca Turmo IV A and IV C series turboshaft engines. These engines are installed on but not limited to Aerospatiale SA 330—PUMA helicopters.

Unsafe Condition

(d) This AD results from Turbomeca's review of the engines' service experience that determined more frequent borescope inspections are required on engines not modified to the TU 191, TU 197, or TU 224 standard. The actions specified in this AD are intended to prevent centrifugal compressor intake wheel blade cracks, which can result in engine in-flight power loss, engine shutdown, or forced landing.

Compliance

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

Engine Modification Before Further Flight

(f) For engines modified to the TU 197 standard, but not to the TU 191 or TU 224 standard, before further flight, remove the TU 197 standard and install the TU 224 standard.

Initial Inspections

(g) For all engines, borescope-inspect, and either eddy current-inspect (ECI) or ultrasonic-inspect (UI) the centrifugal compressor intake wheel blades using paragraphs 2.B.(1)(a) through 2.B.(1)(g) of Turbomeca Mandatory Service Bulletin A249 72 0100, Update No. 5, dated February 25, 2005, and the criteria in the following Table 1:

TABLE 1.—INSPECTION CRITERIA

If engine modification level is:	Then borescope-inspect centrifugal compressor intake wheel blades:	Were traces of corrosion found at borescope-inspection?	Then confirm corrosion by performing ECI or UI within:
(1) Pre TU 191 and Pre TU 224	Within 200 flight hours-since-last inspection.	(i) Yes	Six months-or 50 flight hours-since-borescope inspection, whichever occurs first.
		(ii) No	Two hundred flight hours-since-borescope inspection.
(2) Post TU 191 or Post TU 224. ..	Within 1,000 flight hours-since-last inspection.	(i) Yes	Six months-or 50 flight hours-since-borescope inspection, whichever occurs first.
		(ii) No	One thousand flight hours-since-borescope inspection.

(h) Thereafter, perform repetitive inspections using the criteria in Table 1 of this AD.

(i) Remove centrifugal compressor intake wheel blades confirmed cracked or pitted.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(k) You must use Turbomeca Mandatory Service Bulletin A249 72 0100, Update No. 5, dated February 25, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy of this service information from Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00, fax 33 05 59 74 45 15. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Related Information

(l) Direction Generale de L'Aviation Civile airworthiness directive F–2005–037, dated March 2, 2005, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on November 7, 2006.

Peter A. White,

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

[FR Doc. E6–19274 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25437; Directorate Identifier 2006–NM–136–AD; Amendment 39–14828; AD 2006–23–16]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. This AD requires modifying the nose landing gear. This AD results from reports of loss of the nose wheel assembly. We are issuing this AD to prevent the nose wheel nut from loosening, and consequently, the nose wheel assembly detaching from the airplane; and to prevent the nose wheel clamping loads from applying to the machined radius at the root of the stub axle, which could result in damage to the nose landing gear.

DATES: This AD becomes effective December 21, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 21, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on July 25, 2006 (71 FR 42065). That NPRM proposed to require modifying the nose landing gear.

Comments

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

Request To Publish Service Information

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument and published in the DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. This final rule incorporates by reference the document necessary for the accomplishment of the requirements mandated by this AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request that service documents be made available to the public by publication in the **Federal Register**, we agree that incorporation by reference was authorized to reduce the volume of material published in the **Federal Register** and the Code of Federal Regulations. However, as specified in the *Federal Register Document Drafting Handbook*, the Director of the OFR decides when an agency may incorporate material by reference. As the commenter is aware, the OFR files documents for public inspection on the workday before the date of publication of the rule at its office in Washington, DC. As stated in the *Federal Register Document Drafting Handbook*, when documents are filed for public inspection, anyone may inspect or copy file documents during the OFR's hours of business. Further questions regarding publication of documents in the **Federal Register** or incorporation by reference should be directed to the OFR.

In regard to the commenter's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have

thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the final rule is necessary in response to this comment.

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 as proposed.

Costs of Compliance

This AD affects about 53 airplanes of U.S. registry. The required actions take about 2 work hours per airplane, at an average labor rate of $80 per work hour. The manufacturer states that it will supply required parts to the operators at no cost. Based on these figures, the estimated cost of the AD for U.S. operators is $8,480, or $160 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):

2006–23–16 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14828. Docket No. FAA–2006–25437; Directorate Identifier 2006–NM–136–AD.

Effective Date

(a) This AD becomes effective December 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of loss of the nose wheel assembly. We are issuing this AD to prevent the nose wheel nut from loosening, and consequently, the nose wheel assembly detaching from the airplane; and to prevent the nose wheel clamping loads from applying to the machined radius at the root of the stub axle, which could result in damage to the nose landing gear.

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.

Modification

(f) Within 12 months after the effective date of this AD, modify the nose landing gear in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin 32–174–70676A, dated February 21, 2006.

Note 1: BAE Systems (Operations) Limited Modification Service Bulletin 32–174–70676A refers to Messier-Dowty Service Bulletin 146–32–161, dated March 2, 2005, as an additional source of service information for accomplishing the modification.

Note 2: BAE Systems (Operations) Limited Modification Service Bulletin 32–174–70676A refers to the abutment ring as a spacer. BAE Systems (Operations) Limited BAe 146/Avro 146–RJ Airplane Maintenance Manual (AMM) 32–42–17 401 identifies this part as an abutment ring (item 4). Item 3 of the AMM is identified as a spacer, but this is not the part described in the modification service bulletin.

No Reporting

(g) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) European Aviation Safety Agency (EASA) airworthiness directive 2006–0137, dated May 23, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use BAE Systems (Operations) Limited Modification Service Bulletin 32–174–70676A, dated February 21, 2006, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, 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 November 7, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19148 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–06–026]

RIN 1625–AA01

Anchorage Regulations; Falmouth Maine, Casco Bay

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby amends the special anchorage area in Falmouth, Maine, Casco Bay. This action is necessary to facilitate safe navigation and provide mariners a safe and secure anchorage for vessels of not more than 65 feet in length. This action is intended to increase the safety of life and property on Casco Bay, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective December 18, 2006.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–06–026), and are available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355, e-mail: *John.J.Mauro@uscg.mil*.

Regulatory Information

On August 11, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations; Falmouth, ME, Casco Bay'' in the **Federal Register** (71 FR 46181). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Because we did not receive any comments on the proposed rule, we have not made any changes from the proposed rule with the exception of correcting a paragraph reference in the note to paragraph (d) of 33 CFR 110.5 from ''(g)'' to ''(d)''.

Background and Purpose

This rule is intended to reduce the risk of vessel collisions by enlarging the current special anchorage area in Falmouth, Maine, by an additional 206 acres. This rule will expand the existing special anchorage, described in 33 CFR 110.5(d), to allow anchorage for approximately 150 additional vessels. When at anchor in any special anchorage, vessels not more than 65 feet in length need not carry or exhibit the white anchor lights required by the Navigation Rules.

The Coast Guard has defined the anchorage area contained herein with the advice and consent of the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this rule conforms to the changing needs of the Town of Falmouth, the changing needs of recreational, fishing and commercial vessels, and makes the best use of the available navigable water. This rule is in the interest of safe navigation and protection of Falmouth and the marine environment. This special area, while in the interest of safe navigation and protection of the vessels moored at the Town of Falmouth, does not impede the passage of vessels intending to transit within Casco Bay.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of recreational or commercial vessels intending to transit in a portion of the Casco Bay in and around the anchorage area. However, this anchorage area would not have a significant economic impact on these entities for the following reasons: The special area does not impede the passage of vessels intending to transit in and around Falmouth, which include both small recreational and large commercial vessels. Thus, the special anchorage area will not impede safe and efficient vessel transits on Casco Bay.

Assistance for Small Entities

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

If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro, at the address listed in **ADDRESSES** above.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A final ''Categorical Exclusion Determination'' and a final ''Environmental Analysis Check List'' are available in the docket for inspection or copying where indicated under **ADDRESSES**. This rule fits the category selected from paragraph (34)(f) as it would expand a special anchorage area.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.5, by revising paragraph (d) to read as follows:

§ 110.5 Casco Bay, Maine.

* * * * *

(d) *Mussel Cove and adjacent waters at Falmouth Foreside, Falmouth.* All of the waters enclosed by a line beginning at the Dock House (F.S.) located at latitude 43°44′22″ N, longitude 70°11′41″ W; thence to latitude 43°44′19″ N, longitude 70°11′33″ W; thence to latitude 43°44′00″ N, longitude 70°11′44″ W; thence to latitude 43°43′37″ N, longitude 70°11′37″ W; thence to latitude 43°43′04″ N, longitude 70°12′13″ W; thence to latitude 43°41′56″ N, longitude 70°12′53″ W; thence to latitude 43°41′49″ N, longitude 70°13′05″ W; thence to latitude 43°42′11″ N, longitude 70°13′30″ W; thence along the shoreline to the point of beginning. DATUM: NAD 83.

Note to paragraph (d). The area designed by paragraph (g) of this section is reserved for yachts and other small recreational craft. Fore and aft moorings will be allowed in this area. Temporary floats or buoys for marking anchors or moorings in place will be allowed. Fixed mooring piles or stakes are prohibited. All moorings must be so placed so that no vessel when anchored is at any time extended into the thoroughfare. All anchoring in the area is under the supervision of the local harbor master or such other authority as may be designated by the authorities of the Town of Falmouth, Maine.

* * * * *

Dated: October 30, 2006.

Timothy S. Sullivan,

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

[FR Doc. E6–19315 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–06–002]

RIN 1625–AA09

Drawbridge Operation Regulations; Chincoteague Channel, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations that govern the SR 175 Bridge, at mile 3.5, across Chincoteague Channel at Chincoteague Island, Virginia. This change is necessary to help relieve vehicular traffic congestion and reduce traffic delays while still balancing the needs of marine and vehicular traffic.

DATES: This rule is effective December 18, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–06–002 and will be

available for inspection or copying at Commander (dpb), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 28, 2004, we published a notice of temporary deviation from the regulations and request for comments entitled ''Drawbridge Operation Regulations; Chincoteague Channel, VA'' in the **Federal Register** (69 FR 36011). The temporary deviation was in operation to test an alternate drawbridge operation schedule for 90 days and solicit comments from the public. From July 2, 2004 through September 29, 2004, the draw of the bridge opened every two hours on the even hour from 6 a.m. to midnight; except from 7 a.m. to 5 p.m., on the last consecutive Wednesday and Thursday in July, the draw needed not be opened. At all other times, the draw needed not open. The Coast Guard received six letters and four petitions commenting on the provisions of the temporary deviation.

On December 30, 2004, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulation; Chincoteague Channel, Chincoteague, VA'' in the **Federal Register** (69 FR 78373). The NPRM allowed hourly openings of the draw year-round from 6 a.m. to midnight; except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year, the draw needed not be opened. At all other times, the draw needed not open. We received six comments on the NPRM.

On April 18, 2005, the Coast Guard published a final rule entitled ''Drawbridge Operation Regulation; Chincoteague Channel, Chincoteague, VA'' in the **Federal Register** (70 FR 20051). The final rule required the draw to open on demand from midnight to 6 a.m., and on the hour from 6 a.m. to midnight, except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year, the draw needed not be opened.

We published an NPRM on April 13, 2006, entitled ''Drawbridge Operation Regulations; Chincoteague Channel, Chincoteague, VA'' in the **Federal Register** (71 FR 19150). The NPRM would allow the bridge to open on demand from midnight to 6 a.m., and every hour and a half from 6 a.m. to midnight; except from 7 a.m. to 5 p.m., on the last consecutive Wednesday and Thursday in July, the draw need not be opened. The comment period ended on May 30, 2006. We received 557 comments to the NPRM.

On June 26, 2006, we published a notice; request for comments and notice of public meeting in the **Federal Register** (71 FR 36297). On July 18, 2006, we held a public meeting at the Chincoteague Community Center, Chincoteague Island, Virginia. We accepted written comments from the public until July 21, 2006.

Background and Purpose

Current regulations require the SR 175 Bridge, at mile 3.5, across Chincoteague Channel to open on demand from midnight to 6 a.m. and on the hour from 6 a.m. to midnight, except the draw shall remain in the closed position to vessels from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July of every year.

In October 2005, the Chincoteague Town Council adopted a resolution that requested a change in the scheduled openings of the bridge. The resolution details the Town's concerns based on the following factors: The number of openings have actually increased since the last modification; the boats north of the bridge frequently sail and return one-at-a-time; due to inconsistencies in the openings, the Town of Chincoteague has received many complaints from motorists; and openings on the even hours as needed will not significantly impact the boaters. Additionally, in September 2005, we were advised of an incident in which ambulance services were unable to transit the drawbridge due to a vessel opening request. The ambulance service was further delayed because during closing procedures the drawbridge experienced mechanical problems. The Coast Guard drawbridge operating regulations already address the emergency situations, so no changes are needed to the operating regulations to address that concern. 33 CFR Part 117.31(a)—Operation of draw for emergency situations—states that ''When a draw tender is informed by a reliable source that an emergency vehicle is due to cross the draw, the draw tender shall take all reasonable measures to have the draw closed at the time the emergency vehicle arrives at the bridge''.

Based on the request from the Chincoteague Town Council, we published a NPRM on April 13, 2006, entitled ''Drawbridge Operation Regulations; Chincoteague Channel, Chincoteague, VA'' in the **Federal Register** (71 FR 19150). The NPRM would allow the bridge to open on demand from midnight to 6 a.m., and every one and a half hours from 6 a.m. to midnight; except from 7 a.m. to 5 p.m., on the last consecutive Wednesday and Thursday in July, the draw need not be opened. The proposed change would reduce vehicular traffic congestion while still balancing the needs of marine and vehicular traffic. The comment period ended on May 30, 2006.

After the comment period ended on May 30, 2006, an Accomack County official communicated to the Coast Guard that residents of Chincoteague had additional comments concerning the operating regulations of the drawbridge. Based on this request we held a public meeting at the Chincoteague Community Center, at Chincoteague Island, Virginia. We accepted written comments from the public until July 21, 2006.

The Coast Guard also reviewed the bridge logs provided by VDOT. There were approximately 1919 bridge openings in 2005 over a six-month period (May, June, July, August, September and October) (See Table A); and in 2006, for the same six-month period, there were approximately 1359 bridge openings. (See Table B).

TABLE A

Bridge Openings for 2005											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
62	112	60	163	453	330	316	317	291	212	200	134

TABLE A—Continued

Bridge Openings for 2005											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
Boat Passages for 2005											
56	122	61	187	642	606	559	622	377	368	268	160

TABLE B

Bridge Openings for 2006											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
134	141	82	181	359	271	265	236	122	106	NA	NA
Boat Passages for 2006											
167	177	88	279	710	460	431	361	145	125	NA	NA

Annually, there are between 66 and 90 commercial fishing vessels that are dependent on regular drawbridge openings to access docking facilities to unload their product. Depending on the season, these vessels regularly unload multiple seafood catches a day because of trip catch limits. The Virginia Natural Resources Department provided Fisheries landing data from 2002 to 2005 for Accomack County. This data supports an overall increase in the pounds of seafood unloaded and the monetary value which supports the economic base for the surrounding area. (See Table C)

TABLE C.—SUMMARY OF FISHERIES DATA—ACCOMACK COUNTY

2002	[1] 11,238,247	$9,811,727
2003	[1] 11,304,169	10,900,731
2004	[1] 12,829,955	13,745,649
2005	[1] 10,693,540	12,369,899

[1] Pounds.

During the late spring, summer and early fall months, the number of vacationers and commercial fishing vessels (often scallop boats) that utilize the SR 175 Bridge is ever-increasing. The average resident population in the Town of Chincoteague is approximately 5,000. However, in the summertime with vacationers, the average population on Chincoteague Island is about 15,000. A proposed seasonal schedule was considered as an option, where the drawbridge would open for vessels every two hours during the spring and summer months; and hourly during the fall and winter months. However, the data shows that the peak commercial fishing period and delivery times are in direct conflict with the peak tourist and travel season on Chincoteague Island. Therefore, this option was not chosen.

Discussion of Comments and Changes

The Coast Guard received 554 comments to the NPRM published on April 13, 2006 (71 FR 19150). The comments included 540 letters, one petition, two e-mail comments, and 14 oral remarks presented at the public meeting.

The vast majority of the letters (471) were mass-produced form letters signed by residents. In addition, there were 60 letters from fishermen and small businesses. Six letters were from State and Town officials (two letters each from an Accomack County Supervisor, and the Town Manager of Chincoteague; with one letter each from a Virginia House Delegate, and an official with the Virginia Department of Transportation (VDOT)). Two separate comments were supplied on one e-mail message.

A majority of comments from residents of the Town of Chincoteague favored a two-hour opening schedule of the drawbridge from 6 a.m. to midnight. Commercial vessel owners and small businesses preferred hourly openings. However, the commercial vessel owners and small businesses commented that they can manage their establishments and vessels under the proposal to open every one and a half hour from 6 a.m. to midnight. Eight of the 14 oral remarks that were offered at the public meeting favored a two-hour opening schedule of the drawbridge from 6 a.m. to midnight, and 6 supported openings every one and a half hour from 6 a.m. to midnight.

The State and Town officials asserted their concerns that the bridge has exceeded its useful design life, that the increase in vessel traffic to the area has had a serious impact on the wear and tear of the bridge, and that reducing the number of vessel openings will assist VDOT in maintaining the mechanical condition of the bridge until a replacement bridge is complete.

It is the duty of the owner and operator of a drawbridge, VDOT in this case, to maintain the operating machinery in a serviceable condition and to provide for the safe and prompt opening of the drawbridge according to the operating regulations. The Coast Guard may not issue regulations for the purpose of relieving the owner or operator of the duty to properly maintain or operate the draw span solely because of financial hardship, or to save wear and tear on the structure or machinery, unless there is clearly documented evidence that there is little or no need for bridge openings. The data shows that mariners still require continued openings of the SR 175 Bridge over Chincoteague Channel, so the wear and tear on the bridge will not be considered as a factor in establishing the operating regulations.

Based on all of the comments received, we will implement a final rule with no changes to the NPRM. Under this final rule, the draw will open on demand from midnight to 6 a.m., and every one and a half hours from 6 a.m. to midnight (at 6 a.m., 7:30 a.m., 9 a.m., 10:30 a.m., 12 p.m., 1:30 p.m., 3 p.m., 4:30 p.m., 6 p.m., 7:30 p.m., 9 p.m. 10:30 p.m. and midnight); except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not open.

To minimize uncertainty and to assist in the transition to the new operating schedule of the drawbridge, the Coast Guard will print and distribute flyers providing the new opening times to residents and business owners. Officials with VDOT are required to post signs on the bridge for mariners with the operating schedule, including the opening times from 6 a.m. to midnight.

This final rule will help address vehicular traffic congestion and reduce traffic delays while still providing for the reasonable needs of navigation.

Discussion of Rule

The Coast Guard amends 33 CFR 117.1005, by inserting a new provision to require the draw to open on demand from midnight to 6 a.m., and every one and a half hour from 6 a.m. to midnight (at 6 a.m., 7:30 a.m., 9 a.m., 10:30 a.m., 12 p.m., 1:30 p.m., 3 p.m., 4:30 p.m., 6 p.m., 7:30 p.m., 9 p.m. 10:30 p.m. and midnight); except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not open.

Regulatory Evaluation

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

This conclusion based on the fact that the changes will have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

Small Entities

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

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

This conclusion is based on the fact the rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delays. In addition, the comments received from mariners suggest that they can accommodate the change in the schedule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically

excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. § 117.1005 is revised to read as follows:

§ 117.1005 Chincoteague Channel.

The draw of the SR 175 Bridge, mile 3.5, at Chincoteague shall open on demand from midnight to 6 a.m., and every one and a half hours from 6 a.m. to midnight (at 6 a.m., 7:30 a.m., 9 a.m., 10:30 a.m., 12 p.m., 1:30 p.m., 3 p.m., 4:30 p.m., 6 p.m., 7:30 p.m., 9 p.m. 10:30 p.m. and midnight); except from 7 a.m. to 5 p.m. on the last consecutive Wednesday and Thursday in July, the draw need not be opened.

Dated: November 1, 2006.

L.L. Hereth,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 06–9237 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–130]

Drawbridge Operation Regulations;Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, Jones Beach, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Loop Parkway Bridge across Long Creek at mile 0.7, at Jones Beach, New York. Under this temporary deviation, the Loop Parkway Bridge need not open for the passage of vessel traffic from 8:30 a.m. through 11:30 a.m. and 1:30 p.m. through 4:30 p.m., daily, from November 5, 2006 through December 20, 2006. A single bridge opening for all inbound commercial fishing vessels shall be provided, if a request to open the bridge is given, during the 1:30 p.m. to 4:30 p.m. bridge closure period. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from November 5, 2006 through December 20, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Loop Parkway Bridge, across Long Creek at mile 0.7, at Jones Beach, New York, has a vertical clearance in the closed position of 21 feet at mean high water and 25 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.799(f).

The owner of the bridge, New York State Department of Transportation, requested a temporary deviation to complete bridge painting operations. The bridge will not be able to open while the bridge painting operation is underway.

Under this temporary deviation, the Loop Parkway Bridge across Long Creek at mile 0.7, need not open for the passage of vessel traffic from 8:30 a.m. through 11:30 a.m. and from 1:30 p.m. through 4:30 p.m., daily, from November 5, 2006 through December 20, 2006. All inbound commercial fishing vessels shall be provided a single bridge opening during the 1:30 p.m. through 4:30 p.m. bridge closure period each day provided a bridge opening request is given by calling the number posted at 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.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: 31 October 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–19313 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–122]

RIN 1625–AA09

Drawbridge Operation Regulations; Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has temporarily changed the drawbridge operation regulations that govern the Amtrak Bridge across the Thames River, mile 0.8, at New London, Connecticut. This temporary final rule allows the bridge owner to open the bridge on a temporary opening schedule from November 15, 2006 through May 15, 2007. This temporary final rule is necessary to facilitate bridge pier repairs.

DATES: This rule is effective from November 15, 2006 through May 15, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–06–122) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, one South Street, New York, New York, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Leung-Yee, Project Officer, First Coast Guard District, (212) 668–7195.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 19, 2006, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations''; Thames River, Connecticut, in the **Federal Register** (71 FR 61698). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

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

Due to the urgency of the repairs, it is essential that this rule becomes effective on November 15, 2006.

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary final rule to facilitate unscheduled structural bridge repairs.

On June 29, 2006, the bridge owner discovered that one of the main bridge piers had shifted as a result of pile driving for the new adjacent Amtrak Bridge. In order to perform corrective repairs, minimize structural impingement, and continue to provide for rail traffic, the bridge must remain in the closed position, except during specific time periods during which the bridge will remain in the full open position for the passage of vessel traffic.

The Coast Guard published a temporary deviation in the **Federal Register** on July 24, 2006, [71 FR 41730] to allow immediate repairs to the bridge to commence.

On September 6, 2006, Amtrak contacted the Coast Guard and requested a temporary regulation effective from November 15, 20006 through May 15, 2007, to facilitate the completion of the bridge repairs.

The Coast Guard published a notice of proposed rulemaking (71 FR 61698) on October 19, 2006. No comments were received in response to the NPRM.

The Coast Guard believes making this temporary final rule effective in less than 30-days after publication in the **Federal Register** is reasonable because the bridge repairs facilitated by this temporary rule are vital and necessary repairs that must be performed with all due speed in order to assure the continued safe and reliable operation of the bridge.

Background and Purpose

The Amtrak Bridge, at mile 0.8, across the Thames River has a vertical clearance of 30 feet at mean high water and 33 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.224.

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary change to the drawbridge operation regulations to facilitate repairs to one of the main bridge piers.

On June 29, 2006, the bridge owner discovered that one of the main bridge piers had shifted as a result of pile driving for the new adjacent Amtrak Bridge.

In order to perform corrective repairs, minimize structural impingement, and continue to provide for rail traffic, the bridge must remain in the closed position except during specific time periods during which the bridge will remain in the full open position for the passage of vessel traffic.

Under this temporary final rule, from November 15, 2006 through May 15, 2007, the Amtrak Bridge across the Thames River, mile 3.0, at New London, Connecticut, shall remain in the full open position for the passage of vessel traffic as follows:

Monday through Friday: 5 a.m. to 5:40 a.m.; 11:20 a.m. to 11:55 a.m.; 3:35 p.m. to 4:15 p.m.; and 8:30 p.m. to 8:55 p.m.

Saturday: 8:30 a.m. to 9:10 a.m.; 12:35 p.m. to 1:05 p.m.; 3:40 p.m. to 4:10 p.m.; 5:35 p.m. to 6:05 p.m.; and 7:35 p.m. to 8:40 p.m.

Sunday: 8:30 a.m. to 9:20 a.m.; 11:35 a.m. to 12:15 p.m.; 1:30 p.m. to 1:55 p.m.; 6:30 p.m. to 7:10 p.m.; and 8:30 p.m. to 9:15 p.m.

The bridge shall open on signal at any time for the passage of U.S. Navy submarines, Navy escort vessels, and commercial vessels.

At all other times the draw shall remain in the closed position. Vessels that can pass under the draw without a bridge opening may do so at all times.

The Coast Guard believes this temporary final rule is reasonable because the required repair work is vital and necessary in order to ensure the safe and continued reliable operation of the bridge.

Discussion of Comments and Changes

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

Regulatory Evaluation

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

This conclusion is based on the fact that the vessel traffic that normally transits this bridge should only be minimally affected as they will still be able to transit the bridge under the temporary opening schedule.

Small Entities

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

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

This conclusion is based on the fact that the vessel traffic that normally transits this bridge should only be minimally affected as they will still be able to transit the bridge under the temporary opening schedule.

Assistance for Small Entities

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

■ 2. From November 15, 2006 through May 15, 2007, § 117.224 is amended by suspending paragraphs (a) and (b) and adding a temporary paragraph (c), to read as follows:

§ 117.224 Thames River.

* * * * *

(c)(1) The draw shall remain in the full open position for the passage of vessel traffic as follows:

(i) Monday through Friday from 5 a.m. to 5:40 a.m.; 11:20 a.m. to 11:55 a.m.; 3:35 p.m. to 4:15 p.m.; and 8:30 p.m. to 8:55 p.m.

(ii) Saturday from 8:30 a.m. to 9:10 a.m.; 12:35 p.m. to 1:05 p.m.; 3:40 p.m. to 4:10 p.m.; 5:35 p.m. to 6:05 p.m.; and 7:35 p.m. to 8:40 p.m.

(iii) Sunday from 8:30 a.m. to 9:20 a.m.; 11:35 a.m. to 12:15 p.m.; 1:30 p.m. to 1:55 p.m.; 6:30 p.m. to 7:10 p.m.; and 8:30 p.m. to 9:15 p.m.

(2) The draw shall open on signal at all times for the passage of U.S. Navy submarines, Navy escort vessels and commercial vessels. At all other times the draw need not open for the passage of vessel traffic.

Dated: November 12, 2006.

Timothy S. Sullivan,

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

[FR Doc. 06–9244 Filed 11–14–06; 12:50 pm]

BILLING CODE 4910–15–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2006–1; Order No. 1481]

Rate and Classification Requests

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission is re-issuing five sets of rules related to certain types of Postal Service requests that are due to expire, given sunset provisions. Re-issuance entails eliminating sunset

provisions in four sets. It also entails limited revisions, such as shortening and standardizing intervention periods, revising the numbering of one set, and minor editorial changes. Re-issuance allows the Postal Service to have continued flexibility, without interruption, and will enhance administrative efficiency.

DATES: These sets of rules are effective November 16, 2006.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION: Regulatory History 71 FR 55136 (September 21, 2006).

54 FR 11394 (March 20, 1989).
54 FR 33681 (August 16, 1989).
60 FR 54981 (October 27, 1995).
61 FR 24447 (May 15, 1996).
66 FR 54436 (October 29, 2001).

In Order No. 1479, the Commission proposed to amend its Rules of Practice and Procedure, 39 CFR 3001.1 *et seq.*, with respect to five sets of rules that are subject to five-year sunset provisions, each of which is scheduled to expire November 28, 2006.[1] Generally, these rules provide for expedited consideration of various Postal Service requests for a recommended decision. The five sets of rules include:[2]

(1) 39 CFR 3001.57–60, market response Express Mail rate requests;

(2) 39 CFR 3001.69–69c, minor classification changes;

(3) 39 CFR 3001.161–166, market tests of proposed classification changes;

(4) 39 CFR 3001.171–176, provisional service changes of limited duration; and

(5) 39 CFR 3001.181–182, multi-year test periods for proposed new services.

Exclusive of minor, non-substantive editorial changes, the Commission proposed to amend its rules in two principal ways, while reserving judgment on the rules concerning market response Express Mail rates. First, it proposed to re-issue rules 69–69c, 161–166, 171–176, and 181–182, amended to eliminate the sunset provision.[3] Second, the Commission proposed to standardize and shorten the time period for interventions as of right in proceedings involving minor classification changes (rules 69–69c), market tests (rules 161–166), and provisional service changes (rules 171–176). The Commission did not propose to re-issue rules 57–60 (market response Express Mail rates), but rather sought comments on whether their re-issuance would be in the public interest.

Interested persons were invited to comment on the proposed rulemaking. The Postal Service and the Office of the Consumer Advocate (OCA) submitted initial comments;[4] the Postal Service also filed reply comments.[5]

I. Parties' Comments

The sole controversy raised by the comments is whether rules 57–60 should be re-issued or allowed to lapse. The Postal Service argues for re-issuance, while the OCA advocates allowing these rules to lapse unless the Postal Service justifies their retention and indicates "a concrete intention to use them in the future[.]"[6] Otherwise, the commenters agree, for all intents and purposes, that the proposed amendments should be adopted.[7]

In Order No. 1479, the Commission discussed the substance and history of each of the rules. Among other things, it noted that the market response Express Mail rules, which were enacted in 1989, had never been invoked by the Postal Service. In light of this, the Commission questioned whether these rules had any continuing utility, suggesting that "[a]bsent an affirmative showing, there may be no compelling reason to reissue these rules."[8]

The Postal Service urges the Commission to re-issue rules 57–60 for an additional five years.[9] It contends that, notwithstanding their lack of use, these rules retain a continuing value providing a "defined procedural mechanism" to enable the Postal Service to respond to changes in the overnight delivery market more quickly than may otherwise be possible. *Id.* at 4. The Postal Service further asserts that re-issuing the rules would not impose a burden on the Commission or any interested party. *Id.* at 5.

The OCA's opposition to rules 57–60 is conditional.[10] It would have them lapse unless the Postal Service justifies their retention and explicitly commits to employ them in the future. Absent that, OCA suggests that discontinuing the rules may serve "administrative efficiency." *Id.* at 2.

In its reply, the Postal Service comments on the OCA's conditional opposition. It asserts that its initial comments provide explicit justification supporting retention of rules 57–60.[11] The Postal Service argues that OCA's second condition, that it commit to using the rules, is impractical because, by their nature, the rules are designed to permit the Postal Service to respond to market developments that it can neither predict nor control. *Id.* at 3. Finally, the Postal Service counters the OCA's suggestion that discontinuing the rules may serve administrative efficiency, arguing that retaining the rules provides definitive procedures governing limited Express Mail rate requests which are preferable to ad hoc determinations which would otherwise be required to achieve expedition. *Id.* at 4–5.

II. Commission Analysis

The proposal to re-issue the rules regarding minor classification changes (redesignated as rule 69(a)–(f), market tests (rules 161–166) provisional service changes (rules 171–176), and multi-year test periods (rules 181–182) on a permanent basis, i.e., by eliminating the sunset provisions, is unopposed. These provisions, which provide procedural options to facilitate expedited consideration of certain Postal Service requests, have proven to be useful.[12] Accordingly, the Commission adopts the proposal to re-issue these rules, amended to eliminate the sunset provisions.

Likewise the Commission's proposal to standardize and shorten the intervention period as of right in proceedings involving minor classification changes, market tests, and provisional service changes is uncontroversial. Under the current

[1] PRC Order No. 1479, Docket No. RM2006–1, September 15, 2006.

[2] The Rules of Practice and Procedure may be accessed on the Commission's Web site, *www.prc.gov*, by clicking first on "Contents" and then on "Commission Rules" which are found under the heading "Table of Contents."

[3] Under the proposal, the rules for minor classification changes (§§ 3001.69–69c) are renumbered as § 3001.69(a)–(f) to conform to Office of the Federal Register style preference.

[4] Initial Comments of the United States Postal Service in Response to Order No. 1479, October 13, 2006, (Postal Service Initial Comments); Office of the Consumer Advocate Comments in Response to Order No. 1479, October 13, 2006 (OCA Comments).

[5] Reply Comments of the United States Postal Service, October 20, 2006 (Postal Service Reply Comments).

[6] OCA Comments at 1.

[7] OCA does not take a position on the proposed shortening of the intervention period because it is not required to intervene in Commission proceeding, but rather is appointed pursuant to 39 U.S.C. 3624(a). *Id.* at 2.

[8] PRC Order No. 1479, *supra*, at 8.

[9] Postal Service Initial Comments at 3.

[10] OCA Comments at 1–2.

[11] Postal Service Reply Comments at 2–3.

[12] *See* PRC Order No. 1479 at 3–6. Although the Postal Service has yet to invoke rules 181–182, the Commission finds that re-issuance, as amended, is appropriate. The rules, which simply prescribe the documentation necessary to support such a request, provide a framework for considering potential new services. Retention of these rules disadvantages no potentially interested person, while affording the Postal Service increased flexibility regarding new services.

rules, interventions are due 26 or 28 days after filing of the Postal Service's request.[13] These provisions predate the Commission's adoption of electronic filing requirements. As the Commission noted, the proposed change should present no hardship to any prospective intervenor given the ready online availability of the Postal Service's request, the Commission's order noticing the request, and the ease of intervening electronically.[14] The Postal Service supports this proposal.[15] No party contests it. Accordingly, the Commission adopts the proposal to standardize and shorten the intervention period in the relevant proceedings.[16]

The Commission did not propose not to re-issue rules 57–60. Instead, it simply did not propose to re-issue those rules, urging any party favoring them to demonstrate that renewal is appropriate. The Postal Service has made an adequate showing to support re-issuing the rules for another five-year period. In addition, it satisfactorily addressed OCA's conditional opposition, demonstrating the problematic nature of requiring an explicit commitment to employ the rules.[17]

Two additional factors influence the Commission's decision to re-issue these rules for an additional five-year period. First, the rules provide procedures governing requests for an expedited recommended decision on limited Express Mail rate proposals. Interested persons may intervene in any such proceeding to protect their interests. As with all proceedings before the Commission, one initiated under these rules would be decided on the merits. Thus, no potentially interested person is prejudiced by renewal of the rules.[18]

A second consideration is the notable absence of any comments from private carriers opposing re-issuance. This void is not meant to suggest that such comments would have been dispositive. By the same token, the Commission is reluctant to read too much into the lack of opposition. Nonetheless, absent indications to the contrary, it would seem to imply that, at a minimum, the rules contain adequate safeguards to protect the interests of such prospective parties.

Finally, as a cautionary observation, the Commission notes that, although it is, under the circumstances, re-issuing these rules for an additional five-year period, this result is not intended to preclude a finding, based on the record in a future proceeding, that these rules have become obsolete.

In conclusion, pursuant to the foregoing discussion, the Commission hereby amends its Rules of Practice as set forth below.

Ordering Paragraphs

It is ordered:

1. The Commission's Rules of Practice are amended as set forth below the signature line of this order.

2. The attached rules are effective upon publication in the **Federal Register**.

3. The Secretary shall cause this order to be published in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

■ For the reasons discussed above, the Commission amends 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661, 3662, 3663.

§ 3001.57(b) [Amended]

■ 2. Revise § 3001.57(b) to read as follows:

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

§ 3001.57 Market response rate requests for express mail service—purpose and duration of rules.

* * * * *

(b) This section and §§ 3001.58 through 3001.60 remain in effect until November 16, 2011.

■ 3. Revise § 3001.69 to read as follows:

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

§ 3001.69 Expedited minor classification cases.

(a) *Applicability*. This section applies when the Postal Service requests a recommended decision pursuant to section 3623 and seeks expedited review on the ground that the requested change in mail classification is minor in character. The requirements and procedures specified in this section apply exclusively to Commission consideration of requested mail classification changes which the Postal Service denominates as, and the Commission finds to be, minor in character.

(b) *Considerations*. A requested classification change may be considered minor in character if it:

(1) Would not involve a change in any existing rate or fee;

(2) Would not impose any restriction in addition to pre-existing conditions of eligibility for the entry of mail in an existing subclass or category of service or for an existing rate element or worksharing discount; and

(3) Would not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service.

(c) *Filing of formal request and prepared direct evidence*. Whenever the Postal Service determines to file a request under this section, it shall file a request for a change in mail classification pursuant to § 3623 that comports with the requirements of this section and of Subpart C of the rules of practice. Each such formal request shall include the following information:

(1) A description of the proposed classification change or changes, including proposed changes in the text of the Domestic Mail Classification Schedule and any pertinent rate schedules;

(2) A thorough explanation of the grounds on which the Postal Service

[13] *See* current rules 69b(e), 163(b), and 173(b); *see also* proposed rules 69(e)(4), 163(e), and 173(e).

[14] PRC Order No. 1479 at 8.

[15] The Postal Service suggests that rules 163(d) and 173(d) be revised to make them consistent with revised rule 69b(d), redesignated as rule 69(e)(3), which eliminated the requirement that the Postal Service's notice accompanying its request for a minor classification change ''identify the last day for filing a notice of intervention with the Commission.'' Postal Service Initial Comments at 2–3. The Postal Service's suggestion is well-taken. The failure to revise rules 163(d) and 173(d) to reflect the proposal was an oversight. Under the proposal, the Commission's notice of proceeding will afford all interested persons a minimum of 15 days after the filing of the Postal Service's request within which to intervene. *See* attached rules 69(e)(4), 163(e), and 173(e). The current rules require the Postal Service's notice of its filing to identify the last day for filing a notice of intervention with the Commission. *See* current rules 69b(d), 163(d), and 173(d). This requirement is unnecessary under the proposal. Accordingly, the Postal Service suggestion will be adopted in the final rule. Conforming changes will not be made to rules 59(c)(1) and (c)(3) at this time because rules 57–60 are substantively different from the rules applicable to limited classification changes and would require revisions to other rules as well.

[16] *See* attached rules 69(e)(4), 163(e), and 173(e).

[17] To avoid the possibility that the current rules may lapse, the Commission finds it in the public interest to issue this order as a final rule to become effective upon publication in the **Federal Register**. This approach also provides the Postal Service with maximum operating flexibility under the circumstances.

[18] The Postal Service may be alluding to this point when it states that re-issuing these rules imposes no burden on interested stakeholders. Postal Service Reply Comments at 2–3; *see also* Postal Service Initial Comments at 5.

submits that the requested change in mail classification is minor in character; and

(3) An estimate, prepared in the greatest level of detail practicable, of the overall impact of the requested change in mail classification on postal costs and revenues, mail users and competitors of the Postal Service.

(d) *Data and information filing requirements.* Formal requests generally require the submission of the data and information specified in § 3001.64.

(1) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability as required by § 3001.64(a)(2)(i), (ii), and (iv).

(2) If the Postal Service believes that data or other information required to be filed under § 3001.64 should not be required in light of the minor character of the requested change in mail classification, it shall move for a waiver of that requirement. The motion shall state with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement.

(3) A satisfactory explanation of the unavailability of information required under § 3001.64 or of why it should not be required to support a particular request will constitute grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such a contention:

(i) Demonstrates that, considering all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.64; or

(ii) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

(e) *Expedited procedural schedule.* The Commission will treat requests under this section as subject to the maximum expedition consistent with procedural fairness.

(1) Persons who are interested in participating in proceedings initiated under this section may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a proceeding by filing a notice with the Secretary of the Commission.

(2) When the Postal Service files a request under this section, it shall comply with the Filing Online procedures of §§ 3001.9 through 3001.12.

(3) When the Postal Service files a request under this section, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in mail classification to be considered under this section.

(4) Within 5 days after receipt of a Postal Service request invoking § 3001.69, the Commission shall issue a notice of proceeding and provide for intervention by interested persons pursuant to Subpart A of the rules of practice. The notice of proceeding shall state that the Postal Service has denominated the mail classification change as a minor change, and has requested expedited consideration pursuant to § 3001.69. The notice shall further state the grounds on which the Postal Service submits that the requested change in mail classification is minor in character and shall afford all interested persons a minimum of 15 days after filing of the Postal Service's request within which to intervene, submit responses to the Postal Service's request for consideration of its proposed mail classification change under § 3001.69, and request a hearing.

(5) Within 28 days after publication of the notice of proceeding pursuant to paragraph (e)(4) of this section, the Commission shall decide whether to consider the request under this section and shall issue an order incorporating that ruling. The Commission shall order a request to be considered under this section if it finds:

(i) The requested classification change is minor in character; and

(ii) The effects of the requested change are likely to be appropriately limited in scope and overall impact.

(6) If the Commission determines that a Postal Service request is appropriate for consideration under this section, those respondents who request a hearing shall be directed to state with specificity within 14 days after publication of that determination the issues of material fact that require a hearing for resolution. Respondents shall also identify the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position.

(7) The Commission will hold hearings on a Postal Service request considered under this section when it determines that there are genuine issues of material fact to be resolved and that a hearing is needed to resolve those issues. Hearings on a Postal Service request will commence within 21 days after issuance of the Commission determination pursuant to paragraph (e)(5) of this section. Testimony responsive to the Postal Service's request will be due 14 days after the conclusion of hearings on the Postal Service request.

(8) If the Commission determines that a request of the Postal Service is not appropriate for consideration under this section, the request will be considered in accordance with appropriate provisions of the Commission's rules.

(f) *Time limits.* The schedule involving a request under this section will allow for issuance of a recommended decision:

(1) Not more than 90 days after the filing of a Postal Service request if no hearing is held; and

(2) Not more than 120 days after the filing of a request if a hearing is scheduled.

§ 3001.69a [Removed]

■ 4. Remove § 3001.69a.

§ 3001.69b [Removed]

■ 5. Remove § 3001.69b.

§ 3001.69c [Removed]

■ 6. Remove § 3001.69c.

§ 3001.161 [Amended]

■ 7. In § 3001.161, remove paragraph (b) and remove the designation of paragraph (a).

§ 3001.163 [Amended]

■ 8. In § 3001.163, revise paragraphs (b), (d), and (e) to read as follows:

§ 3001.163 Procedures—expedition of public notice and procedural schedule.

* * * * *

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

* * * * *

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a Market Test Request to be considered under §§ 3001.161 through 3001.166.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide interested persons a minimum of 15 days after filing of the Postal Service request within which to intervene. In the event

that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.171 [Amended]

■ 9. In § 3001.171, remove paragraph (b) and remove the designation for paragraph (a).

§ 3001.173 [Amended]

■ 10. In § 3001.173, revise paragraphs (b), (d), and (e) to read as follows:

§ 3001.173 Procedures—expedition of public notice and procedural schedule.

* * * * *

(b) Persons who are interested in participating in a proceeding to consider Postal Service requests to establish a provisional service may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a proceeding by filing a notice with the Secretary of the Commission.

* * * * *

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under §§ 3001.171 through 3001.176.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide interested persons a minimum of 15 days after filing of the Postal Service request within which to intervene. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

■ 11. Revise § 3001.174 to read as follows:

§ 3001.174 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed provisional service in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed service which the Postal Service has identified in accordance with § 3001.172(a)(3). The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.181 [Amended]

■ 12. In § 3001.181, remove paragraph (b), remove the designation of paragraph (a).

[FR Doc. E6–19289 Filed 11–15–06; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0059; FRL–8242–4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; State Implementation Plan Revision for Burlington Industries, Clarksville, VA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of the removal of a Consent Agreement (Agreement) currently in the SIP for the control of sulfur dioxide emissions from Burlington Industries located in Clarksville, Virginia. This Agreement has been superseded by a federally enforceable state operating permit that imposes operating restrictions on the facility's boilers and the shutdown of the remainder of the facility. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on December 18, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0059. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814–3376, or by e-mail at *mccauley.sharon@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 11, 2006 (71 FR 39330), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed approval of the removal of an Agreement from the Virginia SIP. The Agreement was written for the control of emissions of sulfur dioxide from the Burlington Industries facility located in Clarksville, Mecklenburg County, Virginia. This Agreement has been superseded by a federally enforceable state operating permit dated May 17, 2004, which imposes operating restrictions on the facility's boilers and the subsequent shutdown of the remainder of the facility. The formal SIP revision was submitted by Virginia on July 12, 2004.

Other specific requirements of the SIP revision for Burlington Industries, Clarksville, Virginia and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The

legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.'' Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

III. Final Action

EPA is approving the removal of the Consent Agreement for Burlington Industries, Clarksville, Virginia as a revision to the Virginia SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

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 requirement, 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.

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.*).

B. Submission to Congress and the Comptroller General

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. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules

of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for one named source.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 16, 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, to approve the removal of the Consent Agreement for Burlington Industries, Clarksville, Virginia, 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 3, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

§ 52.2420 [Amended]

■ 2. In § 52.2420, the table in paragraph (d) is amended by removing the entry for Burlington Industries.

[FR Doc. E6–19272 Filed 11–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2006–0497; FRL–8243–2]

RIN 2060–AN96

Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: New source performance standards (NSPS) limiting emissions of, among other pollutants, nitrogen oxides (NO_X) from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units (Btu) per hour were promulgated on November 25, 1986. The standards limit NO_X emissions from the combustion of fossil fuels either solely or in combination with other fuels or wastes. The standards include provisions for the establishment of facility-specific NO_X standards for steam generating units which simultaneously combust fossil fuel and chemical byproduct/waste under certain conditions. This amendment promulgates a facility-specific NO_X standard for a steam generating unit which simultaneously combusts fossil fuel and chemical byproduct offgas at the Innovene USA LLC facility located in Lima, Ohio.

DATES: This direct final rule will be effective on January 16, 2007 without further notice, unless EPA receives material adverse comments by December 18, 2006, unless a hearing is requested by November 27, 2006. If a timely hearing request is submitted, the hearing will be held on December 1, 2006 and we must receive written comments on or before January 2, 2007. If EPA receives such comments, it will publish a timely withdrawal in the **Federal Register** indicating the amendment is being withdrawn due to adverse comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0497, 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:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted 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 listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0497. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC,

EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket 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 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. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Eddinger, Energy Strategies Group, Emission Standards Division (D243–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5426; facsimile number (919) 541–5450; electronic mail address *eddinger.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The only regulated entity that will be affected by this direct final rule amendment is the Innovene USA facility located in Lima, Ohio.

Comments. We are publishing this direct final rule without prior proposal because we view it as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. If we receive any adverse comments on a specific element of this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendment is being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. The amendment in this direct final rule will become effective on the date set out above if we do not receive adverse comment. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

World Wide Web (WWW). In addition to being available in the docket, electronic copies of this direct final rule will be posted on the Technology Transfer Network's (TTN) policy and guidance information page *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this direct final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 16, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to this direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements that are subject to this action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. What Is EPA Finalizing Under This Action?
III. 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 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
J. Congressional Review Act

I. Background

The objective of the NSPS, promulgated on November 25, 1986, is to limit NO_X emissions from the combustion of fossil fuel. For steam generating units combusting byproduct/waste, the requirements of the NSPS vary depending on the mode of operation of the steam generating units. During periods when only fossil fuel is combusted, the steam generating unit must comply with the NO_X emission limits in the NSPS for fossil fuel. During periods when only byproduct/waste is combusted, the steam generating unit may be subject to other requirements or regulations which limit NO_X emissions, but it is not subject to NO_X emission limits under the NSPS. In addition, if the steam generating unit is subject to federally enforceable permit conditions limiting the amount of fossil fuel combusted in the steam generating unit to an annual capacity factor of 10 percent or less, the steam generating unit is not subject to NO_X emission limits under the NSPS when it simultaneously combusts fossil fuel and byproduct/waste.

With the exception noted above, during periods when fossil fuel and byproduct/waste are simultaneously combusted in a steam generating unit, the unit must generally comply with NO_X emission limits under 40 CFR 60.44b(e) of the NSPS. Under 40 CFR 60.44b(e) the applicable NO_X emission limit depends on the nature of the byproduct/waste combusted. In some situations, however, ''facility-specific'' NO_X emission limits developed under 40 CFR 60.44b(f) may apply. The order for determining which NO_X emission limit applies is as follows. A steam generating unit simultaneously combusting fossil fuel and byproduct/waste is expected to comply with the NO_X emission limit under 40 CFR 60.44b(e); only in a few situations may NO_X emission limits developed under 40 CFR 60.44b(f) apply. An equation in 40 CFR 60.44b(e) is included to determine the NO_X emission limit applicable to a steam generating unit when it simultaneously combusts fossil fuel and byproduct/ waste.

Only where a steam generating unit which simultaneously combusts fossil fuel and byproduct/waste is unable to comply with the NO_X emission limit determined under 40 CFR 60.44b(e), might a facility-specific NO_X emission limit under 40 CFR 60.44b(f) apply. That section permits a steam generating unit to petition the Administrator for a facility-specific NO_X emission limit. A facility-specific NO_X emission limit will be proposed and promulgated by the Administrator for the steam generating unit only where the petition is judged to be complete. To be considered complete, a petition for a facility-specific NO_X standard under 40 CFR 60.44b(f) consists of three components. To satisfy the first component, the steam generating unit must demonstrate compliance with the NO_X emission limit when combusting fossil fuel alone. This provision ensures that the steam generating unit has installed best demonstrated NO_X control technology, identified the NO_X control technology, and identified the manner in which this technology is operated to achieve compliance with the NO_X emission limit for fossil fuel.

To satisfy the second component, the steam generating unit must demonstrate

that the NO_X control technology does not comply with the NO_X emission limit when the unit simultaneously combusts fossil fuel and chemical byproduct/waste. The unit must demonstrate this non-compliance under the same operating conditions used to demonstrate compliance with fossil fuel alone. In addition, the steam generating unit must identify what unique and specific properties of the chemical byproduct/waste are responsible for preventing compliance with the NO_X emission limit for fossil fuel. Byproduct/waste is defined in subpart Db as being a liquid or gaseous substance.

Thirdly, the steam generating unit must provide data and/or analyses to support a facility-specific NO_X standard that represents the emissions while simultaneously combusting fossil fuel and chemical byproduct/waste. The unit must perform these analyses while operating the NO_X control technology under the same conditions used to demonstrate compliance with the NO_X emission limit for fossil fuel, if only fossil fuel were combusted. In addition to identifying the NO_X emission limit, the unit must identify appropriate testing, monitoring, reporting and recordkeeping procedures to ensure proper operation of the NO_X control technology and minimize NO_X emissions at all times.

Upon receipt of a complete petition, the Administrator will propose a facility-specific NO_X standard for the steam generating applicable during those times when it simultaneously combusts chemical byproduct/waste with fossil fuel. The NO_X standard will include the NO_X emission limit(s) and/or operating parameter limit(s) to ensure proper operation of the NO_X control technology at all times, as well as appropriate testing, monitoring, reporting and recordkeeping requirements.

Innovene USA LLC has submitted a petition requesting that EPA adopt a facility-specific NO_X standard for the absorber offgas incinerator (AOGI) at its acrylonitrile production process facility in Lima, Ohio. The AOGI contains a steam generating heat recovery section which qualifies the AOGI as a steam generating unit subject to NSPS subpart Db. The AOGI combusts natural gas to incinerate the offgas from the reactor and absorber section of the acrylonitrile production process. The AOGI was installed to destroy the volatile organic compounds and hazardous air pollutants (HAP) in the vent stream generated by the acrylonitrile manufacturing process. While the AOGI is designed to comply with Subpart Db while firing natural gas, the combustion of the offgas with natural gas in the AOGI results in a NO_X emission rate in excess of the NSPS limit.

II. What Is EPA Finalizing Under This Action?

Based on a review of the Innovene USA's petition for an alternative NO_X standard, EPA's Office of Air Quality Planning and Standards has determined the petition to be complete and an alternative facility-specific standard to be appropriate. This determination is appropriate because the AOGI is designed to minimize the formation of NO_X from the combustion of the fuel as well as the formation of NO_X generated by the nitrogen bound organic compounds in the offgas. The alternative NO_X standard is based on analysis of NO_X emissions continuously monitored during operation of the AOGI while burning the offgas. An alternative NO_X standard of 1.5 pounds per million Btu heat input is provided in the final rule amendment. EPA also indicates reporting and recordkeeping requirements for the owner or operator of the AOGI.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This action imposes no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of this action, the information collection requests have not been revised. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 60, Subpart Db under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0072, EPA ICR number 1088.10. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 40 CFR chapter 15.

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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the direct final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System code; (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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the direct final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

D. Unfunded Mandates Reform Act

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

EPA has determined that this direct final rule amendment 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, nor does this direct final rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of sections 202 and 205 of the UMRA do not apply to the direct final rule.

E. Executive Order 13132: Federalism

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

This direct final rule does not have federalism implications. It will not have new 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. This action codifies a facility-specific NO_X standard. There are minimal, if any, impacts associated with this action. Thus, Executive Order 13132 does not apply to the direct final rule.

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

Executive Order 13175 (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule.

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

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

We interpret 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. This direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

This direct final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

These direct final rule amendments do not involve technical standards. Therefore, this direct final rule is not subject to NTTAA.

J. Congressional Review Act

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

This direct final rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2). The direct final rule amendments are effective on January 16, 2007.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended to read as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart Db—[Amended]

■ 2. Section 60.49b is amended by adding paragraph (y) to read as follows:

§ 60.49b Reporting and recordkeeping requirements.

* * * * *

(y) Facility-specific nitrogen oxides standard for Innovene USA's AOGI located in Lima, Ohio:

(1) *Standard for nitrogen oxides.* (i) When fossil fuel alone is combusted, the nitrogen oxides emission limit for fossil fuel in § 60.44b(a) applies.

(ii) When fossil fuel and chemical byproduct/waste are simultaneously combusted, the nitrogen oxides emission limit is 645 ng/J (1.5 lb/million Btu).

(2) *Emission monitoring for nitrogen oxides.* (i) The nitrogen oxides emissions shall be determined by the compliance and performance test methods and procedures for nitrogen oxides in § 60.46b.

(ii) The monitoring of the nitrogen oxides emissions shall be performed in accordance with § 60.48b.

(3) *Reporting and recordkeeping requirements.* (i) The owner or operator of the AOGI shall submit a report on any excursions from the limits required by paragraph (x)(2) of this section to the Administrator with the quarterly report required by paragraph (i) of this section.

(ii) The owner or operator of the AOGI shall keep records of the monitoring required by paragraph (x)(3) of this section for a period of 2 years following the date of such record.

(iii) The owner or operator of the AOGI shall perform all the applicable reporting and recordkeeping requirements of this section.

[FR Doc. E6–19386 Filed 11–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R07–RCRA–2006–0877; FRL–8242–9]

Adequacy of Missouri Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves Missouri's Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. On April 14, 2006, Missouri submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

DATES: This direct final determination is effective January 16, 2007, without further notice unless EPA receives adverse comments by December 18, 2006. If adverse comments are received, EPA will publish a timely response or withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will or will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–RCRA–2006–0877, by one of the following methods:

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

2. *E-mail: Mclaughlin.chilton@epa.gov.*

3. *Mail:* Send written comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–RCRA–2006–0877. 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, Solid Waste/Pollution Prevention 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: Chilton McLaughlin at (913) 551–7666, or by e-mail at *Mclaughlin.chilton@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued at certain municipal solid waste landfills (69 FR 13242). This new provision may only be implemented by an approved State. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to municipal solid waste landfills must seek approval from EPA before issuing such permits. Missouri received final approval for 40 CFR part 258 provisions on April 13, 1994 (59 FR 17526). This request incorporates the November 27, 1996, rule (61 FR 60328, at 60337), which adds financial mechanisms for local governments, and the April 10, 1998, rule (63 FR 17706, at 17729), which adds financial test and corporate guarantee to financial assurance mechanisms. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12. On April 14, 2006, Missouri submitted an application for approval of its RD&D permit provisions and update of the approved MSWLP program.

II. Decision

After a thorough review, EPA Region 7 determined that Missouri's RD&D provisions as defined under Missouri Solid Waste Management Regulations, 10 CSR 80, and Missouri Solid Waste Management Statute, Title 16: Conservation, Resources and Development, Chapter 260: Environmental Control are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

III. Statutory and Executive Order Reviews

This action approves State solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866:* Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. *Paperwork Reduction Act:* This action does not impose an information collection burden under the Paperwork Reduction Act;

3. *Regulatory Flexibility Act:* After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;

4. *Unfunded Mandates Reform Act:* Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;

5. *Executive Order 13132:* Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (*i.e.*, there are no substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities between Federal and State governments);

6. *Executive Order 13175:* Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have tribal implications (*i.e.*, there are no 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);

7. *Executive Order 13045:* Protection of Children from Environmental Health Risks and Safety Risks—This action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. *Executive Order 13211:* Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. *National Technology Transfer Advancement Act:* EPA approves State programs so long as the State programs meet the criteria delineated in RCRA. It would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets RCRA requirements. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this action;

10. *Congressional Review Act:* EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: November 6, 2006.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E6–19384 Filed 11–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R07–RCRA–2006–0878; FRL–8242–6]

Adequacy of Nebraska Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves Nebraska's Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. On September 27, 2006, Nebraska submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

DATES: This direct final rule is effective January 16, 2007, without further notice unless EPA receives adverse comments by January 16, 2007. If adverse comments are received, EPA will publish a timely response or withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will or will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–RCRA–2006–0878, by one of the following methods:

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

2. *E-mail*: *Mclaughlin.chilton@epa.gov.*

3. *Mail:* Send written comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier.* Deliver your comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–RCRA–2006–0878. 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, Solid Waste/Pollution Prevention 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: Chilton McLaughlin at (913) 551–7666, or by e-mail at *Mclaughlin.chilton@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued at certain municipal solid waste landfills (69 FR 13242). This new provision may only be implemented by an approved state. While states are not required to seek approval for this new provision, those states that are interested in providing RD&D permits to municipal solid waste landfills must seek approval from EPA before issuing such permits. The current request is for approval to issue RD&D permits. Nebraska received partial approval for 40 CFR part 258 provisions on October 5, 1993 (58 FR 51819).

The provision that it received partial approval for derived from an opinion by the United States Court of Appeals on February 12, 1992, which instructed EPA to require groundwater monitoring at all landfills. The updated state rules impose groundwater monitoring at small, arid landfills. The current request also incorporates the August 7, 1995, rule (60 FR 40105), which corrects the financial assurance criteria; the September 25, 1996, rule (61 FR 50413), which relates to groundwater exemptions of small, arid, remote landfills; the November 27, 1996, rule (61 FR 60328, at 60337), which adds financial mechanisms for local governments; and the April 10, 1998, rule (63 FR 17706, at 17729), which adds a financial test and corporate guarantee to financial assurance mechanisms. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12. On September 27, 2006, Nebraska submitted an amended application for approval of its RD&D permit provisions and an update of the approved MSWLP program.

II. Decision

After a thorough review, EPA Region 7 determined that Nebraska's RD&D provisions and the updated rules for its Municipal Solid Waste Landfill Permit Program as defined under Nebraska Title 132—Integrated Solid Waste Management Regulations, effective March 7, 2006, are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

III. Statutory and Executive Order Reviews

This action approves state solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. Paperwork Reduction Act—This action does not impose an information collection burden under the Paperwork Reduction Act;

3. Regulatory Flexibility Act—After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;

4. Unfunded Mandates Reform Act—Because this action approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;

5. Executive Order 13132: Federalism—EO 13132 does not apply to this action because this action will not have federalism implications (*i.e.*, there are no substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities between Federal and State governments);

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments—EO 13175 does not apply to this action because it will not have tribal implications (*i.e.*, there are no 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);

7. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks—This action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. National Technology Transfer Advancement Act—EPA approves State programs so long as the State programs meet the criteria delineated in RCRA. It would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets RCRA requirements. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this action;

10. Congressional Review Act—EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: November 6, 2006.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E6–19388 Filed 11–15–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6295–34; I.D. 110806D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,809 nm² (6,204 km²), southeast of Portland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours November 18, 2006, through 2400 hours December 2, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40°N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 5, 2006, an aerial survey reported a sighting of 13 right whales in the proximity 43°29′ N. lat. and 68°27′ W. long. This position lies southeast of the Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is

based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

43°52′ N., 68°56′ W. (NW Corner)
43°52′ N., 67°58′ W.
43°09′ N., 67°58′ W.
43°09′ N., 68°56′ W.
43°52′ N., 68°56′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours November 18, 2006, through 2400 hours December 2, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone

and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: November 9, 2006.

Samuel D. Rauch III,

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

[FR Doc. 06–9227 Filed 11–13–06; 2:42 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–6294–33; I.D. 110806C]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,549 nm² (5,312 km²), south of Portland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours November 18, 2006, through 2400 hours December 2, 2006.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm² (139 km²)) such that right whale density is equal to or greater than 0.04 right whales per nm² (1.85 km²). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey

personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 5, 2006, an aerial survey reported a sighting of four right whales in the proximity 43° 07 N. lat. and 70° 10′ W. long. This position lies south of the Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

43° 29′ N., 70° 23′ W. (NW Corner)
43° 29′ N., 69° 44′ W.
42° 47′ N., 69° 44′ W.
42° 47′ N., 70° 38′ W.
43° 08′ N., 70° 38′ W. and follow the coastline northeast to
43° 29′ N., 70° 23′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps the year-round Western Gulf of Maine Closure Area for Northeast Multispecies found at 50 CFR 648.81(e). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Inshore State Lobster Waters, Northern Nearshore Lobster Waters and Stellwagen Bank/Jeffreys Ledge that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours November 18, 2006, through 2400 hours December 2, 2006, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once

the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: November 9, 2006.

Samuel D. Rauch III,

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

[FR Doc. 06–9226 Filed 11–13–06; 2:42 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051017270–5339–02; I.D. 083106D]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Quota Harvested for Maine Mahogany Quahog Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the annual quota for the Maine mahogany quahog fishery has been harvested. Commercial vessels operating under a limited access Maine mahogany quahog permit may not harvest Maine mahogany quahogs from the Maine mahogany quahog zone for the remainder of the fishing year (through December 31, 2006). Regulations governing the Maine mahogany quahog fishery require publication of this notification to advise the public of this closure. This closure does not apply to vessels with a Maine mahogany quahog permit that are fishing under an ocean quahog individual transferable quota (ITQ).

DATES: Effective 0001 hrs local time, November 14, 2006, through 2400 hrs local time, December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, 978–281–9273; fax 978–281–9135; email *Tobey.Curtis@Noaa.gov*.

SUPPLEMENTARY INFORMATION: The regulations governing the Maine mahogany quahog fishery appear at 50 CFR part 648, subpart E. The annual quota for the harvest of mahogany quahogs within the Maine mahogany quahog zone for the 2006 fishing year was established at 100,000 Maine bu (35,150 hL), as stated in the final rule published on December 28, 2005 (70 FR 76715). The Maine mahogany quahog zone is defined as the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43° 50′ N. lat., and on the north and west by the shoreline of Maine.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial Maine mahogany quahog quota for each fishing year using dealer and other available information to determine when the quota is projected to have been harvested. If the quota is projected to be reached, NMFS is required to publish notification in the Federal Register informing commercial vessel permit holders that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and no commercial quota is available for harvesting mahogany quahogs by vessels possessing a limited access Maine mahogany quahog permit for the remainder of the year, from within the Maine mahogany quahog zone. This does not apply, however, to vessels with a Maine mahogany quahog permit that are fishing under an ocean quahog ITQ, and utilizing ITQ cage tags.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2006 Maine mahogany quahog quota has been harvested. Therefore, effective 0001 hrs local time, November 16, 2006, further landings of Maine mahogany quahogs harvested from within the Maine mahogany quahog zone by vessels possessing a limited access Maine mahogany quahog Federal fisheries permit are prohibited through December 31, 2006. The 2007 fishing

year for Maine mahogany quahog harvest will open on January 1, 2007.

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: November 8, 2006.

James P. Burgess,

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

[FR Doc. 06–9228 Filed 11–13–06; 2:42 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 051014263–6028–03; I.D. 110706A]

Fisheries off West Coast States; Pacific Coast Groundfish Pacific Coast Groundfish Fishery; End of the Pacific Whiting Primary Season for the Catcher-processor Sector

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

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 2006 Pacific Whiting (whiting) Primary Season for the catcher-processor sector at 4 pm local time (l.t.) November 3, 2006, because the allocation for the catcher-processor sector is projected to have been reached by that time. This action is intended to keep the harvest of whiting within the 2006 allocation levels.

DATES: Effective from 4 pm l.t. November 3, 2006, until the start of the 2007 primary season for the catcher-processor sector, unless modified, superseded or rescinded. Comments will be accepted through December 1, 2006.

ADDRESSES: You may submit comments, identified by [I.D. 110706A], by any of the following methods:

1.E-mail:. *WhitingCPclosure.nwr@noaa.gov* Include [*I.D. 110706A*] in the subject line of the message.

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

3. Fax: 206–526–6736, Attn: Becky Renko.

4. Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

The regulations at 50 CFR 660.323(a) establish separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. For 2006, the 232,069–mt commercial harvest guideline for whiting is divided with the catcher/processor sector receiving 78,903 mt (34 percent); the mothership sector receiving 55,696 mt (24 percent); and the shore-based sector receiving 97,469 mt (42 percent).

Regulations at 50 CFR 660.373(b) describe the primary season for each sector. For catcher-processors, the primary season is the period when at-sea processing is allowed and the fishery is open for the catcher-processor sector. When each sector's allocation is reached, the primary season for that sector is ended.

To prevent an allocation from being exceeded, regulations at 50 CFR 660.323 (e) allow closure of the commercial whiting fisheries by actual notice to the fishery participants. Actual notice includes e-mail, internet, phone, fax, letter or press release. NMFS provided actual notice by fax to the catcher/processors on November 3, 2006.

NMFS Action

This action announces achievement of the allocation for the catcher-processor sector only. The best available information indicated that the catcher-processor allocation would be reached by 4 pm November 3, 2006, at which time the primary season for the catcher processor sector ends.

For the reasons stated here and in accordance with the regulations at 50 CFR 660.323(b), NMFS herein announces that, effective 4 pm November 3, 2006, further receiving or at-sea processing of whiting by catcher-processors is prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher-processor may continue to process whiting that was on board before at-sea processing was prohibited.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and comment opportunity would be impracticable. It would be impracticable because if this closure were delayed in order to provide notice and comment, the fishery would be expected to greatly exceed the catcher-processor sector allocation and the OY for whiting. A delay to provide a cooling off period also would be expected to cause the fishery to exceed its allocation and the whiting OY. Therefore, good cause also exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323 (b) and is exempt from review under Executive Order 12866.

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

Dated: November 09, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–19395 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 221
Thursday, November 16, 2006

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB99

Common Crop Insurance Regulations; Cabbage Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new § 457.171 that provides insurance for cabbage. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the cabbage pilot crop insurance program to a permanent insurance program for the 2009 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 16, 2007 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 must be received on or before January 16, 2007.

ADDRESSES: Interested persons are invited to submit written comments, titled ''Cabbage Crop Provisions'', by any of the following methods:

- By Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- E-mail: *DirectorPDD@rma.usda.gov.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: John McDonald, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0057 through June 30, 2006.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order No. 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economical impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to

require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offered the pilot crop insurance program for cabbage in five states beginning with the 1999 crop year and expanded the program into the states of Alaska, Florida, Georgia, Illinois, Michigan, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin for the 2000 crop year. For the 2005 crop year, 149 producers with 14,527 acres were insured under the pilot cabbage program.

FCIC intends to convert the cabbage pilot crop insurance program to a permanent crop insurance program beginning with the 2009 crop year. To effectuate this, FCIC proposes to amend the Common Crop Insurance regulations (7 CFR part 457) by adding a new section § 457.171, Cabbage Crop Insurance Provisions. These provisions will replace and supersede the current unpublished pilot cabbage crop provisions.

Some changes have been made to the pilot program, including the addition of quality adjustment and the allowance of written agreements. Other minor changes have been made to make the provisions more comprehensible, effective, consistent with other similar Crop Provisions, and to clarify coverages.

List of Subjects in 7 CFR Part 457

Crop insurance, Cabbage, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations, for the 2009 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.171 is added to read as follows:

§ 457.171 Cabbage crop insurance provisions.

The Cabbage Crop Insurance Provisions for the 2009 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies: Cabbage Crop Insurance Provisions.

1. Definitions

Cabbage. Plants of the family Brassicaceae and the genus *Brassica,* grown for their compact heads and used for human consumption.

Damaged cabbage production. For fresh market cabbage that fails to grade U.S Commercial or better, or for processing cabbage that fails to grade U.S No. 2 or better, in accordance with the grade standards due to an insurable cause of loss.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Harvest. Cutting of the cabbage plant to sever the head from the stalk.

Hundredweight. One hundred pounds avoirdupois.

Inspected transplants. Cabbage plants that have been found to meet the standards of the public agency responsible for the inspection process within the State in which they are grown.

Local market price. The price per hundredweight for fresh marketable cabbage at the time of harvest offered by buyers in the area in which you normally market the fresh cabbage.

Marketable cabbage. Cabbage that is sold or:

(a) Grades at least U.S. Commercial for fresh market cabbage; or

(b) Grades at least U.S. No. 2 for processing cabbage.

Price election. In addition to the definition contained in section 1 of the Basic Provisions, the price election for cabbage grown under a processor contract will be the price contained in such processor contract.

Planted acreage. In addition to the definition contained in section 1 of the Basic Provisions, cabbage plants and seeds must initially be planted in rows wide enough to permit mechanical cultivation. Cabbage planted or seeds planted in any other manner will not be insurable unless otherwise designated by the Special Provisions

Processor. Any business enterprise regularly engaged in processing cabbage for human consumption, that possesses all licenses and permits for processing cabbage required by the State in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted cabbage within a reasonable amount of time after harvest.

Processor contract. A written contract between the producer and the processor, containing at a minimum:

(a) The producer's commitment to plant and grow cabbage, and to sell and deliver the cabbage production to the processor;

(b) The processor's commitment to purchase all the production stated in the contract and to accept delivery subject only to specified conditions; and

(c) A price per hundredweight that will be paid for the production.

Timely planted. In lieu of the definition contained in section 1 of the Basic Provisions, cabbage planted during a planting period designated in the Special Provisions.

Type. A category of cabbage as designated in the Special Provisions.

2. Unit Division

(a) A basic unit, as defined in section 1 of the Basic Provisions, will also be divided into additional basic units by planting period if designated in the Special Provisions.

(b) In addition to the requirements of section 34 of the Basic Provisions, optional units may also be established by types designated in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the cabbage in the county insured under this policy unless the actuarial documents provide different price elections by type, in which case you may select one price election for each cabbage type designated in the actuarial documents.

(b) If price elections are allowed by type, you can select one price election for each type designated in the Special Provisions. The price elections you choose for each type must bear the same percentage relationship to the maximum price election offered by us for each

type. For example, if you selected 100 percent of the price election for one type, you must also select 100 percent of the price election for all other types.

(c) If there are multiple processor contracts applicable within the same unit with different price per hundredweights, each will be considered a separate price election which will be multiplied by the number of acres under applicable processor contract (For processor contracts that stipulates the amount of production to be delivered, the number of acres is determined by dividing the amount of production to be delivered by the approved yield). These amounts will be totaled to determine the premium, liability, and indemnity for the unit.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change dates are the following calendar dates preceding the cancellation dates:

(a) April 30 in Florida; Colquitt County, Georgia; South Carolina; and Texas;

(b) November 30 in Alaska; Rabun County, Georgia; Illinois; Michigan; New York; North Carolina; Ohio; Oregon; Pennsylvania; Virginia; Washington; and Wisconsin; or

(c) As designated in the Special Provisions for all other states and counties.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and counties	Cancellation and termination dates
Colquitt County, Georgia; South Carolina; Texas	July 1.
Florida	August 15.
Oregon, Washington	February 1.
Rabun County, Georgia; North Carolina	February 28.
Alaska, Illinois, Michigan, New York, Ohio, Pennsylvania, Virginia, and Wisconsin	March 15.
All other states and counties	As designated in the Special Provisions.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, to insure your cabbage under the price per hundredweight contained in your processor contract you must provide a copy of all your processor contracts, if applicable, to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the cabbage types in the county for which a premium rate is provided by the actuarial documents, in which you have a share, and that are:

(1) Planted with inspected transplants, if required by the Special Provisions;

(2) Planted with hybrid seed, if direct-seeded, unless otherwise permitted by the Special Provisions;

(3) Planted within the planting periods as designated in the Special Provisions;

(4) Planted to be harvested and sold as fresh cabbage;

(5) Planted to be grown and sold as processing cabbage in accordance with the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; or

(6) Unless allowed by the Special Provisions:

(i) Not interplanted with another crop; and

(ii) Not sold by direct marketing.

(b) Under the processor contract, you will be considered to have a share in the insured crop to the extent you retain control of the acreage on which the cabbage is grown, your income from the insured crop is dependent on the amount of production delivered, and the processor contract provides for delivery of the mustard under specified conditions and at a stipulated base contract price.

(c) A processing cabbage producer who is also a processor may establish an insurable interest if the following additional requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the processor definition contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

(b) Any acreage of the insured crop damaged before the end of the planting period, to the extent that a majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

9. Insurance Period

(a) In lieu of the provisions of section 11 of the Basic Provisions, coverage begins on each unit or part of a unit the later of:

(1) The date we accept your application; or

(2) When the cabbage is planted in each planting period.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period will be the earlier of:

(1) The date the crop should have been harvested;

(2) For processing cabbage, the date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered; or

(3) The following applicable calendar date after planting;

(i) Alaska: October 1;

(ii) Florida:

(A) February 15 for the fall planting period;

(B) April 15 for the winter planting period; and

(C) May 31 for the spring planting period;

(iii) Colquitt County, Georgia, and South Carolina:

(A) January 15 for the fall planting period; and

(B) June 15 for the spring planting period;

(iv) Rabun County, Georgia:

(A) September 15 for the spring planting period; and

(B) October 31 for the summer planting period;

(v) Illinois, Michigan, New York, Ohio, and Pennsylvania:

(A) September 30 for the spring planting period; and

(B) November 25 for the summer planting period;

(vi) North Carolina:

(A) July 10 for the spring planting period; and

(B) December 31 for the fall planting period;

(vii) Oregon: December 31;

(viii) Texas:

(A) December 31 for the summer planting period;

(B) February 15 for the fall planting period; and

(C) April 30 for the winter planting period;

(ix) Virginia:

(A) July 31 for the early spring planting period;

(B) September 15 for the spring planting period; and

(C) November 15 for the summer planting period;

(x) Washington: December 31;

(xi) Wisconsin: November 5; and

(xii) All other states and counties as provided in the Special Provisions.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Insects or plant disease, but not damage due to insufficient or improper application of control measures;

(5) Earthquake;

(6) Volcanic eruption; or

(7) Failure of the irrigation water supply, if caused by cause of loss specified in sections 10(a)(1) through (6) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Failure to market the cabbage for any reason other than actual physical damage from an insured cause of loss that occurs during the insurance period (For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production, etc.); or

(2) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs or becomes evident after the cabbage has been placed in storage.

11. Replanting Payments

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage and it is practical to replant.

(b) No replanting payment will be made on acreage planted prior to the initial planting date or after the final planting period dates as designated by the Special Provisions.

(c) In accordance with section 13(c) of the Basic Provisions, the maximum amount of the replanting payment per acre is the number of hundredweight specified in the Special Provisions multiplied by your price election; multiplied by your insured share. The fresh market cabbage price election will be used to determine processing cabbage replanting payments in counties where both fresh market and processing cabbage are insurable.

(d) When the insured crop is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment attributable to your share. The premium will not be reduced.

(e) In lieu of the provisions contained in section 13 of the Basic Provisions that limit a replanting payment to one each crop year, only one replanting payment will be made for acreage replanted during each planting period within the crop year, if allowed by the Special Provisions.

12. Duties in the Event of Damage or Loss

(a) Failure to meet the requirements of this section will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(b) In addition to section 14 of the Basic Provisions, so that we may inspect the insured crop, you must give us notice:

(1) Within 72 hours of your initial discovery of damage, if such discovery occurs more than 15 days prior to harvest of the acreage.

(2) Immediately if damage is discovered 15 days or less prior to the beginning of harvest or during harvest.

(3) At least 15 days prior to the beginning of harvest, if direct marketing of the insured crop is allowed by the Special Provisions, and if you intend to direct market any of the crop.

(4) At least 15 days before the earlier of:

(i) The date harvest would normally start if any acreage on the unit will not be harvested;

(ii) The beginning of harvest, if any production will be harvested for a use other than as indicated on the acreage report.

(c) After you have provided the applicable notice required by section 12(b), we will conduct an appraisal to determine your production to count for the purposes of section 13(d). You must not dispose of or sell the damaged crop, or store the insured crop, until after we have appraised it and given you written consent to do so. If additional damage occurs after this appraisal except for stored cabbage, we will conduct another appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count in accordance with section 13(d).

(d) In accordance with the requirements of section 14 of the Basic Provisions, if you initially discover damage to any insured cabbage within 15 days of or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 3 rows wide and extend the entire length of each field in the unit and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim

(a) We will determine your loss on a unit basis.

(1) In the event you are unable to provide separate acceptable production records:

(i) For any optional units, we will combine all optional units for which such production records were not provided; and

(ii) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units. For any processor contract that stipulates the amount of production to be delivered, and nothwithstanding the provisions of this section or any unit division provisions contained in the Basic Provisions or these Crop Provisions:

(i) No indemnity will be paid for any loss of production on any unit if you produce sufficient production to fulfill the processor contracts forming the basis for the guarantee;

(ii) Production in excess of the guarantee from a unit will be included as production to count for the purposes of section 13(b)(4) for any unit where the amount of production to count is less than the guarantee for such unit until the production to count equals the guarantee for the unit; and

(iii) Once all production in excess of the guarantee for a unit is allocated to units where the amount of production to count is less than the guarantee for such unit, an indemnity will be determined for those units where the adjusted production to count remains is less than

the guarantee in accordance with section 13(b).

(b) We will determine the extent of any loss the date the cabbage is placed in storage if the production is stored prior to sale, or the date it is delivered to a buyer, wholesaler, packer, processor, or other handler if production is not stored.

(c) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee (per acre), by type if applicable (If you have multiple processor contracts with varying prices per hundredweight within the same unit, we will value your production to count by using your highest price election first and will continue in decreasing order to your lowest price election based on the amount of production insured at each price election);

(2) Multiplying each result in section 13(c)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 13(c)(2);

(4) Multiplying the total production to count of each type, if applicable (see section 13)(d)), by its respective price election;

(5) Totaling the results in section 13(c)(4);

(6) Subtracting the results in section 13(c)(5) from the results of section 13(c)(3); and

(7) Multiplying the result in section 13(c)(6) by your share.

For example: For a basic unit you have 100 percent share in 100 acres of cabbage, 50 acres for fresh market and 50 acres for processing as sauerkraut, with a production guarantee (per acre) of 400 hundredweight per acre for fresh market and 400 hundredweight per acre for processing as sauerkraut and a price election of $5.00 per hundredweight for fresh market and $1.90 per hundredweight for processing as sauerkraut. You are only able to harvest 9,000 hundredweight of fresh market cabbage and 9,000 hundredweight of cabbage for sauerkraut because an insured cause of loss has reduced production. Your total indemnity would be calculated as follows:

(1) 50 acres × 400 hundredweight = 20,000 hundredweight guarantee for the fresh market acreage;

50 acres × 400 hundredweight = 20,000 hundredweight guarantee for the processing as sauerkraut acreage;

(2) 20,000 hundredweight guarantee × $5.00 price election = $100,000 value of guarantee for the fresh market cabbage.

20,000 hundredweight guarantee × $1.90 price election = $38,000 value of guarantee for processing as sauerkraut.

(3) $100,000 + $38,000 = $138,000 total value of guarantee.

(4) 9,000 hundredweight × $5.00 price election = $45,000 value of production to count for the fresh market acreage.

9,000 hundredweight × $1.90 price election = $17,100 value of production to count for the acreage for sauerkraut.

(5) $45,000 + $17,100 = $62,100 total value of production to count.

(6) $138,000 − $62,100 = $75,900 loss.

(7) $75,900 × 100 percent share = $75,900 indemnity payment.

(d) The total production to count (in hundredweight) of marketable cabbage from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee (per acre) for acreage:

(A) That is abandoned;

(B) For which you fail to meet the requirements contained in section 12;

(C) That is put to another use without our consent;

(D) That is damaged solely by uninsured causes; or

(E) For which you fail to provide production records that are acceptable to us;

(ii) All production lost due to uninsured causes;

(iii) All unharvested production;

(iv) All potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature production that is considered damaged cabbage production due to an insured cause but is marketable will be adjusted as follows:

(1) Dividing the local market price per hundredweight of such damaged cabbage production by the applicable price election; and

(2) Multiplying the result by the number of hundredweight of damaged cabbage production.

14. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on November 7, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–19319 Filed 11–15–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC04

Common Crop Insurance Regulations; Mustard Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new § 457.168 that provides insurance for mustard. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the mustard pilot crop insurance program to a permanent insurance program effective for the 2008 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 16, 2007 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 must be received on or before January 16, 2007.

ADDRESSES: Interested persons are invited to submit written comments, titled ''Mustard Crop Provisions'', by any of the following methods:

- By Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- E-mail: *DirectorPDD@rma.usda.gov.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., c.s.t., Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: John McDonald, Risk Management Specialist, Deputy Administrator for Product

Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this proposed rule have been approved by OMB under control number 0563–0057 through June 30, 2006.

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order No. 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies this regulation will not have a significant economical impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J, for the informal administrative review process of good farming practices, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offered the pilot crop insurance program for mustard beginning with the 1999 crop year in selected counties in the state of North Dakota. For the 2005 crop year, the mustard program was expanded to selected counties in the states of Montana, Idaho, Oregon and Washington. For the 2005 crop year, 2,149 policies were sold with 29,674 acres insured under the pilot mustard program.

FCIC intends to convert the mustard pilot crop insurance program to a permanent crop insurance program beginning with the 2008 crop year. To effectuate this, FCIC proposes to amend the Common Crop Insurance regulations (7 CFR part 457) by adding a new section § 457.168, Mustard Crop Insurance Provisions. These provisions will replace and supersede the current unpublished pilot mustard crop provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Mustard, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations, for the 2008 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.168 is added to read as follows:

§ 457.168 Mustard crop insurance provisions.

The Mustard Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

FCIC policies: UNITED STATES DEPARTMENT OF AGRICULTURE, Federal Crop Insurance Corporation
Reinsured policies: (Appropriate title for insurance provider)
Both FCIC and reinsured policies: Mustard Crop Insurance Provisions

1. Definitions

Base contract price. The price per pound (U.S. dollars) stipulated in the processor contract (without regard to discounts or incentives) that will be used to determine your price election.

Harvest. Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

Mustard. A crop of the family Cruciferae, genus and species Sinapis alba (also called Brassica hirta or Brassica alba) or Brassica juncea.

Planted acreage. In addition to the definition contained in the Basic Provisions, mustard seed must be planted in rows. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Processor. Any business enterprise regularly engaged in buying and processing mustard, that possesses all licenses and permits for processing mustard required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted mustard within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow mustard of the types specified in the Special Provisions and to deliver the production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Salvage price. The cash price per pound (U.S. dollars) for mustard that qualifies for quality adjustment in accordance with section 13 of these Crop Provisions.

Swathed. Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

Type. A category of mustard identified as a type in the Special Provisions.

2. Unit Division

In addition to the requirements of section 34 of the Basic Provisions, optional units may also be established by type, if designated on the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election percentage for all the mustard in the county insured under this policy unless the Special Provisions allow different price elections by type.

(b) If price elections are allowed by type, you can select one price election for each type designated in the Special Provisions. The price elections you choose must have the same percentage relationship to the base contract price (maximum price) offered for each type. For example, if you choose 100 percent of the maximum price for a specific type, you must also choose 100 percent of the maximum price for all other types.

(c) If there are multiple base contract prices within the same unit, each will be considered a separate price election which will be multiplied by the number of acres under applicable processor contract (For processor contracts that stipulates the amount of production to be delivered, the number of acres is determined by dividing the amount of production to be delivered by the approved yield). These amounts will be totaled to determine the premium, liability, and indemnity for the unit.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage

In addition to the provisions in section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all mustard in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest as seed;

(3) That is grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and is not excluded from the processor contract at any time during the crop year; and

(4) That is not, unless allowed by the Special Provisions or by written agreement:

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted following the harvest of any other crop in the same crop year.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acres on which the mustard is grown, your income from the insured crop is dependent on the amount of production delivered, and the processor contract provides for delivery of the mustard under specified conditions and at a stipulated base contract price.

(c) A commercial mustard producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

(c) The maximum insurable acreage will be determined by the acreage amount stated in the processor contract(s), if applicable.

9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested unless otherwise stated in the Special Provisions.

10. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; and

(h) Failure of the irrigation water supply, if applicable, caused by a cause

of loss specified in section 10(a) through (g) that occurs during the insurance period.

11. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage, and it is practical to replant or we require you to replant in accordance with section 8(a).

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee (per acre) or 175 pounds, multiplied by the price election applicable to the acreage to be replanted, multiplied by your insured share.

(c) When the mustard is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment that is attributable to your share. The premium amount will not be reduced.

12. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop that we may require must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

13. Settlement of Claim

(a) We will determine your loss on a unit basis.

(1) In the event you are unable to provide separate acceptable production records:

(i) For any optional units, we will combine all optional units for which acceptable production records were not provided; or

(ii) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units. For any processor contract that stipulates the amount of production to be delivered, and not withstanding the provisions of this section or any unit division provisions contained in the Basic Provisions or these Crop Provisions:

(2) No indemnity will be paid for any loss of production on any unit if you produce sufficient production to fulfill the processor contracts forming the basis for the guarantee;

(i) Production in excess of the guarantee from a unit will be included as production to count for the purposes of section 13(b)(4) for any unit where the amount of production to count is less than the guarantee for such unit until the production to count equals the guarantee for the unit; and

(ii) Once all production in excess of the guarantee for a unit is allocated to units where the amount of production to count is less than the guarantee for such unit, an indemnity will be determined for those units where the adjusted production to count remains is less than the guarantee in accordance with section 13(b).

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage of each mustard type, if applicable, by its respective production guarantee (per acre);

(2) Multiplying each result in section 13(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results in section 13(b)(2);

(4) Multiplying the production to be counted for each type, if applicable (see section 13(c)), by its respective price election (If you have multiple processor contracts with varying base contract prices within the same unit, we will value your production to count by using your highest price election first and will continue in decreasing order to your lowest price election based on the amount of production insured at each price election);

(5) Totaling the results in section 13(b)(4);

(6) Subtracting the total in section 13(b)(5) from the total in section 13(b)(3); and

(7) Multiplying the result in section 13(b)(6) by your share.

Example # 1 (with one price election for the unit):

You have 100 percent share in 20 acres of mustard in a unit with a 650 pound production guarantee (per acre) and a price election of $0.15 per pound. Due to insurable causes, you are only able to harvest 10,000 pounds and there is no appraised production.

Your indemnity would be calculated as follows:

(1) 20 acres × 650 pounds = 13,000 pounds guarantee;

(2) 13,000 pounds × $0.15 price election = $1,950 value of guarantee;

(3) $1,950 total value of guarantee;

(4) 10,000 pounds × $0.15 price election = $1,500 value of production to count;

(5) $1,500 total value of production to count;

(6) $1,950 − $1,500 = $450 loss; and

(7) $450 × 100 percent = $450 indemnity payment.

Example # 2 (with two price elections for the same unit):

You have 100 percent share in 20 acres of mustard in a unit with 650 pound production guarantee (per acre), 10 acres with a price election of $0.15 per pound, and 10 acres with a price election of $0.10 per pound, due to insurable causes you are only able to harvest 8500 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 10 acres × 650 pounds = 6500 pounds guarantee × $0.15 price election = $975 value guarantee;

(2) 10 acres × 650 pounds = 6500 pounds guarantee × $0.10 price election = $650 value guarantee;

(3) $975 + $650 = $1,625 total value guarantee;

(4) 6500 pounds production × $ 0.15 price election (higher price election) = $975 value of production to count;

(5) 2000 pounds production × $0.10 price election (lower price election) = $200 value of production to count;

(6) $975 + $200 = $1,175 total value of production to count;

(7) $1,625 total value guarantee − $1,175 total value of production to count = $450 loss; and

(8) $450 × 100 percent = $450 indemnity payment.

(c) The total production to count (in pounds) from all insurable acreage in the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee (per acre) for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 13(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used

to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(3) Any other uninsurable mustard production that is delivered to fulfill the processor contract.

(d) Mature mustard may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Mustard production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 10.0 percent. We may obtain samples of the production to determine the moisture content.

(2) Mustard production will be eligible for quality adjustment only if:

(i) Deficiencies in quality result in the mustard not meeting the requirements for acceptance under the processor contract because of damaged seeds (excluding heat damage), or a musty, sour, or commercially objectionable foreign odor; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss in mustard production only if:

(i) The deficiencies, substances, or conditions specified in section 13(d)(2) resulted from a cause of loss specified in section 10 that occurs within the insurance period;

(ii) The deficiencies, substances, or conditions specified in section 13(d)(2) result in a salvage price less than the base contract price;

(iii) All determinations of these deficiencies, substances, or conditions specified in section 13(d)(2) are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader in accordance with the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC.

(4) Mustard production that is eligible for quality adjustment, as specified in sections 13(d)(2) and (3), will be reduced by multiplying the quality adjustment factors contained in the Special Provisions (or the quality adjustment factors determined by dividing the salvage price by the base contract price (not to exceed 1.000) if the quality adjustment factors are not contained in the Special Provisions) by the number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production.

(i) The salvage price will be determined at the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit subject to the following conditions:

(A) Discounts used to establish the salvage price will be limited to those that are usual, customary, and reasonable.

(B) The salvage price will not include any reductions for:

(1) Moisture content;

(2) Damage due to uninsured causes;

(3) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the mustard; except, if the salvage price can be increased by conditioning, we may reduce the salvage price, after the production has been conditioned, by the cost of conditioning but not lower than the salvage price before conditioning; and

(ii) We may obtain salvage prices from any buyer of our choice. If we obtain salvage prices from one or more buyers located outside your local market area, we will reduce such price by the additional costs required to deliver the mustard to those buyers.

(iii) Factors not associated with grading under the Directive for Inspection of Mustard Seed, provided by the Federal Grain Inspection Service or such other directive or standards that may be issued by FCIC including, but not limited to, protein and oil will not be considered.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

14. Late Planting

In lieu of section 16(a) of the Basic Provisions, the production guarantee (per acre) for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date, unless otherwise specified in the Special Provisions.

15. Prevented Planting

In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting coverage will be 60 percent of your production guarantee (per acre) for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, DC, on November 7, 2006.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E6–19320 Filed 11–15–06; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV06–966–2 PR]

Tomatoes Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Florida Tomato Committee (Committee) for the 2006–07 and subsequent fiscal periods from $0.025 to $0.035 per 25-pound container or equivalent of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon Florida tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by December 1, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or E-mail: *William.Pimental@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–

2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable tomatoes beginning on August 1, 2006, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2006–07 and subsequent fiscal periods from $0.025 to $0.035 per 25-pound container or equivalent of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 22, 2006, and unanimously recommended 2006–07 expenditures of $2,193,700 and an assessment rate of $0.035 per 25-pound container or equivalent of tomatoes. In comparison, last year's budgeted expenditures were $2,161,800. The assessment rate of $0.035 is $0.01 higher than the rate currently in effect. The increase in the assessment rate is needed to continue to support the increased budget for advertising and promotion started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase in the assessment rate, the Committee would need to utilize an additional $500,000 from the authorized reserve.

The major expenditures recommended by the Committee for the 2006–07 fiscal period include $1,000,000 for education and promotions, $445,900 for salaries, $320,000 for research, $67,000 for employee retirement, and $63,800 for employee health insurance. Budgeted expenses for these items in 2005–06 were $1,000,000, $428,000, $320,000, $65,000 and $63,800, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million which should provide $1,750,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently around $700,000) would be kept within the maximum permitted by the order of not to exceed one fiscal period's expenses as stated in § 966.44.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2006–07 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2005–06 season was approximately $10.27 per 25-pound container or equivalent, and total fresh shipments for the 2005–06 season were 47,880,303 25-pound equivalent cartons of tomatoes. Committee data indicates that

approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average annual price of $10.27 per 25-pound container, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2006–07 and subsequent fiscal periods from $0.025 to $0.035 per 25-pound container or equivalent of tomatoes. The Committee unanimously recommended 2006–07 expenditures of $2,193,700 and an assessment rate of $0.035 per pound container. The proposed assessment rate of $0.035 is $0.01 higher than the 2005–06 rate. The quantity of assessable tomatoes for the 2006–07 season is estimated at 50 million cartons. Thus, the $0.035 rate should provide $1,750,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2006–07 fiscal period include $1,000,000 for education and promotions, $445,900 for salaries, $320,000 for research, $67,000 for employee retirement, and $63,800 for employee health insurance. Budgeted expenses for these items in 2005–06 were $1,000,000, $428,000, $320,000, $65,000, and $63,800, respectively.

As previously mentioned, the number of assessable containers during 2006–07 is estimated to be 50 million and the recommended assessment rate would generate $1,750,000 in income. The Committee's financial reserve is now estimated to be $700,000 and is available to cover the deficit in assessment income. The increase in the assessment rate is needed to continue to support the increased budget for advertising and promotion started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase in the assessment rate, the Committee would need to utilize an additional $500,000 from the authorized reserve.

The Committee reviewed and unanimously recommended 2006–07 expenditures of $2,193,700 which included increases in administrative and office salaries. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.035 per 25-pound container of tomatoes was determined by examining the anticipated expenses and expected shipments and considering available reserves. The recommended assessment rate would generate $1,750,000 in income. Considering income from interest and other sources of $190,000, with assessments, total income would be approximately $253,700 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2006–07 season could range between $8.27 and $12.95 per 25-pound container or equivalent of tomatoes. Therefore, the estimated assessment revenue for the 2006–07 season as a percentage of total grower revenue could range between 0.3 and 0.4 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 22, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2006–07 fiscal period began on August, 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past fiscal periods.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

On and after August, 1, 2006, an assessment rate of $0.035 per 25-pound container or equivalent is established for Florida tomatoes.

Dated: November 14, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–9253 Filed 11–14–06; 1:09 pm]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH95

Criticality Control of Fuel Within Dry Storage Casks or Transportation Packages in a Spent Fuel Pool

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations that govern domestic licensing of production and utilization facilities so that the requirements governing criticality control for spent fuel pool storage racks would not apply to the fuel within a spent fuel transportation package or storage cask when a package or cask is in a spent fuel pool. These packages and casks are subject to separate criticality control requirements. This action is necessary to avoid applying two different sets of criticality control requirements to fuel within a package or cask in a spent fuel pool.

DATES: The comment period for this proposed rule ends on December 18, 2006. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AH95 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher at (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: George M. Tartal, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–0016, e-mail *gmt1@nrc.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title, which is found in the Rules and Regulations section of this **Federal Register**.

Because the NRC considers this action non-controversial, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on January 30, 2007. However, if the NRC receives significant adverse comments on the direct final rule by December 18, 2006, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.68 is amended by adding a new paragraph (c) to read as follows:

§ 50.68 Criticality accident requirements.

* * * * *

(c) While a spent fuel transportation package approved under Part 71 of this chapter or spent fuel storage cask approved under Part 72 of this chapter is in the spent fuel pool:

(1) The requirements in § 50.68(b) do not apply to the fuel located within that package or cask; and

(2) The requirements in Part 71 or 72 of this chapter, as applicable, and the requirements of the Certificate of

Compliance for that package or cask, apply to the fuel within that package or cask.

Dated at Rockville, Maryland, this 31st day of October, 2006.

For the Nuclear Regulatory Commission.

William F. Kane,

Deputy Executive Director for Reactor and Preparedness Programs, Office of the Executive Director for Operations.

[FR Doc. E6–19368 Filed 11–15–06; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 061005257–6257–01]

RIN 0691–AA62

International Services Surveys: BE–185, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE–185, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons. This rule would replace the rule for a similar but more limited survey, the BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons. A new agency form number and survey title are being introduced because the survey program is being reconfigured to begin collection of data on transactions with affiliated foreigners using the same survey instruments as are used to collect information on transactions with unaffiliated foreigners. This change will allow respondents to report financial services transactions with foreign persons on one quarterly survey, rather than on as many as three different quarterly surveys. If adopted the BE–185 survey would be conducted quarterly beginning with the first quarter of 2007.

The proposed BE–185 survey data would be used to update universe estimates from similar data reported on the BE–80, Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons and on the benchmark and quarterly direct investment surveys that were administered to collect data on transactions with affiliated foreign persons.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. January 16, 2007.

ADDRESSES: You may submit comments, identified by RIN 0691–AA62, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. For agency, select ''Commerce Department—all.''
- E-mail: *Obie.Whichard@bea.gov*.
- Fax: Office of the Chief, International Investment Division, (202) 606–5318.
- Mail: Office of the Chief, International Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- Hand Delivery/Courier: Office of the Chief, International Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street, NW., Washington, DC 20005.
- Public Inspection: Comments may be inspected at BEA's offices, 1441 L Street, NW., Room 7006, between 8:30 a.m. and 5 p.m., eastern time Monday though Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; e-mail; or phone (202) 606–9890.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR 801.9 to replace the reporting requirements for the BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, with requirements for the BE–185, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Changes

The proposed BE–185 survey would be a mandatory survey and would be conducted, beginning with transactions for the first quarter of 2007, by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' For the initial quarter of coverage, BEA would send the survey to potential respondents in March of 2007; responses would be due by May 15, 2007.

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users, to ensure that, as far as possible, the required data serve their intended purposes and are available from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In designing the BE–185 survey, BEA contacted potential survey respondents to obtain their views on the proposed quarterly survey. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely responses (for example, whether the data are available on respondents' books), and BEA's experience in previous related annual and quarterly surveys.

If implemented the BE–185 would collect all the same information as the BE–85 but would also include financial services transactions with affiliated parties (i.e., with foreign affiliates, foreign parents, and foreign affiliates of foreign parents). BEA is currently collecting these transactions on its quarterly direct investment surveys (the BE–577, Direct Transactions of U.S. Reporter with Foreign Affiliate, the BE–605, Transactions of U.S. Affiliate, except a U.S. Banking Affiliate, with Foreign Parent, and the BE–605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent). These transactions with affiliated parties that are collected on BEA's quarterly direct investment surveys would now be collected on the BE–185. In addition, the BE–185 would also bifurcate the category for brokerage services into two categories, by collecting information on services related to equities transactions separately from other brokerage services.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, would conduct the BE–185 survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act'' and

Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 4908(b)). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibilities under the Act for performing functions concerning international trade in services to the Secretary of Commerce, who has redelegated them to BEA. The survey would provide a basis for updating estimates of the universe of financial services transactions between U.S. and foreign persons. The data are needed to monitor trade in financial services; analyze their impact on the U.S. and foreign economies; compile and improve the U.S. international transactions, national income and product, and input-output accounts; support U.S. commercial policy on financial services; assess and promote U.S. competitiveness in international trade in services; and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Executive Order 12866

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

Executive Order 13132

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federal assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The requirement will be submitted to OMB as a request for a revision of a currently approved collection under OMB control number 0608–0065.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The BE–185 quarterly survey, as proposed, is expected to result in the filing of reports containing mandatory data from approximately 175 respondents on a quarterly basis, or 700 annually. The respondent burden for this collection of information would vary from one respondent to another, but is estimated to average 10 hours per response (40 hours annually), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for the BE–185 survey is estimated at 7,000 hours, compared to 5,000 hours estimated for the previous BE–85 survey. The increase in burden is a result of the inclusion of transactions with affiliated foreign persons.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230, fax: 202–606–5311; and the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0065, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov* or by fax at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international transactions in financial services tend to be relatively large, thereby excluding them from the definition of small entity. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The proposed BE–185 quarterly survey will be required only from U.S. financial services providers whose sales of financial services to foreign persons exceeded $20 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year, or whose purchases of financial services from foreign persons exceeded $15 million for the previous fiscal year or are expected to exceed that amount during the current fiscal year. This amount is applied to the combined total of the individual types of transactions covered by the survey. The exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they would likely report only one type of transaction, often limited to transactions with a single partner country; therefore, the burden on them should be small. In addition, this survey mailing is a targeted mailing. Thus, since small businesses tend not to be involved in the transactions to be covered by the BE–185 survey, few small businesses should receive the survey. However, those receiving the survey are expected to incur a minimal burden in completing the exemption form.

List of Subjects in 15 CFR Part 801

International transactions, Economic statistics, Financial services, Foreign trade, Penalties, Reporting and recordkeeping requirements.

Dated: November 8, 2006.

Sumiyo O. Okumo,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; and E.O. 11961, 3 CFR, 1977 Comp., p.86, as amended by E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518, 3 CFR, 1985 Comp., p. 348.

2. Revise § 801.9(c)(4). to read as follows:

§ 801.9 Reports required.

(c) Quarterly surveys. * * *

(4) BE–185, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons:

(i) A BE–185, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons, will be conducted covering the first quarter of the 2007 calendar year and every quarter thereafter.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and that had sales of covered services to foreign persons that exceeded $20 million for the previous fiscal year or expects sales to exceed that amount during the current fiscal year, or had purchases of covered services from foreign persons that exceeded $15 million for the previous fiscal year or expects purchases to exceed that amount during the current fiscal year These thresholds should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases. Quarterly reports for a year may be required retroactively when it is determined that the exemption level has been exceeded.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If a financial services provider or intermediary, or all of a firm's subsidiaries or parts combined that are financial services providers or intermediaries, had covered sales of $20 million or less, or covered purchases of $15 million or less during the previous fiscal year, and if covered sales or purchases are not expected to exceed these amounts in the current fiscal year, a person is requested to provide an estimate of the total for each type of service for the most recent quarter. Provision of this information is voluntary. The estimates may be based on the reasoned judgement of the reporting entity. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) *BE–185 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52 B Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for these firms (part of Sector 55 B Management of Companies and Enterprises) of the North American Industry Classification System, United States, 2002. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); nondepository credit intermediation (including credit card issuing, sales financing, and other nondepository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(C) *Covered types of services.* The BE–185 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and foreign persons: Brokerage services related to equities transactions; other brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.

(ii) [Reserved]

* * * * *

[FR Doc. E6–19409 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–06–027]

RIN 1625–AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the duration vessels are authorized to anchor in specific anchorage grounds within the Port of New York and New Jersey (PONYNJ). This proposed action is necessary to facilitate safe navigation and provide for the overall safe and efficient flow of waterborne commerce. This proposed action is intended to better facilitate the efficient use of the limited deep water anchorage grounds available in PONYNJ.

DATES: Comments and related material must reach the Coast Guard on or before December 18, 2006.

ADDRESSES: You may mail comments and related material to Waterways Management Division (CGD01–06–027), Coast Guard Sector New York, 212 Coast Guard Drive, Room 321, Staten Island, New York 10305. The Waterways Management Division of Coast Guard Sector New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 321, Coast Guard Sector New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander M. McBrady, Waterways Management Division, Coast

Guard Sector New York at (718) 354–2353.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–06–027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to revise the duration that vessels are authorized to anchor in Federal Anchorage Grounds 19, 21–A, 21–B, 21–C, and 25 in the PONYNJ. These proposed revisions are necessary due to the limited amount of deep water anchorage space available in the Hudson River, Upper and Lower Bay of New York Harbor.

In recent years, as the number of ships in port has increased and their sizes have grown, the anchorage grounds have frequently been filled to capacity. According to the Harbor Safety, Operations, and Navigation Committee of the Port of New York and New Jersey (HAROPS), which represents a broad spectrum of the local maritime industry, having adequate anchorage space is critical to the overall safety and economic vitality of the port. The limited availability of anchorage space has caused undue economic burden for ships that are forced to anchor outside the port in the vicinity of Ambrose Tower, sometimes for days, while awaiting anchorage space. Vessels have been unable to complete their business, including re-supply, lightering, and bunkering, in a cost-efficient manner and sometimes have forgone obtaining services in New York because of the delays. The unavailability of anchorage space also increases safety risks by forcing ships to take on provisions while underway and potentially preventing ships from anchoring in an emergency.

The proposed revisions would increase the availability of anchorage space by reducing the amount of time that a vessel may remain at anchor. The revisions would also limit the number vessels from loitering in the lower Hudson River, Bay Ridge, and Gravesend Bay anchorages.

Discussion of Proposed Rule

The proposed rule would establish a 96-hour limit on the duration of stay for vessels anchoring in Federal Anchorage Grounds 19, 21–A, 21–B, 21–C, and 25. Currently, 33 CFR 110.155(k)(3) establishes an impractical anchorage duration of 30 days. We note that the 48-hour limit for anchoring in Stapleton Anchorage (Federal Anchorage Grounds 23–A, 23–B, and 24) and Federal Anchorage Ground 44 would remain the same and not be affected by this proposed rule.

Implementing this time restriction for the lower Hudson River, Bay Ridge, and Gravesend Bay anchorage grounds will provide for the effective use of this valuable and limited port resource, thus, minimizing vessel delays. The affected Anchorage Grounds would continue to be managed by the Coast Guard Vessel Traffic Service New York (VTS). As part of their anchorage management function, VTS New York will make decisions on requests to extend a vessel's stay at an anchorage beyond the prescribed duration limit.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This finding is based on the following facts:

This proposal would allow the Coast Guard to better manage the increasing and changing needs of commercial vessels and to make the best use of the limited available Anchorage Grounds. Vessels normally complete bunkering or lightering operations within the Anchorage Grounds within 48 hours. Additionally, due to security concerns at facilities, more vessels need to replenish supplies while at anchor, which normally takes no longer than 8 hours. This proposal would allow shipping lines, owners, agents, and others in the shipping industry to operate more efficiently in the Port of New York and New Jersey.

The current 30-day limit for vessels to remain at anchor is an inefficient use of the limited, extremely busy Anchorage Grounds within the PONYNJ since vessels not conducting port related operations could easily anchor offshore while awaiting pier space, supply deliveries, sailing orders, etc. Additionally, this proposal would allow the commercial vessel industry to more efficiently conduct final preparations for sea in a protected Anchorage Ground, as opposed to conducting preparations during outbound transit in the vicinity of the six vessel traffic lanes that converge on Ambrose Light (LLNR 720). This proposed rule is in the interest of safe and efficient navigation.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to anchor in a portion of the Hudson River, Upper New York Bay, or Lower New York Bay. This proposal, however, would not have a significant economic impact on these entities for the reasons stated above in the Regulatory Evaluation section.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander M. McBrady, Waterways Management Division, Coast Guard Sector New York at (718) 354–2353. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it would revise the duration a vessel could anchor in a Federal Anchorage Ground.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.155 by adding paragraphs (c)(5)(vi), (d)(10)(ii), (d)(11)(iii), (d)(12)(iii), and (e)(1)(iii), to read as follows:

§ 110.155 Port of New York.

* * * * *

(c) * * *

(5) * * *

(vi) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

* * * * *

(d) * * *

(10) * * *

(ii) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

(11) * * *

(iii) No vessel may occupy this anchorage for a period of time in excess

of 96 hours without prior approval of the Captain of the Port.

(12) * * *

(iii) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

* * * * *

(e) * * *

(1) * * *

(iii) No vessel may occupy this anchorage for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

* * * * *

Dated: October 30, 2006.

Timothy S. Sullivan,

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

[FR Doc. E6–19314 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–037]

RIN 1625–AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the regulation governing the operation of the Illinois Central Railroad Drawbridge, Mile 579.9, Upper Mississippi River at Dubuque, Iowa. Under the proposed rule, the drawbridge would open on signal if at least 24 hours advance notice is given from 12:01 a.m., on December 15, 2006 until 8 a.m., on March 15, 2007. This would allow time for making upgrades to critical mechanical components and performing scheduled annual maintenance/repairs to the bridge and pier protection.

DATES: Comments and related material must reach the Coast Guard on or before December 18, 2006.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (dwb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269–2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–06–037), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 12, 2006, the Chicago, Central & Pacific Railroad requested a temporary change to the operation of the Illinois Central Railroad Drawbridge, across the Upper Mississippi River, Mile 579.9, at Dubuque, Iowa to open on signal if at least 24 hours advance notice is given to facilitate critical bridge repair and annual maintenance.

The Illinois Central Railroad Drawbridge navigation span has a vertical clearance of 19.9 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted due to the reduced navigation in winter months. Presently, the draw opens on signal for passage of river traffic. The Chicago, Central & Pacific Railroad requested the drawbridge be permitted to remain closed-to-navigation from 12:01 a.m., December 15, 2006 until 8 a.m., March 15, 2007 unless 24 hours advance notice is given of the need to open. Winter conditions on the Upper Mississippi River coupled with the closure of Lock and Dam 11, Mile 583.0, Upper Mississippi River, at Dubuque, Iowa from January 2, 2007 until February 28, 2007 will preclude any significant navigation demands for the drawspan opening. The Illinois Central Railroad Drawbridge, Mile 579.9, Upper Mississippi River, is located just downstream from Lock and Dam 11. Performing maintenance on the bridge and pier protection during the winter, when the number of vessels likely to be impacted is minimal, is preferred to the bridge closure or advance notification requirements during the navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

Discussion of Proposed Rule

The proposed temporary rule is to add a new paragraph to § 117.671. The drawbridge by regulation is to open on signal. This proposed rule would allow the drawbridge to open on signal if at least 24 hours advance notice is given from 12:01 a.m., on December 15, 2006 until 8 a.m., on March 15, 2007. This proposed rule will allow time for making upgrades to critical mechanical components and perform scheduled annual maintenance/repairs to the bridge and pier protection.

Regulatory Evaluation

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

The Coast Guard expects that this temporary change to operation of the Illinois Central Railroad Drawbridge will have minimal economic impact on commercial traffic operating on the Upper Mississippi River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a

substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This proposed rule will have a negligible impact on vessel traffic. The primary users of the Upper Mississippi River in Dubuque, Iowa are commercial towboat operators. With the onset of winter conditions, most activity on the Upper Mississippi River is curtailed and there are few, if any, significant navigation demands for opening the drawspan.

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 269–2378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore this rule is categorically excluded under figure 2–1, paragraph 32(e) of the Instruction from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation

No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 12:01 a.m., December 15, 2006 until 8 a.m., March 15, 2007 in § 117.671 add new paragraph (c) to read as follows:

§ 117.671 Upper Mississippi River.

* * * * *

(c) The Illinois Central Railroad Drawbridge, Mile 579.9, Upper Mississippi River at Dubuque, Iowa shall open on signal if at least 24 hours notice is given.

Dated: October 18, 2006.

J.R. Whitehead,

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

[FR Doc. E6–19311 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–013]

RIN 1625–AA09

Drawbridge Operation Regulation; Illinois Waterway, Illinois

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard has revised its proposal to change the operation of the Pekin Railroad Drawbridge, Mile 151.2, at Pekin, Illinois and the Chessie Railroad Drawbridge, Mile 254.1 at Seneca, Illinois across Illinois Waterway. The present regulation requires revision to reflect the actual procedures that have always been followed. The current regulation was intended to be temporary, for test purposes only, and was inadvertently permanently included. The revision would eliminate the ''Specific Requirements'' for remote operation and the bridge would continue to operate, as required by the Coast Guard, under the ''General Requirements''. In addition the Coast Guard proposes to change the regulation governing the operation of the Chessie Railroad Drawbridge across the Illinois Waterway, Mile 254.1, at Seneca, Illinois. The existing regulation requires the drawspan to open on signal. This change is necessary to reflect a change in operating procedure.

DATES: Comments and related material must reach the Coast Guard on or before January 16, 2007.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (dwb) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269–2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–06–013], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On June 26, 2006, we published a notice of proposed rulemaking (NPRM) titled Drawbridge Operation Regulation; Illinois Waterway, IL in the **Federal Register** (71 FR 36295). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

A test period to remotely operate the Pekin Railroad Drawbridge, Mile 151.2, across the Illinois Waterway was proposed by the bridge owner and determined that remote operation was not feasible. The bridge owner withdrew the proposal and the Coast Guard required the continued on-site operation of the bridge. The bridge is not remotely operated. The bridge owner has always maintained an on-site bridge operator for the bridge. However, the temporary regulation allowing the test period was inadvertently published in 33 CFR 117, Subpart B.

This proposed rulemaking will correct the drawbridge operating regulations to reflect Coast Guard approved operating conditions presently adhered to by the bridge owner and waterway users.

33 CFR requires the Chessie Railroad Drawbridge, mile 254.1, Illinois Waterway at Seneca, Illinois to open on signal for the passage of vessels. Due to reduced train use, the bridge owner removed the bridgetender, maintains the draw span in the fully open position and allows train operators to close the bridge. This action was taken without proper Coast Guard notification or approval. The proposed rule would improve the navigation safety of bridge operations by establishing a method of operation and communication between vessels and bridge closure personnel.

Discussion of Proposed Rule

The rule proposed by this SNPRM includes two separate changes to existing regulation § 117.393. The first change would delete § 117.393(b), which requires remote operation of the Pekin Railroad Drawbridge. If the remote operation requirement is deleted, it will have no impact on river or rail traffic because the bridge will continue to be operated on-site and open on demand for passage of river traffic. Removing the regulation for remote operation will allow the bridge owner to not install additional equipment and to not operate the bridge from a remote location to meet the regulation.

The second change to § 117.393 would add a new paragraph (b) to § 117.393. The Chessie Railroad Drawbridge is currently maintained in the fully open position and train operators close the draw span to allow trains to pass. This proposed rule would improve the navigation safety of bridge operations by establishing a method of operation and communication between vessels and bridge closure personnel. This proposed rule will accurately depict how the bridge is operated.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866,

Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

The Coast Guard expects that these changes will have no economic impact on commercial traffic operating on the Illinois Waterway.

The proposed regulation changes will not affect the present safe operation of the bridges.

Small Entities

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

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 269–2378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore this rule is categorically excluded under figure 2–1, paragraph 32(e) of the Instruction from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the

docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 017.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.393(b) to read as follows:

§ 117.393 Illinois Waterway.

* * * * *

(b) The draw of the Chessie Railroad Bridge, mile 254.1, at Seneca, Illinois, operates as follows:

(1) The draw is normally maintained in the fully open position, displaying green mid-channel lights to indicate the span is fully open.

(2) When a train approaches the bridge and the draw is in the open position, the train will stop, train operator shall walk out on the bridge and scan the river for approaching vessels.

(3) If a vessel is approaching the bridge, the draw will remain open. The vessel shall contact the train operator on VHF–FM channel 16 and the train operator shall keep the draw in the fully open position until the vessel has cleared the bridge.

(4) If no vessels are observed, the train operator initiates a five minute warning period on VHF–FM radio channel 16 before closing the bridge. The train operator will broadcast the following message: ''The Chessie Railroad Bridge at Mile 254.1, Illinois River, will close to navigation in five minutes.'' The announcement is repeated every minute counting down the time remaining until closure.

(5) At the end of the five minute warning period, and if no vessels are approaching the bridge, the train operator shall sound the siren for 10 seconds, activate the alternate flashing red lights on top of the draw, then lower and lock the draw in place. Red lights shall continue to flash to indicate the draw is closed to navigation.

(6) After the train has cleared the bridge, the draw shall be raised to its full height and locked in place, the red flashing lights stopped, and the draw lights changed from red to green.

* * * * *

Dated: October 19, 2006.

Ronald W. Branch,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.

[FR Doc. E6–19310 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 241, 251, 261

RIN 0596–AC33

Piscicide Applications on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for public comments.

SUMMARY: The Forest Service proposes to amend Title 36 Code of Federal Regulations (CFR) parts 241, 251 and 261. Relevant sections of the Forest Service Manual (FSM) 2151, 2152, 2153, 2610, 2651 and 2719; and Forest Service Handbook (FSH) 2109.14, would also be revised to reflect the changes in the regulations. Title 36 CFR part 241 addresses the cooperation between the agency and State fish and game management agencies and governs the agency's responsibility in these partnerships. Part 251 sets out requirements governing special uses on National Forest System lands and identifies the categories of uses for which a special use authorization is required. Part 261, subpart A sets out the general prohibitions of activities on National Forest System lands, while subpart B provides for prohibition of activities on National Forest System lands by closure orders.

The proposed amendment to the rule would result in three changes. The principle change, in part 241, would establish criteria for State piscicide use on National Forest System lands, outside designated Wild and Scenic Rivers or Congressionally designated Wilderness and Wilderness Study Areas. A provision that State piscicide applications outside designated Wilderness and Wilderness Study Areas are not ''special uses'' requiring special use authorization would be added to 36 CFR 251.50. A paragraph would be inserted into 36 CFR 261.50 to specifically provide for closure of an area, under specific circumstances, to prohibit piscicide application. In addition, the ambiguous phrase ''other minor uses,'' which refers to pesticide uses, would be eliminated in 36 CFR 261.9(f). The proposed rule changes would provide an efficient and standardized national approach for the application of piscicides by State agencies on National Forest System lands while retaining the Forest Service's authority over such use. Public comment is invited and will be considered in development of the final rule.

DATES: Comments must be received, in writing, January 16, 2007.

ADDRESSES: Written comments concerning this notice should be addressed to Dr. Jesus A. Cota at Forest Health Protection Staff, 1601 N. Kent St., RPC, 7th Floor (FHP), Arlington, VA 22209. Comments for Dr. Jesus A. Cota may be sent via e-mail to *pesticiderule@fs.fed.us* or via facsimile to (703) 605–5353.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Service office of the Forest Health Protection staff, 1601 N. Kent St., RPC, 7th Floor (FHP), Arlington, VA 22209. Due to security requirements, visitors are encouraged to call ahead to (703) 605–5352 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Jesus A. Cota at Forest Health Protection Staff, at (703) 605–5344 (e-mail: *jcota@fs.fed.us*) or Ronald Dunlap at Watershed, Fish, Wildlife, Air and Rare Plants Staff, at (202) 205–1790 (e-mail: *rldunlap@fs.fed.us*).

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: State agencies and the Forest Service share responsibility for the protection and management of fish and wildlife populations on National Forest System (NFS) lands. A number of Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife populations by affirming that the statutes do not affect the jurisdiction or responsibilities of the States with respect to wildlife and fish on the National Forests; see the Organic Administration Act at 16 U.S.C. 480; the Multiple-Use Sustained-Yield Act at 16 U.S.C. 528; the Sikes Act at 16 U.S.C. 670h; the Federal Land Policy and Management Act at 43 U.S.C. 1732; and the Wilderness Act at 16 U.S.C. 1131–1136. In acknowledging State

jurisdiction and responsibilities, however, these statutes do not diminish the Federal Government's coexistent jurisdiction and responsibilities.

Overall, the Forest Service and State agencies have enjoyed long-standing and mutually beneficial partnerships. On some management issues, such as hunting and fishing, the States generally exercise virtually all management responsibility. On other issues, Forest Service and the States exercise their responsibilities cooperatively, with the State and Forest Service working out issues in order to satisfy any concerns. This cooperative, informal approach has generally worked except on occasions when Forest Service special authorizations have been required. Under the current rules, the States must obtain special use authorization for the application of pesticides, including piscicides, on units of the NFS.

Piscicides are chemicals intended to kill fish. Piscicides are the most effective means of eradicating invasive species or making habitat—streams, lakes or other bodies of water—available for desired aquatic species. A State piscicide project is generally understood to include the following activities: The ground transportation of supplies, equipment and personnel to and from the project site; the construction or setup of a temporary downstream barrier to ensure that target species do not escape the application of the piscicide (typically a block net, in place for a month or less); the application of an Environmental Protection Agency (EPA) approved piscicide to the target waters; the detoxification of the waters by chemically neutralizing the effects of the piscicide; and pretreatment and post treatment monitoring.

The proposed amendment to the rule would strengthen the cooperative relationship between the Forest Service and the State(s) by setting criteria for State piscicide use on NFS lands; where a State piscicide use meets the criteria, it may proceed. The rule does not change the Forest Service's ability to use a closure order to preclude the action where necessary to protect NFS resources.

Not requiring the special use authorization process for State piscicide applications would reduce the time between a State's proposing an action and the execution of that action. A State would know beforehand the precise information it must supply the Forest Service before it can proceed with a piscicide project and would need not wait for a special use authorization to be granted.

Timing is important in accomplishing piscicide projects, particularly with respect to control and eradication of invasive species. Where rapid control or eradication of invasive species is not possible, risk to native fish can increase dramatically, as can control costs. The special use authorization process has often resulted in increased costs or failure to achieve management goals, such as control of invasive species; recovery, downlisting or delisting of threatened and endangered species; and has caused friction in long-standing State-Federal partnerships.

The standard set of criteria established in the rule also would provide consistency from NFS unit to unit, and State to State. Currently, a State with a number of national forests within its borders may have to meet a different set of criteria or conditions for each of those NFS units. Over time, a State may have to meet a different criteria within the same NFS unit. Under the proposed rule, a State would know the criteria it must meet on any NFS unit. Moreover, the same criteria would apply to every State. The criteria have been designed to eliminate duplicative State and Federal procedures while ensuring adequate protection of resources.

Although the Forest Service proposes to change the manner in which it exercises its responsibilities, it does not anticipate that this rule change would change the frequency and manner of piscicide use by States on NFS land. State and Forest Service cooperation has always extended to such use, and, as described in the ''Section-by-section explanation of the proposed rule,'' the criteria that would be established in this Rule are practices that generally have been required by Forest Service authorizations, and by the States themselves on their operations. The reporting requirements also would formalize a long-standing practice. The Forest Service is required to maintain records of restricted-use pesticides and to annually report all pesticide use on its lands. In addition, field units are required to report to the Washington Office all accidents and incidents involving pesticides; this provision is included to ensure that the Forest Service will have a thorough accounting of use on National Forest System lands.

The rule does not change the requirement that States obtain a special use authorization to use piscicides within congressionally designated wilderness and wilderness study areas, as well as designated wild and scenic rivers. The Wilderness Act provides that ''each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area,'' and also that ''except as necessary to meet minimum requirements for the administration of the area for the purposes of this Act * * * there shall be no * * * use of motor vehicles, motorized equipment or motorboats, * * * no other form of mechanical transport, and no structure or installation within any such area.'' The Forest Service must retain its authority to determine whether a proposed piscicide application would be appropriate in wilderness, particularly where motorized equipment or installation of temporary structures would be involved, as is often the case. Likewise, it is appropriate for the Forest Service to require that States obtain special use authorization within the Wild and Scenic Rivers System, to ensure protection of the values for which each river has been added to the National Wild and Scenic Rivers System (see 16 U.S.C. 1272). Because Congress typically requires the Forest Service to manage wilderness study areas so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System (see, for example the Montana Wilderness Study Act, Pub. L. 95–150, 91 Stat 1243 (1977)), the U. S. Department of Agriculture (USDA) believes that the Forest Service also should require special use authorization for State piscicide actions in such areas.

Section-by-Section Explanation of the Proposed Rule

Proposed Changes to 36 CFR Part 241

A portion of the text of the current section 241.2 would be designated as paragraph (a), and new paragraphs (b)(1) through (b)(4)(ii) would be added to specifically refer to State application of piscicides within the National Forest System.

Paragraph (b)(1) would require the State to provide notice of a piscicide project to the supervisor for the NFS unit within which the project would take place. This provision requires communication between State and Federal agencies regarding any fish or wildlife management project the State undertakes on Federal land, and specifies the particular information to provide regarding the piscicide project. The proposed rule provides that 60 days prior to the date the project is to take place, the State is to give the Forest Service notice of the reason for the project; its location and scope; the specific piscicide and amount to be applied; the method of application; and the time period in which the project would occur. The qualifications of the persons to apply the piscicide must be

stated. The Forest Service believes that 60 days is an appropriate time period in which the Forest Service can consider whether it has concerns about the project, and the State and Forest Service can address and satisfy those concerns. The information required to be provided would help ensure that the Forest Service has sufficient information to know that the project would fit the criteria set out in paragraphs (b)(3)(i) through (b)(3)(vi), so that the project may proceed.

Paragraph (b)(3) on criteria allows the Forest Service to waive the 60-day notice period in an emergency, when rapid action is necessary, such as to eradicate an invasive species that has the potential to increase quickly.

Paragraph (b)(2) identifies reporting requirements. By December 1 of each year, the State is required to report to the applicable supervisor all piscicide projects the State has conducted during the Federal fiscal year (October 1–September 30) on the administrative unit under the supervisor's responsibility. The information is necessary for the Forest Service field units to fulfill their recording of restricted-use pesticides as required under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and to report to the Washington Office all pesticide use on National Forest System lands. This section also requires immediate reporting of accidents or incidents involving piscicide use on the administrative unit. Examples of accidents or incidents to report are: piscicide spills, crashes of aircraft or vehicle with piscicides on board, and injury or fatality of application personnel for any reason in the preparation or execution of the project piscicide.

Paragraph (b)(3)(i) through (vi) provides that States need not obtain special use authorization for piscicide projects that are outside Congressionally designated Wilderness, Wilderness Study Areas, and designated Wild and Scenic Rivers and that meet certain criteria set out in that paragraph. The project must be in compliance with all Federal laws and regulations, and must be consistent with the Land and Resource Management Plan for the administrative unit within which the project will occur, in addition to any applicable or relevant aquatic resource recovery plan or species management plan. The piscicide to be applied must be registered for that purpose with EPA, and restricted use piscicide must be applied by certified personnel or under the supervision of a certified pesticide applicator.

The purpose of the project must be for the management of aquatic resources. The Forest Service expects that projects would continue to be carried out for the reintroduction, maintenance, or enhancement of native and desired species, particularly in habitat occupied by invasive species; and to maintain sport fisheries. Also, the project must be designed to ensure that there is no long-term impairment to ecosystem functions, or unreasonable interference with other uses on National Forest System lands. Some short-term impairment, such as a temporary reduction in macro-invertebrate populations, is a common consequence of piscicide application, and would not preclude a piscicide project that meets all the criteria in the rule from going forward on National Forest System lands. A project of such extent and intensity that would result in long-term impairment of ecosystem functions, however, would not meet this criterion. In addition, the project must be designed so that it would not interfere with other uses, such as shortly before a holiday weekend when many visitors may be in the area.

The project design must include a plan for monitoring to determine that the project was effective in meeting its objectives, that detoxification successfully neutralized the piscicide, the extent, if any, to which the piscicide had drifted, and the impacts to non-target species within and outside the treatment area. Like the other criteria, this criterion is not expected to impose a new responsibility on the States, as monitoring is always an integral part of State piscicide projects. Finally, the State must have reported on past piscicide projects, as required by this section at (b)(2).

Paragraph (b)(4)(i) would confirm that State piscicide projects within Congressionally designated Wilderness, Wilderness Study Areas and designated Wild and Scenic Rivers remain subject to Forest Service special use authorization requirements. Paragraph (b)(4)(ii) affirms the normal requirement that States, engaged in wildlife and fish management activities including piscicide projects, must obtain a special use authorization for access over closed roads, trails or areas, or for construction or placement of structures and installations on NFS lands, unless a structure or installation would be temporary and necessary to a piscicide project.

Proposed Changes to 36 CFR Part 251

Part 251, Subpart B governs special use authorization requirements on National Forest System lands and identifies the categories of activities that require a special use authorization and those that do not. The change to section 251.50 would include the application of piscicides by State fish and game management agencies on National Forest System lands, consistent with proposed 36 CFR 241.2(b), in the category of activities that do not require a special use authorization.

Proposed Changes to 36 CFR Part 261

Part 261 governs the prohibitions of activities on National Forest System lands. Section 261.9(f) specifically prohibits the use of pesticides on National Forest System lands and also identifies the exceptions to this prohibition. The application of piscicides by State fish and game management agencies in accordance with the criteria in section 241.2(b) would be included in this list of exceptions. The phrase ''other minor uses'' would be removed from the exceptions in this list. The phrase is being removed to acknowledge that special use authority may be issued for any pesticide use, not just minor uses.

Section 261.10(a) currently lists activities, including constructing, placing or maintaining any kind of road, trail, structure, fence, enclosure, communications equipment, or other improvement on National Forest System lands or facilities that are prohibited except as permitted under the use of such written instruments as a special use authorization, contract or operating plan. This section currently states that these activities are prohibited unless the requirement of such a written instrument is waived pursuant to section 251.50(e). Since State piscicide application activities can include the set up or construction of a temporary downstream barrier, those activities listed under paragraph (a) of section 251.50 are being added to section 261.10(a).

Section 261.50 governs the use of closure orders, including the authority, method of posting, and the different reasons for which an order can be issued. The proposed changes to this section would specify the triggers that can result in the issue of a closure order by the Forest Service in order to prohibit a State piscicide project on National Forest System lands. One trigger would be if the criteria listed in 36 CFR 241.2(b) are not met. An additional trigger would include the occurrence of an existing fire incident or other emergency that threatens public safety so that a piscicide application at such time would not be appropiate. The Forest Service believes that it will rarely have to use the proposed closure

authority. The usual cooperative relationships with States should ensure that any problems will be worked out well before the point of issuing an order. Nevertheless, the Forest Service believes it must retain the option to close an area to piscicide use, if necessary.

In summary, the principle change under the proposed rule would be that a special use authorization for State piscicide projects on National Forest Systems lands except in Wilderness and Wilderness Study Areas would no longer be required. Instead, States would be required to meet specific criteria (36 CFR 241.2(b)) to apply piscicides, and the Forest Service will continue to retain final authority over piscicide use on National Forest Service lands by means of closure orders instead of special use authorizations. This change would not apply to piscicide projects proposed in designated Wild and Scenic Rivers and Congressionally designated Wilderness and Wilderness Study Areas. Although piscicide projects in these areas are not prohibited, because of the additional considerations due to the special character of such areas, as defined in the Wild and Scenic Rivers Act and the Wilderness Act, State piscicide projects proposed in these areas would remain subject to Forest Service special use authorization requirements. The practice and frequency of piscicide applications by States on National Forest System lands is not expected to change as a result of the amendment of the rule. The proposed rule change would provide a consistent, standardized national approach for the application of piscicides on National Forest System lands by State agencies, would eliminate the delays associated with the Forest Service special use authorization process, and would strengthen long-term Federal and State partnerships. The benefit to the States, the Forest Service, and the public that would be realized as a result of this proposed rule change is the ability for State agencies to proceed in a timely manner with piscicide projects to achieve aquatic management objectives which include the restoration of aquatic ecosystems, the recovery of listed species, and the rapid response to discoveries of new or rapidly spreading invasive species.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a non-significant rule as defined by E.O 12866. This proposed rule will not have an annual effect of $100 million or more on the economy, nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs. Therefore, it has been determined that this proposed rule is not an economically significant regulatory action.

This proposed rule also has been considered in light of the Regulatory Flexibility Act, as amended, (5 U.S.C. 601 *et seq.*). In promulgating this proposed rule, publication of an advance notice of proposed rulemaking was not required by law. Further, it has been determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities as defined by that act. Therefore, it has been determined that preparation of a regulatory flexibility analysis is not required for this proposed rule.

Environmental Impact

Section 31.11a of Forest Service Handbook 1909.15 (69 FR 40591; July 6, 2004) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule. Moreover, this proposed rule itself has no impact on the human environment. Therefore, it has been determined that preparation of an environmental assessment or an environmental impact statement is not required in promulgating this proposed rule.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 12612 and has made a preliminary assessment that the proposed rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time.

Consultation With Tribal Governments

This proposed rule has been reviewed under E.O. 13175 of November 6, 2000, ''Consultation, and Coordination With Indian Tribal Governments.'' This proposed rule does not 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. Nor does this proposed rule impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Therefore, it has been determined that this proposed rule does not have tribal implications requiring advance consultation with Indian tribes.

No Takings Implications

This proposed rule has been reviewed for its impact on private property rights under Executive Order 12630. It has been determined that this proposed rule does not pose a risk of taking private property.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Energy Effects

This proposed rule has been reviewed under E.O. 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This proposed rule will not have a significant adverse effect on the supply, distribution, or use of energy. Nor has the Office of Management and Budget designated this rule as a significant energy action. Therefore, it has been determined that this proposed rule does not constitute a significant energy action requiring the preparation of a Statement of Energy Effects.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this proposed rule, (1) All State and local laws and regulations that conflict with this rule or that would impede full implementation of this rule will be preempted (2) no retroactive effect would be given to this proposed rule; and (3) this proposed rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the agency has assessed the effects of this proposed rule on State, local, and tribal governments, and on the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects

36 CFR Part 241

Fish, Intergovernmental relations, National forests, Wildlife, Wildlife refuges.

36 CFR Part 251

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

36 CFR Part 261

Law enforcement, National Forests.

For the reasons stated in the Preamble, the Forest Service proposes to amend 36 CFR Chapter II as follows:

PART 241—FISH AND WILDLIFE

1. The authority citation for part 241 continues to read as follows:

Authority: 16 U.S.C. 472, 539, 551, 683.

Subpart A—General Provisions

2. Revise § 241.2 to read as follows:

§ 241.2 Cooperation in wildlife management.

The Chief of the Forest Service, through the Regional Foresters and Forest Supervisors, shall determine the extent to which national forests or portions thereof may be devoted to fish and wildlife protection in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State concerned, will formulate plans for securing and maintaining desirable populations of wildlife species, and may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in:

(a) The planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands;

(b) The application of piscicides within the National Forest System by State fish and game management agencies.

(1) *Notice.* Written notice of a project involving the application of piscicides by State agencies on National Forest System lands must be provided to the Supervisor for the affected administrative unit and must:

(i) Precede the project by at least 60 days, unless the Forest Service agrees that an emergency requiring response within a shorter period of time exists.

(ii) Include a description of the purpose of the project, the location and scope of the project, the piscicide to be applied, the amount applied, the method of application, the qualifications of the persons that will apply the piscicides, the time period within which the piscicides will be applied, and the monitoring plan for the project.

(2) *Reporting.* By December 1 of each year the State must provide to the Supervisor, in writing, information on piscicide use within the administrative unit under the Supervisor's jurisdiction, and monitoring results for such uses, including: The name of the piscicide active ingredients (AI), the formulation used, the amount applied, and the total area within the administrative unit treated during the Federal fiscal year. The State shall immediately report any accident or incident involving piscicides occurring on National Forest System lands to the Supervisor for the administrative unit where the accident or incident occurred.

(3) *Criteria for State piscicide projects outside Wild and Scenic Rivers, Wilderness, and Wilderness Study Areas.* Forest Service special use authorization is not required for State piscicide projects that would occur outside designated Wild and Scenic Rivers or Congressionally designated Wilderness and Wilderness Study Areas and that meet the following criteria:

(i) The project is in compliance with all Federal laws and regulations;

(ii) The project is consistent with the Land and Resource Management Plan plus any relevant Aquatic Resource Recovery Plan and Species Management Plan;

(iii) The piscicides to be applied are currently registered with EPA and restricted-use piscicides will only be applied by a certified pesticide applicator or those under the supervision of a certified pesticide applicator;

(iv) The purpose of the project is for the management of aquatic resources;

(v) The project is designed in concert with the local Forest to address any issues related to ecosystem functions and existing uses of the National Forest System lands;

(vi) The project design includes a plan for monitoring within 60 days of treatment, including:

(A) Effectiveness monitoring to determine whether project objectives were met;

(B) Detoxification monitoring to determine whether piscicide neutralization was successful; and

(C) Non-target monitoring to determine piscicide drift and impacts to non-target species.

(vii) The State has provided reports on past piscicide use as required by paragraph (2).

(4) *Special Use Authorization Requirements.*

(i) Piscicide projects within designated Wild and Scenic Rivers or Congressionally designated Wilderness and Wilderness Study Areas are subject to special use authorization requirements of 36 CFR part 251 subpart B.

(ii) Nothing in this Rule exempts a State from the requirement to obtain a special use authorization in accordance with 36 CFR part 251 subpart B, for any purpose to gain access over a closed road or trail, or through a closed area; or to construct structures or installations beyond those temporary structures or installations that are a necessary part of a piscicide project.

PART 251—LAND USES

Subpart B—Special Uses

3. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 4601–6a, 4601–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

4. Amend § 251.50 by revising paragraph (a) to read as follows:

§ 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources,

except those authorized by the regulations governing sharing use of roads (§ 212.9); grazing and livestock use (part 222); the sale and disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223); minerals (part 228); and the application of piscicides by State fish and game management agencies outside of designated Wild and Scenic Rivers and Congressionally designated Wilderness and Wilderness Study Areas (part 241) are designated ''special uses.'' Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraphs (c) through (e)(3) of this section.

* * * * *

PART 261—PROHIBITIONS

5. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

Subpart A—General Prohibitions

6. Revise § 261.9(f) to read as follows:

§ 261.9 Property.

* * * * *

(f) Using any pesticide except for:

(1) Personal use as an insect repellent;

(2) Application of piscicides on National Forest System lands by State fish and game management agencies in accordance with section 241.2(b) of this chapter;

(3) Other pesticide use authorized pursuant to part 251, subpart B of this chapter.

* * * * *

7. Revise § 261.10 (a) to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communications equipment, or other improvement on National Forest System lands or facilities without a special use authorization, contract, or approved operating plan, unless such authorization, contract, or operating plan is waived pursuant to section 251.50(a) or (e) of this chapter.

* * * * *

Subpart B—Prohibitions in Areas Designated by Order

8. Amend § 261.50 by adding paragraphs (g) to read as follows:

§ 261.50 Orders.

* * * * *

(g) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders to close an area to prohibit piscicide applications by State agencies under the following circumstances:

(1) A proposed State piscicide application that does not meet the requirements specified under 36 CFR 241.2(b), or

(2) Existing fire incident or other emergencies that threaten public safety.

Dated: October 18, 2006.

Dale N. Bosworth,

Chief, Forest Service.

[FR Doc. E6–19197 Filed 11–15–06; 8:45 am]

BILLING CODE 3410–11–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2006–0497; FRL–8243–1]

RIN A2060–AN96

Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing a facility-specific nitrogen oxides (NO_X) standard for a steam generating unit which simultaneously combusts fossil fuel and chemical by-product/waste at the Innovene USA facility located in Lima, Ohio. New source performance standards limiting emissions of, among other pollutants, NO_X from industrial-commercial-institutional steam generating units capable of combusting more than 100 million British thermal units per hour were promulgated on November 25, 1986. The standards limit NO_X emissions from the combustion of fossil fuels by themselves or in combination with other fuels or wastes. The standards include provisions for the establishment of facility-specific NO_X standards for steam generating units which simultaneously combust fossil fuel and chemical by-product/waste under certain conditions.

DATES: *Comments.* Comments must be received on or before December 18, 2006, unless a hearing is requested by November 27, 2006. If a timely hearing request is submitted, the hearing will be held on December 1, 2006 and we must receive written comments on or before January 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0497, 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:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC. Such deliveries are only accepted 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 listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

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. The Docket Center's mailing address for U.S. mail and the procedures for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0497. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site are ''anonymous access'' systems, 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://regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *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 Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Public Hearing. If a public hearing is held, it will be held at EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, North Carolina or at an alternate site nearby.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Eddinger, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5426; facsimile number (919) 541–5450; electronic mail address *eddinger.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The only regulated entity that will be affected by this proposed amendment is the Innovene USA facility located in Lima, Ohio.

What Should I Consider as I Prepare My Comments for EPA?

Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI to only the following address: Mr. James Eddinger, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2006–0497.

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Public Hearing. If a public hearing is held, it will be held on December 1, 2006 at the EPA facility, Research Triangle Park, NC, or an alternative site nearby. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Pamela Garrett, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Research Triangle Park, NC 27711, telephone number (919) 541–7966, at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Garrett to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be posted on the Technology Transfer Network's (TTN) policy and guidance page *http://www/epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Direct Final Rule. A direct final rule identical to this proposal is published in the Rules and Regulations section of this **Federal Register**. If we receive any material adverse comment pertaining to the amendment in the proposal, we will publish a timely notice in the **Federal Register** informing the public that the amendments are being withdrawn due to adverse comment. We will address all public comments concerning the withdrawn amendments in a subsequent final rule. If no material adverse comments are received, no further action will be taken on the proposal, and the direct final rule will become effective as provided in that action.

The regulatory text for this proposal is identical to that for the direct final rule published in the Rules and Regulations section of this **Federal Register**. For further supplemental information, the detailed rationale for the proposal, and the regulatory revisions, see the information provided in the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

Regulatory Flexibility Act

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

For purposes of assessing the impacts of this proposed rule amendments on

small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hours per year of electricity usage, depending on the size definition for the affected North American Industry Classification System code; (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 this proposed rule amendment on small entities, we conclude that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule amendment will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

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.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 9, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–19385 Filed 11–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R07–RCRA–2006–0877; FRL–8242–8]

Adequacy of Missouri Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Missouri's Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. On April 14, 2006, Missouri submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

DATES: Comments on this proposed action must be received in writing by December 18, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0877 by one of the following methods:

1. *http://www.regulations.gov* : Follow the on-line instructions for submitting comments.
2. *E-mail*: *Mclaughlin.chilton@epa.gov.*
3. *Mail:* Send written comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier*. Deliver your comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention 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: Chilton McLaughlin at (913) 551–7666, or by e-mail at *Mclaughlin.chilton@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving Missouri's Research, Development and Demonstration permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments to this action. 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: November 6, 2006.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E6–19383 Filed 11–15–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA–R07–RCRA–2006–0878; FRL–8242–5]

Adequacy of Nebraska Municipal Solid Waste Landfill Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve Nebraska's Research, Development and Demonstration (RD&D) permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. On September 27, 2006, Nebraska submitted an application to the EPA seeking Federal approval of its RD&D requirements and to update Federal approval of its MSWLP program.

DATES: Comments on this proposed action must be received in writing by December 18, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0878 by one of the following methods:

1. *http://www.regulations.gov* : Follow the on-line instructions for submitting comments.
2. *E-mail*: *Mclaughlin.chilton@epa.gov.*
3. *Mail*: Send written comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier*. Deliver your comments to Chilton McLaughlin, EPA Region 7, Solid Waste/Pollution Prevention 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: Chilton McLaughlin at (913) 551–7666, or by e-mail at *Mclaughlin.chilton@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving Nebraska's Research, Development and Demonstration permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments to this action. 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: November 6, 2006.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E6–19387 Filed 11–15–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, 390, and 391

[Docket No. FMCSA–1997–2210]

RIN 2126–AA10

Medical Certification Requirements as Part of the CDL

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to merge information from the medical certificate into the Commercial Driver's License (CDL) process as required by section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). This NPRM would implement section 215 by requiring interstate CDL holders subject to the physical qualification requirements of the FMCSRs to provide a current original or copy of their medical examiner's certificates to their State Driver Licensing Agency (SDLA). It would also require the SDLA to record on the Commercial Driver License Information System (CDLIS) driver record the certification the driver made regarding applicability of 49 CFR part 391, and, for drivers subject to part 391, the medical status information proposed in this NPRM. The driver's certification as to the applicability of part 391 and the specified medical certification status information would be made available to personnel authorized in 49 CFR part 384 via CDLIS and National Law Enforcement Telecommunication System (NLETS) electronic inquiries, and on the CDLIS motor vehicle record (CDLIS MVR) obtained by employers and drivers. CDL drivers would no longer be required to carry the medical examiner's certificate, because their certification status would be verified electronically.

DATES: Comments must be received by February 14, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–1997–2210 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the Agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2126–AA10). Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please refer to the Privacy Act heading for **FURTHER INFORMATION CONTACT**.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Room 8301, Washington, DC 20591; Telephone: (202) 366–4001; E-mail address: *Maggi.Gunnels@dot.gov.*

SUPPLEMENTARY INFORMATION:

Outline of the NPRM

A. Legal Basis
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  2. Medical Certification of CDL Drivers Subject to Part 391
  3. Current CDL Requirements Regarding Physical Qualifications
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List of Subjects

A. Legal Basis

Section 215 of MCSIA (Pub. L. 106–159, 113 Stat. 1767 (Dec. 9, 1999)) (set out as a note to 49 U.S.C. 31305) provides that: ''The Secretary shall initiate a rulemaking to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses.'' The population of drivers required to obtain a CDL is different from the population of drivers required to obtain a medical certificate. For that reason, in order to implement this congressional mandate, the proposed rule reconciles the differences between the scope of the Agency's authority to regulate the physical qualifications of drivers of commercial motor vehicles (CMVs) and its authority to establish requirements for the issuance of commercial driver's licenses. The proposed rule would place requirements on only those drivers required to obtain a CDL from a State who are also required to obtain a certificate from a medical examiner indicating that they are physically qualified to operate a commercial motor vehicle in interstate commerce. The proposed rule would also establish requirements to be implemented by States that issue CDLs to such drivers. These requirements would ensure that accurate and timely information about the medical examiner's certificate would be contained in the electronic CDLIS driver record maintained in compliance with the CDL regulations. Finally, the proposed rule would require States to take certain actions against CDL holders if such information is not kept accurate and up-to-date in a timely manner.

1. Authority Over Drivers Affected

a. Drivers Required To Obtain a Medical Certificate. FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce. (49 U.S.C. 31136(a)(3) and 31502(b)) For this purpose, CMVs are defined in 49 U.S.C. 31132(1) and 49 CFR 390.5. There are four basic categories of vehicles covered by this definition:

- Those with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW), whichever is greater, of at least 10,001 pounds;
- Those designed or used to transport for compensation more than 8 passengers, including the driver;
- Those designed or used to transport not for compensation more than 15 passengers, including the driver; or
- Those used to transport hazardous materials that require a placard on the vehicle under 49 CFR subtitle B, chapter I, subchapter C.

In addition, the vehicles in these categories must be ''used on the highways in interstate commerce to transport passengers or property.'' *(Id.)* Interstate commerce, for purposes of this provision, is based on the definitional provisions of 49 U.S.C. 31132(4) and 31502(a) and long-standing administrative and judicial interpretations of those sections (and their predecessors), and defined in 49 CFR 390.5 as follows:

> Interstate commerce means trade, traffic, or transportation in the United States—
> (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
> (2) Between two places in a State through another State or a place outside of the United States; or
> (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

With certain limited exceptions,[1] FMCSA has fulfilled the statutory mandate of 49 U.S.C. 31136(a)(3) by establishing physical qualification standards for all drivers covered by these provisions. (49 CFR 391.11(b)(4)). Such drivers must also obtain from a medical examiner a certification indicating that the driver is physically qualified to drive a CMV. (49 CFR 391.41(a), 391.43(g) and (h)). The proposed rule would not make any change in the requirements for obtaining a medical certificate. But, on the basis of this authority, it would require drivers subject to the medical examiner's certificate requirement who are also required to obtain a CDL, to furnish the original or a copy of the certificate to the licensing State. As explained in the Summary Cost Benefit Analysis in this Notice, the proposed rule should improve compliance by CMV operators with the physical qualification standards in the FMCSRs. By doing so, the proposed rule would aid the Agency in ensuring that the physical condition of CMV operators is adequate to enable them to operate safely and that such operation does not have a deleterious effect on their health, as required by section 31136(a)(3) and (4). The other minimum requirements of section 31136, set out in subsections (a)(1) and (2), are not applicable to the proposed rule, because it does not involve either the safety of CMV equipment or the operational activities of the operators.

b. Drivers Required To Obtain a CDL. The authority for FMCSA to require an operator of a CMV to obtain a CDL rests on different statutory provisions than those authorizing the promulgation of physical and medical qualifications for such operators; the authority is found in 49 U.S.C. 31302. The requirement to obtain a CDL is applicable to drivers of specified CMV categories that are different from the categories specified in 49 U.S.C. 31132(1) and the implementing regulations, as discussed in the preceding section. The four categories of CMVs for which an operator is required to have a CDL, as defined in 49 U.S.C. 31301(4) and specified in 49 CFR 383.5, are:

- Those with a gross combination weight rating or gross combination weight, of at least 26,001 pounds, including towed units with gross vehicle weight rating or gross combination weight of more than 10,000 pounds;
- Those with a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds;
- Those designed to transport at least 16 passengers, including the driver; or
- Those of any size used to transport either hazardous materials that require a placard on the vehicle under 49 CFR part 172, subpart F, or any quantity of a material listed as a select agent or toxin under 42 CFR part 73.

In addition, the vehicles involved must be used ''in commerce to transport passengers or property.'' (49 U.S.C. 31301(4)). The term ''commerce'' is defined for the purpose of the CDL statutes and regulations as:

> trade, traffic, and transportation—
> (A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or
> (B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause. (49 U.S.C. 31301(2). *See also* 49 CFR 383.5.)

However, the statutory provisions governing CDLs also contain a limitation on the scope of the authority granted to FMCSA. The provision at 49 U.S.C. 31305(a)(7) states that:

> The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—
> * * * * *
> (7) shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, *to the extent the regulations apply to the individual;* (Emphasis added).

The current CDL provisions require each CDL driver either to certify that he/she meets the qualification requirements contained in 49 CFR part 391 or, if the driver expects to operate entirely in intrastate commerce and is not subject to part 391 but is subject to State driver qualification requirements, to certify that he/she is not subject to part 391. (49 CFR 383.71(a)(1)).

Therefore, reading all of these statutory provisions as a whole, FMCSA interprets section 215 of MCSIA to be applicable only to CDL holders or applicants operating or intending to operate in interstate commerce, as

[1] *See* 49 CFR 390.3(f) and 391.2.

defined in 49 CFR 390.5. The proposed rule would require CDL holders and applicants operating in interstate commerce to furnish evidence of their physical qualifications (in addition to certifying), by providing the required medical certificate to the State issuing the CDL.

2. Authority To Regulate State CDL Programs

FMCSA, in accordance with 49 U.S.C. 31311 and 31314, has authority to prescribe procedures and requirements for the States to observe in order to issue CDLs. (*See, generally*, 49 CFR part 384.) In particular, under section 31314, in order to avoid loss of funds apportioned from the highway trust fund, each State shall comply with the following requirement:

(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by [FMCSA] under section 31305(a) of [Title 49 U.S.C.]. (49 U.S.C. 31311(a)(1). *See also* 49 CFR 384.201.).

If a State does not comply with these requirements, it is also subject to possible loss of grant funds under the Motor Carrier Safety Assistance Program (MCSAP). (*See* 49 CFR 350.217.).

On the basis of this authority, the proposed rule would require States issuing CDLs to drivers operating or intending to operate in interstate commerce, to obtain all information on the required medical examiner's certificate for entry into the CDLIS driver record. The proposed rule would also require the States to take certain specified actions if such information is not provided by the CDL applicant or holder.

B. Background

1. Current CDL Information and Recordkeeping Systems

The Commercial Driver's License Information System or CDLIS is the existing information system that serves as a clearinghouse and depository of all information about the licensing, identification, and disqualification of CDL operators of commercial motor vehicles. This NPRM uses the term ''CDLIS driver record'' as the name of the electronic record containing a CDL driver's status and history located in the database of the driver's State-of-Record.[2] The motor vehicle record (MVR) is the term, that by convention and usage, generally describes the driver history information provided from the driver record to the driver or employer by a SDLA, usually for a fee. Historically the FMCSRs have used a variety of terms such as driver record or driving record in the context of various requirements for motor carriers to investigate and obtain the driving history and status of all operators of commercial motor vehicles, both CDL and non-CDL. This NPRM proposes to standardize usage of the terms CDLIS driver record for CDL drivers, and driver record for non-CDL drivers to refer to the computer record stored by the SDLA. It further proposes to standardize usage of the terms CDLIS motor vehicle record (CDLIS MVR) for CDL drivers and motor vehicle record (MVR) for non-CDL drivers, to mean the driver history information provided to the driver or employer by the SDLA from the driver record.

Different methods are used for obtaining responses from the CDLIS driver record by different user groups. Federal and State MCSAP personnel largely use the FMCSA CDLIS-Access software developed and operated by FMCSA, and provided to these personnel. State and local police performing traffic enforcement as part of MCSAP or other operations, predominantly use the National Law Enforcement Telecommunications System to obtain whatever form of the driver status and/or history information the SDLA provides from the CDLIS driver record. Drivers and motor carriers have access to CDLIS driver record information by purchasing the MVR from the SDLA, subject to the limitations in 49 CFR 384.225(e).

2. Medical Certification of CDL Drivers Subject to Part 391

With limited exceptions, all drivers who operate CMVs, as defined in 49 CFR 390.5, in interstate commerce must comply with the qualification requirements of 49 CFR part 391 (49 CFR 391.1). This includes CDL drivers operating in interstate commerce (49 U.S.C. 31305(a)(7)).

There are exceptions from the medical certification requirement provided under 49 CFR 390.3(f) including, for example, drivers engaged in transportation performed by Federal, State or local governments, and school bus drivers providing school to home and home to school transportation. Additional exceptions are also provided under 49 CFR 391.2 and include drivers engaged in certain custom farm operations, the seasonal transportation of bees using CMVs controlled and operated by a beekeeper, and the operation of certain farm vehicles.

Each driver subject to the physical qualification requirements must be examined and certified by a medical examiner, as defined in 49 CFR 390.5, at least once every 2 years. For certain drivers, such as those with severe cases of hypertension or other acute medical conditions, more frequent medical reexamination may be required by medical examiners to determine whether the driver can still be certified.

Medical examiners document the results of the examination on a medical examination report (also referred to as the ''long form''). If the medical examiner determines that a driver is physically qualified in accordance with 49 CFR 391.41(b), the examiner certifies the driver meets the physical qualification standards by completing a form substantially in accordance with the medical examiner's certificate contained in 49 CFR 391.43. The certificate also contains check boxes indicating whether the driver is subject to any restrictions while operating a CMV, such as wearing corrective lenses or a hearing aid, or whether the driver was granted a medical variance and thus the certificate must be accompanied by a medical exemption document or a skill performance evaluation (SPE) certificate.

A driver granted an exemption or SPE certificate must carry an original or copy of the accompanying documentation, e.g., exemption document or SPE certificate, at all times while operating a CMV in interstate commerce. *See, e.g.,* 49 CFR 391.49(j)(1). The driver must also provide an original or copy of the Medical Examiner's certificate to the employing motor carrier who must retain it in the driver's qualification file (sections 391.51(b)(7) and 391.51(d)(4)).

3. Current CDL Requirements Regarding Physical Qualifications

Before the enactment of section 215 of MCSIA, the Commercial Motor Vehicle Safety Act (CMVSA) provided that FMCSA ''may require issuance of a certification of fitness to operate a commercial motor vehicle to an individual passing the tests * * *'' (49 U.S.C. 31305(a)(8)). Because the authority is permissive, not mandatory, the current regulations that implement the CDL program only require the States to obtain a certification from the driver that either the driver qualification provisions of 49 CFR part 391 apply, or that the driver operates entirely in intrastate commerce. Most States meet this requirement by providing an appropriate box on the CDL application form for the driver to check.

[2] ''State of Record'' is the jurisdiction that maintains the CDLIS driver record for every CDL driver licensed within its jurisdiction. See 49 CFR 384.107 and AAMVA, Inc.'s ''Commercial Driver License Information System (CDLIS) State Procedures Manual.''

Drivers are not currently required by the CDL regulations to provide an original or copy of the medical examiner's certificate to the SDLA as proof of the driver's physical qualification to operate a CMV in interstate commerce. Likewise, there are no CDL compliance regulations that require the SDLA to ensure that: (1) The driver's medical certification is accurate; (2) the driver who self certifies he or she is subject to part 391 has a current medical certification; or (3) the medical examiner's certificate for the driver does not expire during the course of the licensing period. Diagram 1, ''Existing System,'' illustrates the current way CDL drivers meet these requirements, and highlights that there is a lack of integration currently between the existing medical certification and CDL licensing processes. The purpose of this NPRM is to address this situation.

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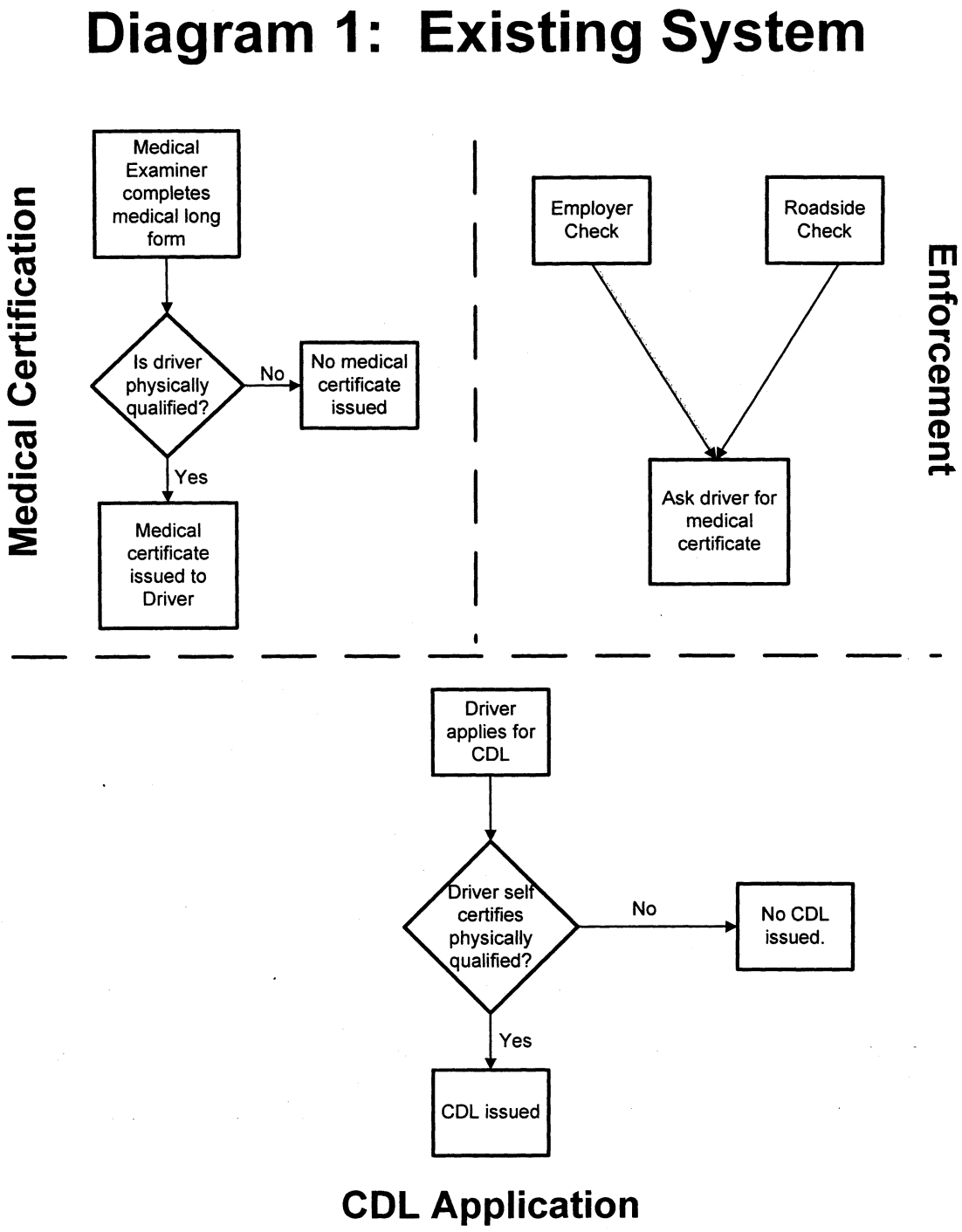

4. State Feasibility Pilot Tests

In September 1990, the Federal Highway Administration (FHWA) (predecessor Agency to FMCSA) entered into a contract with the Association for the Advancement of Automotive Medicine (AAAM) and the American Association of Motor Vehicle Administrators (AAMVA) to assess the feasibility of integrating the medical certification and CDL issuance and renewal processes. AAAM and AAMVA worked with FHWA to help select States to participate in six pilot tests, and determine whether States could assume some level of responsibility for ensuring CDL drivers are certified as physically qualified before a CDL is issued or renewed.

The States selected to test various approaches for merging the medical certification and CDL processes were Alabama, Arizona, Indiana, Missouri, North Carolina and Utah. During the study, each pilot State had to address a variety of budgeting, operational and technical challenges. All six States achieved at least 1 full year of operations data and demonstrated it would be feasible for SDLAs to take a more active role in verifying that a CDL applicant has obtained medical certification such as that being proposed in this rule. For purposes of this NPRM, we briefly discuss the results of the tests. However, more details about the individual concepts tested by each State are in the final report. The final report for the study, entitled ''Prototype State Medical Review Program,'' dated January 31, 1995, is included in the rulemaking docket.

Two States wanted to test the possibility of placing the driver's medical certification status on the CDLIS driver record. Each was successful in demonstrating this could be operationally implemented. During the pilot test, these two States placed information about the medical certification status on the CDLIS driver record and made this information electronically available to the SDLA and, ultimately, to Federal and State enforcement personnel who could use it as part of roadside inspections or traffic enforcement. The other four States explored methods for verifying medical certification as part of issuing the CDL that did not include recording the medical certification status on the driver record. As such, they are not germane to the MCSIA section 215 requirement to make the certificate part of the CDL.

5. Advance Notice of Proposed Rulemaking

In 1994, FHWA issued an advance notice of proposed rulemaking (ANPRM) (59 FR 36338, July 15, 1994) titled ''Commercial Driver Physical Qualifications as Part of the Commercial Driver's License Process.'' The ANPRM requested comments on the concept of requiring the States to verify the medical certification of CMV drivers and include documentation within the States' CDL information systems. The ANPRM indicated the Agency was considering a rulemaking to require State licensing agencies to review and verify the accuracy of the medical examination report (long form), and record documentation of the medical certification status on CDLIS driver record, prior to issuing or renewing a CDL. States would thus ensure that all applicants seeking a CDL for the purpose of operating CMVs in interstate commerce were in compliance with the medical certification standards before issuing the CDL. Medical examination reports would be sent to the SDLA for review and evaluation by a State Medical Review Board to achieve better quality control over the medical certifications issued, before the State could issue a CDL. FHWA prepared a report summarizing all the public comments to the ANPRM, entitled ''Summary of Comments to the ANPRM: CDL Medical Fitness.'' A copy of the report is included in the docket.

6. Negotiated Rulemaking Advisory Committee

After evaluating the public comments received in response to the ANPRM, FHWA announced its intention to form a Negotiated Rulemaking Advisory Committee (Committee) to develop an NPRM for merging the medical certification and CDL issuance and renewal processes. A notice of intent to form the Committee was published in the **Federal Register** on April 29, 1996 (61 FR 18713). The Agency invited interested parties to comment on the proposal to establish the Committee, and to submit applications or nominations for Committee membership. The notice provided a preliminary list of entities identified as interested parties that should be included in the negotiated rulemaking process, either directly as members of the Committee or as part of a broader caucus of similar or related interests.

On July 23, 1996, FHWA published a notice in the **Federal Register** (61 FR 38133) announcing the first meeting of the Committee, the membership, and major issues the Committee would consider. Twenty-five organizations and FHWA were represented on the Committee. The charter for the Committee was approved by the Secretary on July 12, 1996, with an expiration date of July 12, 1998. The Committee held several meetings between August 7, 1996, and November 20, 1997.

Commercial Driver Physical Qualifications Negotiated Rulemaking Advisory Committee

Membership List (Approved by Secretary Peña 7/10/96)

1. Federal Highway Administration
2. American Association of Motor Vehicle Administrators
3. New York (State commercial driver licensing agency)
4. Utah (State commercial driver licensing agency)
5. Wisconsin (State commercial driver licensing agency)
6. Montana (State commercial driver licensing agency)
7. Commercial Vehicle Safety Alliance
8. International Association of Chiefs of Police
9. American Trucking Associations
10. National Private Truck Council
11. National School Transportation Association
12. United Motor Coach Association & American Bus Association (sharing one seat on the committee)
13. Owner-Operator Independent Drivers Association
14. Independent Truckers and Drivers Association
15. Teamsters Union
16. Amalgamated Transit Union
17. Lancer Insurance
18. AI Transport
19. American Insurance Association
20. National Association of Independent Insurers
21. Advocates for Highway and Auto Safety
22. Farmland Industries
23. American College of Occupational and Environmental Medicine
24. Association for Advancement of Automotive Medicine
25. American Academy of Occupational Health Nurses
26. American Academy of Physicians' Assistants

Although the Committee did not reach consensus concerning the major issues considered (and listed in the July 23, 1996, notice), the Committee supported moving forward with a rulemaking proposal focused on improving the availability of information about driver physical qualifications, and recording medical

certification information on the CDLIS driver record. Copies of the Committee's report and all documents considered by the Committee are available in the public docket for this rulemaking.

C. Rulemaking Proposal

1. Highlights of Proposed New CDL Licensing Processes

This rulemaking would apply to all CDL holders who: (1) Operate CMVs as defined in 49 CFR 383.5; and (2) are subject to the driver qualification requirements under 49 CFR part 391. FMCSA proposes in this NPRM to add a requirement that CDL holders to whom 49 CFR part 391 applies must begin providing an original or copy (at the option of the SDLA) of their medical examiner's certificate to their SDLA for recording of information specified in this NPRM on the CDLIS driver record. The States would be provided the flexibility to establish their own processes for receiving this information from drivers. SDLAs would also be required to downgrade a CDL if the driver's medical certification is no longer valid. A ''CDL downgrade'' means the State either: (1) Restricts a previously unrestricted CDL to intrastate transportation or to interstate transportation excepted from part 391 as provided in 49 CFR 390.3(f) or 391.2; or (2) The State removes the CDL privilege entirely from the driver's license.

Diagram 2, Proposed System, illustrates how the CDL and medical certification processes would be integrated. The process begins with obtaining medical certification. The new requirements are for recording the medical examiner's certificate information on the CDLIS driver record, and making the medical certification information available to FMCSA and State licensing and enforcement agencies as part of CDLIS inquiries.

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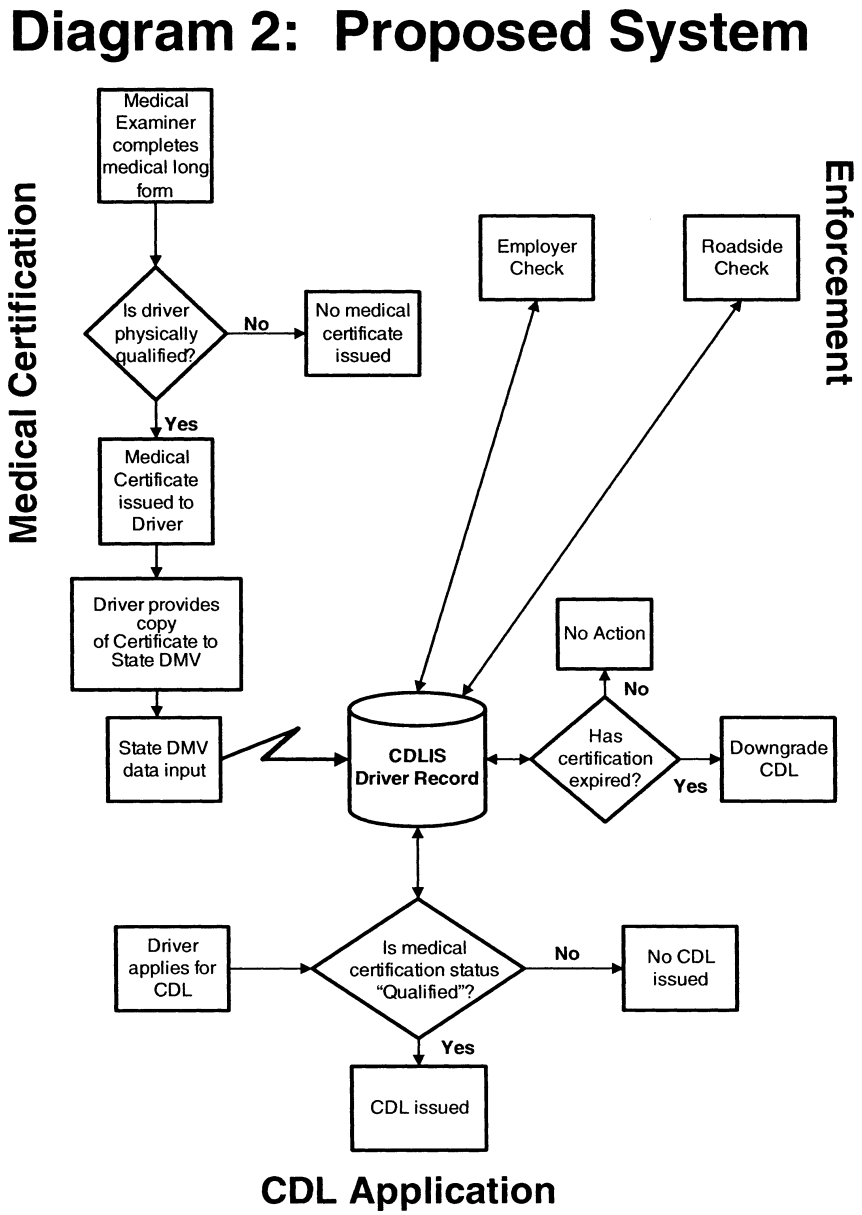

The proposal is to clarify which CDL drivers are subject to part 391 and to require the SDLA to record the driver's certification regarding applicability of part 391 on the CDLIS driver record. For those drivers subject to part 391, they

would be required to provide a current original or copy of their medical examiner's certificate to their SDLA. The SDLA would be required to record the proposed medical certification status information on the CDLIS driver record. Additionally the SDLA would be required to provide the medical certification status information to all authorized personnel specified in 49 CFR 384.225(e) via the established access methods. These methods include CDLIS electronic inquiries, NLETS electronic inquiries for CDL drivers, and on the CDLIS MVR (as specifically defined in proposed 49 CFR 384.105) that all States sell to employers and drivers.

As a result of these CDL recordkeeping and information collection provision proposals, any future actions by the Agency that enhance the quality of the medical examination process would flow directly into the CDLIS driver record and thus would be available for use by all persons who are authorized to access this information. This NPRM, along with planned future rulemaking actions, would reduce the likelihood of States and employing motor carriers receiving improper or false medical certification documents from drivers.

Anticipated future actions include establishing a National Registry of Medical Examiners required by 49 U.S.C. 31149(d). The creation of the National Registry was authorized by section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, 1726 (Aug. 10, 2005)). By that provision, Congress indicated FMCSA should implement a capability to accept as valid only medical examiner's certificates issued by medical examiners on the National Registry. FMCSA anticipates the required action to establish the National Registry would include standards to ensure that medical examiners on the Registry fully understand the physical qualification requirements applicable to drivers subject to part 391, and that enough examiners are certified.

2. Potential Impacts on States

a. *General.* States would continue to require each driver to certify what type of driving they do, either: (1) Subject to the qualification requirements of part 391; or (2) not subject to those requirements. The SDLA in each State would be required to modify its procedures, *e.g.*, forms or computer systems, to make the certification for type of driving electronically accessible from the CDLIS driver record. This includes status and history responses to CDLIS and NLETS inquiries, and on the CDLIS MVR responses generated from the CDLIS driver record and provided to the driver or employer by the SDLA.

The States would also be required to establish procedures for receiving the medical examiner's certificates from drivers subject to part 391. The process would include date stamping the certificate when received by the State; recording, within 2 business days, all required information proposed by this NPRM from the medical examiner's certificate onto the CDLIS driver record for all CDL drivers subject to part 391; and retaining the certificate or an image of the certificate for 6 months. Drivers, employers and enforcement personnel would be depending on the timely posting of the medical examiner's certificate information. The Agency is seeking comments on whether the number of days allowed for posting the medical certification data should be longer than 2 business days, and whether the retention period should be longer than 6 months.

Additionally, the States would be required to verify whether the driver is subject to part 391, and if so that the current medical certification status is designated as ''qualified'' before taking any action to issue, renew, transfer or upgrade that driver's CDL. Further, the States would be required to update the medical certification status of the CDLIS driver record within 2 business days if the certification expires, to show the driver as ''not-qualified.'' The State must then complete a downgrade of the CDL within 60 days of the driver becoming not-qualified. Additionally, the States would be required to notify drivers of any possible CDL downgrade actions resulting from expired medical certification information. (See section ''d. Notification of Drivers,'' below.) The Agency is seeking comments about whether the proposed 2 business days for updating the medical certification status and the proposed 60 days for downgrading the CDL are reasonable and appropriate.

The States would further be required to make the driver's medical certification status information, and if applicable, medical examiner's certificate information, electronically accessible as part of the information obtained from the CDLIS driver record by authorized users, including the FMCSA, State licensing and enforcement agencies, drivers, and employers. Enforcement personnel would obtain this data electronically via CDLIS or NLETS. Employing motor carriers and drivers would obtain it on the CDLIS MVR. The States would have to modify their programs that provide the following responses: CDLIS, CDLIS equivalent for NLETS and CDLIS MVR to include the medical certification status information.

States such as California and Indiana already have programs that require drivers to provide copies of the Medical Examination Report (long form) to the State as part of the State's CDL program. This rule does not propose submission of the long form. Those States already are denying a new or renewal of a CDL or taking action against an existing CDL if the State does not receive an updated certification by the time the previous one expires. They are also placing information about the current medical certification status on the driver record.

FMCSA is also seeking comments on how drivers could verify that the data regarding their medical certification status information is timely and properly recorded on their CDLIS driver record. The normal process for verification and correction of information on the CDLIS driver record is for drivers to go to an SDLA office in their licensing State and obtain a copy of their CDLIS MVR. Because of the ongoing operational nature of updates of medical certification status information, FMCSA requests comments on whether there is a more efficient method by which CDL drivers could accomplish this data quality review of their medical certification status information.

b. *States Would Record Additional Specified Data if the Driver Is Subject to Part 391.* This proposal builds on the proposal developed by the negotiated rulemaking advisory committee. The SDLAs would become the keepers of the record for the medical examiner's certification information. The SDLA would then become the primary source for verification of medical certification status. It is therefore critical that the States record enough information to enable enforcement officials to trace the medical examiner's certificate back to the medical examiner in cases where investigations occur and find there are problems with the driver's certification.

FMCSA would require States to modify their information systems to add new data fields to the CDLIS driver record. One data field would record which of the two possible certifications the driver made regarding the applicability of part 391.

If the driver certifies he or she is subject to part 391, then FMCSA would require the State to record on the CDLIS driver record the following information:

- Medical examiner's name.
- Medical examiner's license or certificate number and the State that issued it.

○ Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, required by 49 U.S.C. 31149(d), as added by section 4116(a) of SAFETEA–LU requires one).[3]

○ Date of physical examination/issuance of the medical examiner's certificate to the driver.

○ Medical certification status determination (receipt of a current medical examiner's certificate means ''qualified.'')

○ Expiration date of medical examiner's certificate (this can vary, depending on CDL driver's medical condition, from 3 months to 2 years).

○ Information from FMCSA that a medical variance was issued to the driver.

○ Any restriction (*e.g.*, corrective lenses, hearing aid, etc.).

○ Date the information is entered on CDLIS driver record.

States would be required to keep a copy or an electronic image, including the time stamp, of the medical examiner's certificate received from the driver for 6 months so that FMCSA may request access to these certificates to verify States are inputting information in an accurate and timely manner as part of a State CDL compliance review.

c. *State Input of Data for Medical Variances.* FMCSA proposes adding information about the existence of medical variances, for example, the existence of a vision exemption or SPE certificate, to the CDLIS driver record maintained by the SDLA. Enforcement personnel could obtain both the current medical certification status, ascertain whether the driver has a medical variance, and determine the identity of the medical examiner, all by an electronic inquiry to CDLIS.

Interstate drivers (both CDL and non-CDL) granted an exemption from one or more of the FMCSRs are required by its terms and conditions to carry the exemption document or legible copy in their possession while driving. Drivers who are granted a SPE certificate are required by regulation to carry the SPE certificate or a legible copy. (49 CFR 391.49(j)). It is important for enforcement personnel to know about the existence of medical variances that require the driver to carry such additional supporting information. Enforcement personnel are directed to ask such drivers to show them the required additional documentation the driver is required to carry as a condition of that medical variance. This requirement to include information about existing medical variances on the CDLIS driver record thus ensures that enforcement personnel can verify whether the driver is in compliance with the conditions for the issuance.

d. *Notification of Drivers.* Currently, most States notify drivers when an action is going to be taken against their driver license privilege. In this NPRM, FMCSA proposes that States notify interstate CDL drivers when they plan to downgrade the driver's license based on the lack of a valid medical certificate. FMCSA believes each State already has an automated system that generates notices for drivers who are identified for suspension action. The Agency further believes that these State systems could be modified to identify and notify drivers whose medical certification status has expired, and whose CDLs thus must be downgraded.

FMCSA included the cost of adding CDL drivers subject to part 391 to these State notification systems, as part of the developmental costs for the proposed rule during years one through three. The ongoing major cost of the notification system would be operational, at an estimated cost of $0.40 per driver notified. For calculating the maximum possible impact on the States, FMCSA used the worst case scenario that would show all drivers receiving a notice of a CDL downgrade, for a total national cost of $1.29 million per year, which is included in the total estimated State costs discussed later in the preamble's Summary Cost Benefit Analysis section. (See section F. ''Summary Cost Benefit Analysis.''). FMCSA is seeking comment concerning the number of notifications the States would need to mail to CDL drivers receiving notice of a downgrade.

e. *Costs.* FMCSA estimates that the requirements set forth in this NPRM would cost the States $18.3 million over the first 3 years of implementation and would decrease to $4.0 million per year in the fourth year and afterward. For further detail on the cost issue, see section F. ''Summary Cost Benefit Analysis,'' contained below in this NPRM, or the more detailed stand alone Regulatory Evaluation document contained in the docket. FMCSA is seeking comments about whether these evaluations of the cost impacts are accurate.

3. Potential Impacts on Motor Carriers Employing CDL Drivers

a. *Carrier Would Request a Copy of the CDLIS Motor Vehicle Record from the Current State of Licensure Before Allowing the Driver to Operate a CMV in Interstate Commerce.* Under the proposed rule, the motor carrier that employs a CDL driver subject to part 391 to operate a CMV would need to obtain the driver's CDLIS MVR, verify the driver has a medical certification status of qualified, and place that CDLIS MVR in the driver qualification (DQ) file, (thereby documenting medical certification for such CDL drivers) before allowing the driver to operate a CMV for the motor carrier.

Under FMCSA's current regulation, the motor carrier has up to 30 days to obtain the driver's MVR (for both CDL and non-CDL drivers) and place it in the DQ file (49 CFR 391.23(b)). The driver is immediately permitted to begin operating a CMV pending completion of the driver record check. However, the proposed rule would change this current practice by requiring the motor carrier to obtain and place a copy of the driver's CDLIS MVR in the DQ file before allowing an interstate CDL driver to operate a CMV. FMCSA believes the 30-day timeframe specified in § 391.23(b) is a hold-over from years ago when this process was accomplished via regular U.S. mail. Now States offer driver's MVRs electronically, and numerous companies sell a service to assist motor carriers to obtain MVRs. FMCSA believes many motor carriers are already obtaining MVRs electronically, generally before making an offer to hire the driver. For this reason, this NPRM would not impose any significant additional burden on motor carriers except those that are letting newly hired drivers operate a CMV before verifying the driver holds a valid CDL. There would be no change in the current 30 days allowed to obtain a motor vehicle record for non-CDL drivers who must also provide a copy of their medical examiner's certificate.

Under this proposed rule, motor carriers would no longer be required to place a copy of a current medical examiner's certificate in the DQ file for CDL drivers subject to part 391. Information about the current medical certification status for those drivers would be on the CDLIS MVR the motor carrier is already required to obtain and place in the DQ file. However, the motor carrier would be required, under the proposed rule, to obtain and file a copy of *any* medical exemption granted to a CMV driver (both CDL and non-CDL). Carriers are already required to obtain a

[3] Section 31149(d) becomes effective August 10, 2006. See section 4116(f) of SAFETEA–LU. FMCSA plans to implement regulations establishing the National Registry of Medical Examiners in the future. In order to minimize the number of times States have to update their information systems, States may want to make provisions in the CDLIS driver record to accept this information should it be required.

copy of an SPE certificate. (49 CFR 391.49(j)(1))

b. *Costs.* FMCSA believes the net cost impact on motor carriers would at worst be neutral, and more likely is a modest cost saving. Carriers would be relieved of obtaining or making a copy of the medical examiner's certificate and placing a copy of it in the DQ file for CDL drivers subject to part 391. This proposal would expand an existing requirement for the motor carrier to obtain or make a copy of *any* medical variance, *e.g.*, Medical Exemption document or SPE certificate, granted to a CMV driver and place it in the driver qualification file for the small number of drivers with such a medical variance. However, motor carriers would also be required to obtain the CDLIS MVR before allowing CDL drivers to operate a CMV.

4. Potential Impacts on Drivers.

a. *Privacy Rights.* FMCSA does not believe the proposed rule would have an adverse effect on drivers' privacy for the following reasons. First, none of the driver's confidential medical information (*i.e.* specific details from the ''long form'' or the actual medical records maintained by medical examiners) would be placed on the CDLIS driver record—the SDLA would post the FMCSA-specified status information regarding whether the driver is currently medically certified, which does not include confidential information. A status of not-qualified does not violate any privacy right, as it does not provide any detail as to the reason for being not-qualified. In other words, a status of not-qualified could just as well mean the driver decided not to take a physical examination because he or she is not currently working as a CDL driver. Second, information about the issuance of medical variances is already public. Information about the granting of any exemptions, *e.g.*, vision, diabetes, is published in the **Federal Register** (49 U.S.C. 31315(b)). Alternatively, if a driver has a medical examiner's certificate based on having an SPE certificate, the medical examiner's certificate has the box checked saying it is only valid when accompanied by an SPE certificate. Thus, any enforcement personnel or potential employer would or should know about the condition requiring the driver to have in his or her possession an SPE certificate or a legible copy whenever operating a CMV. (49 CFR 391.49(j)(1). Finally, access to the data on the CDLIS driver record is restricted to only FMCSA, States, motor carrier employers for authorized use and the driver. (49 CFR 384.225(e)). Enforcement personnel accessing this information via NLETS are similarly restricted to official use. The Driver Privacy Protection Act (18 U.S.C. 2721–2725) provides additional restrictions on access to the driver record. However, FMCSA is seeking comments about whether there would be any issues under the Privacy Act (5 U.S.C. 552a) regarding access to CDL drivers' medical examiner's certificate information arising from the provisions set forth in this proposal.

b. *Impact if a Driver Is Found Operating a CMV with a Medical Certification Status of ''Not-qualified'' or No CDL Privilege Because of a Downgrade of the CDL.*

This rulemaking proposal would require the appropriate medical certification status information to be placed on the CDLIS driver record for all CDL holders, and would remove the requirement for CDL drivers subject to part 391 to carry the medical examiner's certificate. However, the proposal would also establish that the medical certification status information be made available to enforcement personnel as well as to drivers and employing motor carriers. This is expected to become an increasingly valuable enforcement tool, particularly in conjunction with anticipated future rulemakings dealing with driver physical qualifications, such as establishment of the Congressionally-mandated National Registry of Medical Examiners. Nonetheless, nothing in this proposed rule prevents a CDL driver subject to the requirements of part 391 from retaining a copy of the medical examiner's certificate for his or her own records, particularly in the event an SDLA fails or delays in entering the information onto the CDLIS driver record. All non-CDL drivers would continue to provide a copy or original of the medical examiner's certificate to their employing motor carrier, a requirement not changed by this proposed rule.

This NPRM proposes a new requirement that a CDL driver subject to part 391 would have his or her CDL downgraded within 60 days of the medical certification status expiring, *i.e.*, the status becoming ''not-qualified.'' Under 49 CFR part 383 after such a downgrade, a driver found operating a CMV in interstate commerce without a valid CDL, when the regulations require the driver to hold one, could receive a traffic offense citation for violating § 383.51(c)(6). Thus the downgrade proposed in this NPRM could lead to a traffic conviction requiring a 60-day CDL disqualification on the CDLIS driver record for the first offense. This conviction would be retained and considered in any future licensing action, including intrastate CDL eligibility.

This proposed downgrade within 60 days would provide safety benefits by significantly enhancing incentives for drivers to comply with the medical certification standards. Drivers could be placed out-of-service as part of a roadside inspection or traffic enforcement stop, if a driver is found operating a CMV in interstate commerce with a downgraded CDL that resulted from the medical certification status becoming not-qualified because the driver failed to obtain the required new medical examiner's certificate. Currently, the driver could be cited and possibly fined for operating a CMV without a valid medical certification, but generally the driver would be allowed to continue to drive. Additionally, unless this violation results in a carrier compliance review or other enforcement action, it has little impact on the motor carrier. (See 49 CFR 391.41(a)). By linking the medical certification status to the eventual status of the CDL, this proposed rule would provide greater enforcement tools to address driver qualification issues.

If a driver's medical status becomes not-qualified, but the CDL has not yet been downgraded, the driver can be cited under current § 390.37 for not keeping his/her medical status current. In addition, while not proposed in this NPRM, FMCSA has the option of adding a similar, new disqualifying offense for a serious traffic violation under Table 2 of 49 CFR 383.51(c). This disqualifying offense would be applicable if a driver operates a commercial motor vehicle requiring a CDL in interstate commerce during the proposed 60-day window of having received a medical certification status of ''not-qualified,'' but the CDL has not yet been downgraded. If such a disqualifying offense were established, then any CDL driver operating in interstate commerce not excepted from part 391 who does not have a current medical examiner's certificate on file with their SDLA could receive a traffic citation for this serious traffic violation. FMCSA seeks comments about whether FMCSA should add such a disqualifying offense to Table 2 of § 383.51(c) for operating a CMV without the required medical certification.

c. *Provision of Documentation to Motor Carrier for Medical Variance.* All drivers who operate CMVs in interstate commerce pursuant to a medical variance, such as an Medical Exemption or SPE certificate, would be required to provide their employing motor carrier with a copy of the medical variance document. The employing motor carrier

would be required to place it in the DQ file.

d. *Provision Requiring CDL Drivers to Provide Medical Certificate to SDLA.* Under the proposed rule, a CDL would not be issued, renewed, upgraded or transferred by the SDLA to a driver subject to 49 CFR part 391 qualification requirements, unless the State has on record a current medical examiner's certificate. Initially, drivers would not need to obtain a new medical examiner's certificate. Beginning 3 years after the effective date, drivers would be required to provide a copy or an original, as determined by the SDLA, of either their existing medical examiner's certificate or a new one, to their SDLA before any licensing action, including a renewal. Drivers would also be required to provide a copy or original of each new medical examiner's certificate to their SDLA. The information from these certificates, including their expiration dates, would be added to the CDLIS driver record by the SDLA. If the driver has not provided a current medical examiner's certificate within 5 years after the effective date of a final rule on this subject, or the certification expires, the CDL medical certification status would be marked as ''not-qualified,'' and the SDLA would be required to initiate a downgrade of the driver's CDL. The driver would be notified by the SDLA that the CDL would be downgraded.

e. *Number of Drivers Subject to the Proposed Process.* The group of CDL drivers that would be most impacted by this rulemaking would be those not actively driving, are subject to 49 CFR part 391, but who are retaining their CDL without maintaining their medical certification. To estimate the number of possible drivers affected, FMCSA performed the following analysis.

As of August of 2005, there were approximately 12.2 million CDL index or pointer records in the CDLIS central site index. The Agency estimates 10 percent of the CDLIS driver records associated with these index pointers are inactive. Based on an analysis of the split of inter- and intrastate drivers from the annual Drug and Alcohol Testing survey conducted by FMCSA, the Agency estimates about 74 percent of the estimated active 10.98 million CDLIS driver records are for interstate drivers, or about 8.13 million. For purposes of this analysis, it is assumed none of these are operating in excepted interstate commerce, *i.e.*, all of them are subject to part 391. If all of these CDL drivers, who had self-certified they were qualified to operate in interstate commerce, wish to retain their CDL, they would be required to present a copy or original of a current medical examiner's certificate to their SDLA, either at the time of the next issuance (as defined in 49 CFR 384.105(b)) of their CDL or when the medical certificate expires, whichever occurs first. Thereafter, they would have to provide the medical certificate every time it expired. Two years after the States would be required to be in compliance with this proposal (no later than 5 years after the effective date of a final rule on this subject), all of these drivers would not be allowed to continue operating CMVs in interstate commerce unless their CDLIS driver record includes the information that they have submitted a current medical examiner's certificate, prepared by a medical examiner, as defined in 49 CFR 390.5, to their SDLA demonstrating they are physically qualified under part 391.

FMCSA estimates from its annual Drug and Alcohol Testing survey that 3.1 million CDL drivers of the estimated 8.13 million CDLs who self certified they are subject to part 391, are ''actively'' driving for a living. Therefore, the Agency estimates 5.03 million of these CDL drivers who certified that part 391 applies to them are not actively driving. The Agency further estimates that 2.26 million of these 5.03 million drivers would elect to obtain medical certification and retain their CDLs, while the remaining 2.77 million would have their CDL downgraded. This would leave a pool of 5.36 million medically certified CDL drivers (2.26 million + 3.1 million). Refer to the separate Regulatory Evaluation in the docket for this rulemaking for a more detailed discussion of the number of drivers likely to be affected by this proposal. (Note. This analysis does not include any attempt to estimate the number of CDL drivers who operate in excepted service, i.e., who operate in interstate commerce but are excepted from part 391 and do not need medical certification to retain their CDL.)

f. *Impact of the New Code ''W'' on Drivers Domiciled in Canada, Mexico, and the United States.* Drivers of commercial motor vehicles who are domiciled in and licensed by, Canada or Mexico are subject to the requirements of U.S. law while operating a CMV in the United States. (49 U.S.C. 31132(4), 31502(a) and 31301(2)). These drivers must meet the FMCSA physical qualifications and must possess a license issued by their country of domicile that the U.S. has recognized as comparable to a U.S. CDL.

FMCSA previously determined that the Canadian Provinces and Territories have medical and physical qualification requirements comparable to those applicable in the United States, with certain exceptions (49 CFR 391.41, note, as added by 67 FR 61818, October 2, 2002) The Canadian equivalent to CDLIS contains documentation of driver physical qualification, although the program requirements vary by Province and Territory.

FMCSA also determined that the Licencias Federales de Conductor issued by the United Mexican States is itself evidence that the operator has met physical qualification standards required by the United States. (Commercial Driver's License Reciprocity with Mexico, (57 FR. 31454, July 16, 1992).) Proof of compliance with the medical certification requirements is recorded within the Mexican Licencias Federales de Conductor information system, as well as marked on the license document. Drivers must renew both their medical certification and Licencia Federal together every 2 years.

FMCSA considers both licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code and the Licencias Federales de Conductor issued by the United Mexican States, to satisfy the CDL requirements of 49 CFR part 383 (49 CFR 383.23(b)(1), note 1) and to be compatible with the U.S. CDLs.

As indicated in the footnote to 49 CFR 391.41, Canada and the United States have entered into a reciprocity agreement that Canadian drivers who do not meet the physical qualification requirements specified in the Canadian National Safety Code, but are issued a Provincial or Territorial waiver/exemption, will be excluded from operating a CMV in the United States. Similarly, U.S. CDL drivers granted a medical variance will be excluded from operating a CMV in Canada. At a technical level, it was jointly determined by AAMVA and Canadian Council of Motor Transport Administrators (CCMTA) that a code of ''W'' would be placed on the commercial driver's license document to identify those drivers who are issued a waiver/exemption or variance to exclude them from operating in the other country.

This NPRM proposes to establish a new restriction code by revising section 383.95 to specify a new restriction code ''W'' to be placed on the CDL document to identify U.S. CDL holders subject to part 391 who have obtained a medical examiner's certificate with a medical variance in order to operate CMVs in the United States. If implemented, this restriction will allow U.S. enforcement

personnel to identify drivers who are required to carry the documentation supporting the medical variance, and Canadian authorities to identify U.S. CDL drivers who therefore are prohibited by Canadian jurisdictions from operating a CMV in Canada. Similarly, implementation of a ''W'' restriction on Canadian licenses would allow the United States to identify Canadian drivers who do not meet U.S. physical qualification standards.

The U.S. has not yet discussed with Mexico the proposed creation or use of a ''W'' restriction on the CDLs issued in the United States. Therefore, the Agency is unable to assess the potential impact this restriction could have on U.S. drivers who intend to operate CMVs in Mexico.

g. *Costs.* FMCSA estimates that the requirements set forth in this NPRM would cost drivers a total of $3.22 million per year beginning in the fourth year after the effective date of a final rule on the subject and every year thereafter. For more detail on the cost issue, see section F. ''Summary Cost Benefit Analyses,'' below in this NPRM, or the more detailed stand alone Regulatory Evaluation document contained in the docket.

D. Implementation Date

FMCSA proposes to begin enforcement of the requirements set forth in this NPRM 3 years after the effective date of a final rule on the subject. The Agency believes the standard 3-year phase-in period would provide the States with sufficient time to pass required State implementing legislation, to modify their information systems to begin recording the medical examiner's certificate information onto the CDLIS driver record, and to begin making that information available from the CDLIS driver record. Also, the proposed 3-year phase-in period would ensure employing motor carriers and drivers have an opportunity to familiarize themselves with the new requirements and that CDL drivers are prepared to provide a valid medical examiner's certificate to their SDLA as required by this NPRM.

The Agency will also be working with the States to modernize CDLIS, as required by section 4123 of SAFETEA–LU. The CDLIS modernization plan will include a date by which all States must use the new version of CDLIS. Both the CDLIS modernization effort and inclusion of the medical examiner's certificate information on the CDLIS driver record will require States to update their CDLIS computer programs. The Agency requests comments about the importance of having the implementation schedule for this rule coincide with the implementation date for CDLIS modernization.

The Agency is seeking comments about how many States will require passage of legislation to authorize them to carry out the proposals in this rulemaking, and whether the proposed three-year implementation period is sufficient.

E. Section-by-Section Explanation of Changes

Part 383

Conforming amendments. Throughout parts 383, 384, and 391 terms used referring to a driver record or driver history have been revised for clarity. The term ''CDLIS driver record'' refers to the electronic record of driver information and history stored by the State-of-Record as part of CDLIS. The Agency's use of the term ''motor vehicle record'' refers to the information provided to a driver or employer about the status and history of a driver. The term ''CDLIS MVR'' refers to the information provided to a driver or employer about the status and history of a driver that holds a CDL.

Section 383.5. FMCSA proposes to add definitions for ''CDLIS driver record'' and ''CDL downgrade.''

Section 383.71(a). FMCSA proposes to revise the certification requirement in the CDL application process to clarify how applicants should certify if they operate in interstate commerce, but are excepted from part 391.

Section 383.71(g). FMCSA proposes to add a new requirement that applicants who are subject to part 391 must begin providing their SDLA an original or a copy (at the State's option) of each medical examiner's certificate they obtain.

Section 383.73(a)(5). FMCSA proposes to have the SDLA enter on the CDLIS driver record the certification made according to § 383.71(a)(1) and, if the driver is required to have a medical certificate, record the information from the certificate in the CDLIS driver record.

Section 383.73(b)(6). FMCSA proposes to add a requirement for the SDLA, when a driver applies for a license transfer, to verify whether the driver is subject to part 391, and if so, whether the medical certification status is designated as ''qualified'' before taking any licensing action. To accommodate the period of time between the implementation date and when all drivers are required to submit medical certification information to the SDLA, FMCSA also proposes to allow drivers to provide SDLAs with their existing medical examiner's certificates. Those certificates must be issued with a date that is prior to 3 years after the effective date of the final rule on this subject, until the certificate expires, as evidence of current medical certification.

Section 383.73(c)(5). FMCSA proposes to add the same requirement as § 383.73(b)(6) for the license renewal process.

Section 383.73(d)(3). FMCSA proposes to add the same requirement as § 383.73(b)(6) to the license upgrade process.

Section 383.73(j). FMCSA proposes to add a new CDLIS recordkeeping requirement for medical certification status information. A number of items displayed on the medical examiner's certificate would be recorded on the CDLIS driver record. The medical certification status information must be updated within 2 business days of receiving a new medical examiner's certificate, or a current certification expiring. If a driver's medical certification expires, the SDLA must initiate a downgrade of the CDL. The SDLA must accept and record within 2 business days on the CDLIS driver record any medical variance issued by FMCSA to a driver.

Section 383.95. FMCSA proposes to add a second restriction and to rename the section. The new restriction would be coded as ''W'' and would indicate the driver has received a medical variance.

Part 384

Section 384.105. FMCSA proposes to add a definition for CDLIS Motor Vehicle Record. The basic term of motor vehicle record was adopted from the existing usage. FMCSA solicits comments on whether some other descriptive title should be used instead, such as CDLIS driver history, or CDLIS driver and employer report.

Section 384.107. The Agency would revise paragraph (b) to incorporate by reference the most recent version of the CDLIS State Procedures Manual as of the final rule.

Section 384.206(a). FMCSA proposes to revise this compliance requirement to include performing the record checks specified in § 383.73.

Section 384.206(b)(3). The Agency would revise § 384.206(b) by adding a third required action to the two existing ones. This change would mean that a CDL for a driver subject to part 391 must be downgraded if the medical certification expires and no new medical examiner's certificate is provided.

Section 384.225. The Agency would revise all paragraphs under (e) to refer

to the CDLIS driver record, and clarify in paragraphs (e)(3) and (4) that drivers and motor carriers obtain this information according to State procedures on the CDLIS MVR. The Agency would also add a new paragraph (f) to require States to provide the medical certificate information on the CDLIS, CDLIS MVR and CDL NLETS status and history responses. The title of the section would be changed from ''Record of violations'' to ''CDLIS driver recordkeeping'' to more accurately describe its contents.

Section 384.231. The Agency would update the reference to the CDLIS State Procedures manual to be to the most recent version incorporated by reference into § 384.107(b).

Section 384.234. The Agency would add a new compliance requirement to the existing State requirements in part 384 to comply with the State provisions specified in the proposed new § 383.73(j).

Part 390

Section 390.5. FMCSA proposes to add a new definition for ''medical variance'' as an inclusive term for all Federal programs dealing with physical qualification, including exemptions, and skill performance evaluation certificates. This definition does not cover waivers issued under subpart B of part 381. These waivers are issued for short periods of time and any waivers will be addressed through program documentation and not the driver's licensing systems.

FMCSA also proposes to add a definition for ''motor vehicle record.''

Part 391

Section 391.2. In § 391.2, FMCSA proposes to change the section name from ''General exemptions'' to ''General exceptions.'' This proposed change would establish consistency with the term ''exception'' as used in § 390.3(f) and to remove confusion with the different meaning of the word ''exemption'' as used in 49 CFR 381, Subpart C and 49 CFR 391.62.

Section 391.23(m). FMCSA proposes to add a new paragraph (m) to explicitly specify what the employer must do with regard to CDL drivers subject to part 391 to comply with the long-existing requirement in § 391.41(a). This paragraph makes it explicit that substituting the driver's CDLIS MVR for the medical examiner's certificate has an impact on the timing of when the motor carrier must obtain and place the MVR in the DQ file as part of the hiring process. All non-CDL drivers would continue to be required to provide a copy or original of the medical examiner's certificate to their employing motor carrier.

Section 391.41(a). The Agency proposes to amend § 391.41(a) to delete the existing exception reference to § 391.67, and to add an exception that CDL drivers subject to part 391 would be excluded from the requirement to carry the medical examiner's certificate because their current medical certification status information would be on the electronic CDLIS driver record, and could be verified via CDLIS or NLETS inquiries, and on the CDLIS MVR for drivers and employers. Again, all non-CDL drivers would continue to be required to provide a copy or original of the medical examiner's certificate to their employing motor carrier.

Section 391.43(g). The Agency proposes to amend § 391.43(g) to remove the requirement for the medical examiner to provide a copy of the medical examiner's certificate to the employing motor carrier, and to add a requirement that the examiner should retain a copy of all certificates for the duration of the certificate.

Section 391.51. FMCSA proposes to update the requirements for what must be contained in the driver qualification (DQ) file regarding medical certification for CDL drivers subject to part 391. These CDL drivers would no longer need to carry a medical examiner's certificate because the current status of their certification would be electronically available from CDLIS. Employers would satisfy the documentation requirement by obtaining the copy of the driver's CDLIS MVR they are already required to obtain from the SDLA and to place it in the DQ file.

F. Summary Cost Benefit Analysis

The regulatory evaluation describes and evaluates the proposal contained in this NPRM, as well as two other alternatives that were considered by the Agency. No changes are proposed in the physical qualification standards or medical advisory criteria for determining whether a driver may be medically certified as physically qualified to operate a CMV. A number of provisions are proposed to modify the procedures used to document a driver's current medical certification status as a condition for obtaining or retaining a CDL, and to enable motor carriers and enforcement personnel to verify the driver's medical certification status.

Currently, CDL drivers subject to part 391 must certify that they meet the driver qualifications in 49 CFR part 391, in order to operate CMVs in interstate commerce. These drivers are required to carry a current medical examiner's certificate while driving, and motor carriers must keep a copy of the medical examiner's certificates of all such drivers they employ on file. The purpose of these certificates is to prove that the driver is physically qualified to operate a CMV in interstate commerce. Under current regulations, no information about the driver's self-certification regarding applicability of part 391 or any medical certification status information is required to be placed on the CDLIS driver record, and the driver does not need to show the medical examiner's certificate to State officials when applying for, renewing, upgrading, or transferring a CDL in most States.

Alternative 1

This alternative would require medical certification status to be listed on the physical driver's license document of any driver holding a CDL who intends to operate a CMV in interstate commerce. In conducting this analysis, the Agency has assumed that in order to implement this alternative, the expiration periods for CDLs (average period of 5 years) and medical examiner's certificates (maximum period of 2 years) would need to be synchronized. While it is possible that States could list two separate expirations on a license, one for the license renewal and one for medical certification, SDLAs would still have to issue a new CDL each time the medical certification expired. As a result, listing two dates would not be likely to reduce processing costs. This alternative would require all States to renew both CDLs and medical certifications every time a medical certification was issued, and would therefore require them to process a much higher volume of CDLs. Drivers would also have to pay CDL renewal fees much more frequently. Currently, CDL renewal fees average $45 per renewal.

This alternative, like the others listed below, would also require that States: (1) Receive from the driver a medical examiner's certificate, and (2) post specified information from it on the electronic CDLIS driver record prior to issuing, renewing, upgrading or transferring that driver's CDL. Implementing this proposal would require SDLAs to modify their driver licensing computer systems to accommodate this new information. In addition, States would need to establish methods for receiving medical examiner's certificates from drivers either via mail or fax, or by having drivers present the medical examiner's certificate in-person at a SDLA office.

Table 1 below provides an itemized list by year of the costs incurred under this alternative. Costs in years 6 and later are identical to those for year 5 and are aggregated in the table. The net present value of the costs of this alternative over 10 years, assuming a 7 percent discount rate, is $526 million.

TABLE 1.—TOTAL COST OF ALTERNATIVE 1

[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Licensing Costs *	$0	$0	$0	$97,000	$97,000	$485,000	$679,000
Mailing Costs *	0	0	0	4,500	4,500	22,500	31,500
Planning and Design **	1,785	1,785	0	0	0	0	3,570
State Compliance Reviews ***	0	0	0	1,700	1,700	8,500	11,900
State Training Costs **	425	425	425	0	0	0	1,275
State Computer Systems Development **	4,250	4,250	4,250	0	0	0	12,750
State Computer Operations **	0	0	0	510	510	2,550	3,570
Data Entry Costs **	0	0	0	4,400	4,400	22,000	30,800
CDLIS Testing Costs **	250	250	250	0	0	0	750
Total costs	6,710	6,710	4,925	108,110	108,110	540,550	775,115
Total Costs (7 percent discount rate)	6,710	6,271	4,302	88,250	82,477	338,170	526,180
Total Costs (3 percent discount rate)	6,710	6,515	4,642	98,936	96,054	439,901	652,758

* Cost to be borne by drivers.
** Cost to be borne by States.
*** Cost to be borne by Federal Government.

Alternative 2

Under this alternative, States would be responsible for receiving, recording and providing data from a medical examiner's certificate received from the driver prior to the State issuing, renewing, updating or transferring a CDL for a driver who operates in interstate commerce. The State would be responsible for including the medical certification status information on all reports provided to persons authorized to access information from the CDLIS driver record. This includes those using CDLIS and NLETS to make the inquiry, and drivers and employing motor carrier requesting a CDLIS MVR. The SDLA would also be required to downgrade a CDL if the medical certification expires. It is anticipated States would prefer mail delivery of certifications from drivers rather than in-person delivery, because this is expected to be less costly to both States and drivers. The SDLA would then record the specified certificate information on the electronic CDLIS driver record. Implementing this change would enable enforcement personnel to gain electronic access to verify CDL drivers have a medical certification status of ''qualified'' during roadside inspections or traffic stops.

The changes proposed under this alternative would ensure that all CDL drivers operating in interstate commerce who are not excepted from the driver qualification requirements of part 391 would have a medical certification status of ''qualified'' prior to the State issuing, renewing, upgrading or transferring a CDL. In addition, if a driver fails to obtain a new medical examiner's certificate before the old one expires, the State would be required to: (1) Update the status of that driver's medical certification status to ''not-qualified,'' and (2) begin taking action to downgrade that driver's commercial driving privileges unless a new, valid medical examiner's certificate is obtained by the driver. Table 2 below presents an itemized list of the costs associated with this alternative. The 10-year costs of this alternative are $59 million when discounted at 7 percent.

TABLE 2.—TOTAL COST OF ALTERNATIVE 2

[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Planning and Design**	$1,785	$1,785	$0	$0	$0	$0	$3,570
State Compliance Reviews***	0	0	0	1,700	1,700	8,500	11,900
State Computer Systems Development**	4,250	4,250	4,250	0	0	0	12,750
State Computer Operations**	0	0	0	510	510	2,550	3,570
Training**	425	425	425	0	0	0	1,275
SDLA Data Entry Extra Time/Staffing**	0	0	0	2,200	2,200	11,000	15,400
CDLIS Testing Costs**	250	250	250	0	0	0	750
Mailing Costs*	0	0	0	4,500	4,500	22,500	31,500
Total	6,710	6,710	4,925	8,910	8,910	44,550	80,715
Present Value (Disc. at 7%)	6,710	6,271	4,302	7,273	6,797	27,871	59,224
Present Value (Disc. at 3%)	6,710	6,515	4,642	8,154	7,916	36,255	70,192

* Cost to be borne by drivers.
** Cost to be borne by States.
*** Cost to be borne by Federal Government.

Alternative 3

This alternative is similar to Alternative 2, with the exception that FMCSA would receive medical examiner's certificates through the mail or facsimile transmission from drivers, rather than having drivers submit the form directly to their licensing State. FMCSA would then enter the data and electronically route it directly to the licensing State as a CDLIS transaction, so that the information would be recorded on the driver's electronic CDLIS driver record.

This alternative would require States to develop the capacity to receive medical certification information on drivers electronically. State CDL computer systems already have a similar capacity to receive traffic convictions that occur in other States, transmitted electronically from these States, so developing this capacity is possible. This alternative would also require FMCSA to develop the recordkeeping capacity to receive and record medical examiner's certificates for all CDL licensed interstate drivers. Table 3 below presents the costs associated with this alternative. The net present value of the total cost of this proposed rule after 10 years is $63 million when discounted at 7 percent.

TABLE 3.—TOTAL COST OF ALTERNATIVE 3

[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Planning and Design**	$1,785	$1,785	$0	$0	$0	$0	$3,570
State Compliance Reviews***	0	0	0	1,700	1,700	8,500	11,900
State Computer Systems Development**	5,500	5,500	5,500	0	0	0	16,500
State Computer Operations**	0	0	0	510	510	2,550	3,570
Federal Computer Start Up***	150	125	0	0	0	0	275
Federal Computer Maintenance	0	0	0	12	12	60	84
Training**	425	425	425	0	0	0	1,275
Data Entry Extra Time / Staffing***	0	0	0	2,200	2,200	11,000	15,400
Mailing Costs**	0	0	0	4,500	4,500	22,500	31,500
CDLIS Testing Costs**	300	300	300	0	0	0	900
Total	8,160	8,135	6,225	8,922	8,922	44,610	84,974
Present Value (Disc. At 7%)	8,160	7,603	5,437	7,283	6,807	27,908	63,198
Present Value (Disc. At 3%)	8,160	7,898	5,868	8,165	7,927	36,304	74,322

*Cost to be borne by driver.
**Cost to be borne by State.
***Cost to be borne by Federal Government.

Alternative 2 is the least expensive of the 3 alternatives, although Alternative 3 is fairly cost competitive. Alternative 1 is by far the most expensive of the three alternatives. Its higher costs are due mainly to the need to synchronize the CDL renewal and medical certification renewal periods. Alternative 1 would entail a much higher volume of CDL renewals at SDLAs and, as a result, States would incur more costs and drivers would have to pay renewal fees much more frequently.

The costs to the various entities under Alternative 2 are summarized in Table 4 below. These costs are undiscounted. States would bear costs in the range of $4–$6.7 million per year under this alternative for the first three years, and drivers would bear costs of slightly more than $3 million per year once they begin submitting their medical certificates to the States after year 3.

TABLE 4.—SUMMARY OF COSTS TO VARIOUS DRIVERS/ENTITIES, ALTERNATIVE 2 UNDISCOUNTED

[Thousands of dollars]

	Year 1	Year 2	Year 3	Later years
State Costs	$6,710	$6,710	$4,925	$3,998
Driver Costs	0	0	0	3,212
Federal Costs	0	0	0	1,700
Total	.....	.....	.....	8,910

Benefits

The Agency believes all three alternatives would offer comparable safety benefits. These benefits would result from preventing a limited percentage of physically not-qualified drivers from obtaining a CDL to operate CMVs in interstate commerce. FMCSA believes such not-qualified drivers are more likely to be involved in crashes than those who are qualified. The Agency estimates the proposed changes could result in the prevention of as many as 10 percent of the crashes attributable to physically not-qualified drivers. These benefits are expected to stem from a deterrent effect because the drivers would be providing their medical examiner's certificate to a government official, rather than a motor carrier, and may be less likely to engage in forgery. In addition, having easy electronic access to tracking information from the driver's medical certificate should facilitate any desired investigations of fraud in the medical certification system at the State and Federal level, and is likely to assist in exposing drivers that engage in untruthful statements about their medical certification status. Thus, certain types of fraud might be deterred.

This proposed rule would also provide safety benefits by providing drivers with a greater incentive to renew their medical certifications on time.

Currently, there are only minor penalties for driving with an expired medical certification. In addition, this violation is only caught if the driver is targeted for a roadside inspection or stopped for violating traffic laws. Since penalties are so light and there is a good probability of escaping detection, many drivers put off renewing their medical certifications until well after their old ones have expired. Once the medical certification becomes part of the CDLIS driver record, detection of expired medical certifications will become automated. In addition, States would have to send the drivers notice that action is being taken to downgrade their CDL unless a new medical certificate is submitted. As a result of this enhanced enforcement, drivers are more likely to renew their medical certifications in a timely manner.

FMCSA believes that this more timely renewal by CDL drivers of medical certifications is likely to provide enhanced safety benefits for the entire motor carrier industry. During the 2-year renewal period between medical examinations some percentage of drivers will develop physical problems that make them physically unqualified to drive. For instance, a driver may have experienced a decline in eyesight, developed high blood pressure, kidney problems, or heart problems. If these drivers put off obtaining a new medical examination, they would remain an increased safety risk. However, if they are medically examined on schedule, the medical problems that have developed in the interim can be discovered and treated effectively. Effective treatment of the physical problem would reduce the safety risk the driver poses, and hence will yield safety benefits to the public in the form of fewer crashes involving physically unqualified drivers. The Agency acknowledges the fact that the level of the safety benefits that would accrue from the proposed changes in this NPRM are to some extent uncertain, and therefore has conducted a sensitivity analysis using two different levels of assumed safety benefits.

If this proposed rule resulted in the avoidance of 10 percent of the crashes attributable to physically unqualified drivers, it would prevent approximately 268 crashes per year. The Agency estimates that the average cost of a truck or bus crash with a CDL driver is $69,439. Avoiding 268 crashes would therefore result in approximately $18.6 million in annual undiscounted crash avoidance benefits. At this possible level of benefit, Alternative 2 would be cost beneficial, with an estimated 10-year net benefit of $20.7 million, assuming a 7 percent discount rate. Alternative 2 would also be cost beneficial if it resulted in avoiding only 4 fatal truck or bus crashes per year. These figures are summarized in Table 5 below. Alternative 3 would also be cost beneficial at this level of crash avoidance, with a slightly lower total net benefit of $16.8 million. Alternative 1 would not be cost-beneficial at this level of benefit.

TABLE 5.—10-YEAR BENEFIT COST COMPARISON—ALL CRASHES 7 PERCENT DISCOUNT RATE

[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Discounted Crash Avoidance Benefits	$0	$0	$0	$7,596	$14,197	$58,211	$80,004
Discounted Total Costs	6,710	6,271	4,302	7,273	6,797	27,871	59,224
Discounted Net Benefits	−6,710	−6,271	−4,302	322	7,400	30,341	20,780

An alternative benefit-cost comparison for Alternative 2 based on an assumption of only a 5 percent reduction in crashes attributable to preventing physically not-qualified drivers from obtaining a CDL to operate CMVs is presented in Table 6 below. The proposed rule would not be cost beneficial at this level of crash prevention. The net present value of net costs under this level of benefits is $19 million. At this level of benefit, none of the alternatives would be cost beneficial. Were this proposed rule to result in no safety benefits, its total 10-year cost would be $59 million.

TABLE 6.—10-YEAR BENEFIT COST COMPARISON, ALTERNATIVE 2 WITH REDUCED CRASH AVOIDANCE 7 PERCENT DISCOUNT RATE

[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Discounted Crash Avoidance Benefits	$0	$0	$0	$3,798	$7,099	$29,106	$40,003
Discounted Total Costs	6,710	6,271	4,302	7,273	6,797	27,871	59,224
Discounted Net Benefits	−6,710	−6,271	−4,302	−3,475	301	1,235	−19,222

Because of the speculative nature of the benefits, it is possible that none of the Alternatives is cost beneficial under the terms of this proposal. This proposal implements the congressional mandate in section 215 of MCSIA. FMCSA anticipates it would also implement the National Registry of Medical Examiners as required by SAFETEA–LU, which the Agency believes could make further improvements in the medical certification program. The proposed requirements set forth in this NPRM are an important first step, and the Agency is separately considering additional changes to improve the medical certification processes in the future. The current changes proposed here are critical precursors for delivering electronic verification of improved medical certification information to State driver licensing agencies and roadside and traffic enforcement personnel as part of their programmatic processes. The FMCSA is also hopeful that substantial information quality improvements would result from the anticipated future rulemakings in the medical certification arena. FMCSA anticipates the combination of this proposed rule and future actions involving the medical certification program would achieve substantial safety benefits to the public. A full description of how these costs and benefits estimates were developed is in

the Regulatory Evaluation in the docket of the rulemaking)

G. Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA determined this proposed rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures. The NPRM is significant because of the level of congressional and public interest in the proposed rule. The NPRM has been reviewed by the Office of the Secretary and the Office of Management and Budget (OMB).

This rulemaking would require States to verify that CDL holders who are subject to the physical qualification requirements under 49 CFR part 391 have obtained a medical examiner's certificate issued by a medical examiner, or certify that they are either operating entirely in excepted interstate commerce or entirely in intrastate commerce. The States would be required to enter either: (1) The information from the medical examiner's certificate, or (2) the information from the CDL application that the driver claimed exempt status or plans to operate entirely intrastate, onto the CDLIS driver record to be available to Federal and State enforcement agencies via CDLIS or NLETS inquiries and to drivers and employers on the CDLIS MVR.

The development costs the States would incur to implement this proposed rule include the cost to modify each State's information systems to enable them to record which certification the CDL driver made, and for those so required, information from the medical examiner's certificate to verify the driver's physical qualification. Operational costs to States include hiring and maintaining sufficient staff to receive these certificates from interstate CDL drivers at least every 2 years (in some cases more often), and to perform data entry functions to record all information from the paper medical examiner's certificates. State costs also include a requirement to downgrade the driver's CDL and to notify the driver of the planned downgrade, as well as updating the programs that provide the following responses: CDLIS, CDLIS equivalent for NLETS and CDLIS MVR status and history to users authorized in 49 CFR 384.225(e) to include specified medical certification status information. More details about these requirements are discussed under the section titled, ''Executive Order 13132 (Federalism),'' below.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires Federal Agencies to take small businesses' particular concerns into account when developing, writing, publicizing, promulgating and enforcing regulations. To achieve this goal, the Act requires that agencies detail how they have met these concerns, by including a Regulatory Flexibility Analysis (RFA). An initial RFA, which accompanies an NPRM, must include the following five elements:

(1) A description of the reasons why action by the Agency is being considered.

The Agency has identified numerous instances in which drivers who are physically unqualified or have failed to be medically examined have obtained CDLs and operated CMVs in violation of Federal regulations. The Agency believes, and research suggests,[4] that physically unqualified drivers are significantly more likely to be involved in motor vehicle crashes. The continued operation of CMVs by physically unqualified drivers therefore poses a significant risk to the health and safety of the general public. FMCSA believes that the changes being proposed here would, if implemented, reduce the number of large truck crashes that occur, and the losses in property, health, and lives that are associated with them.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The objectives of the proposed rule are to inhibit physically unqualified drivers from falsely certifying they are qualified or submitting fraudulent medical examiner's certificates, and thus reduce the number of physically unqualified drivers who are obtaining CDLs and operating CMVs in interstate commerce in violation of Federal regulations. This proposed rule would also bring the CDL process into compliance with the requirements of section 215 of MCSIA, that requires FMCSA to initiate a rulemaking to provide for a Federal medical qualification certificate to be made part of the CDL. The changes being proposed here would bring the Agency into compliance with that mandate.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.

The latest estimates from the Agency's MCMIS database (February 2006) indicate a total of approximately 685,000 interstate motor carriers. However, FMCSA analysts believe the number of truly ''active'' motor carriers (*i.e.*, those currently moving freight or passengers, operating under their own authority, and with required filings on record with FMCSA) is probably less than 500,000. For this analysis, FMCSA used the estimate of 475,500, which is based on research conducted in calendar year 2005. This number includes both for-hire and private interstate carriers. For this analysis, the Agency assumes that 75 percent of existing motor carriers are defined as small entities, since the Economic Census data and conversations with trade associations both indicate that approximately 75 percent of motor carriers qualify as small businesses. Therefore, of the 475,500 current motor carriers in MCMIS, approximately 356,625 are considered small entities and this proposed rule would apply to all that use CDL drivers operating in interstate commerce.

The changes being considered here would slightly reduce the paperwork and documentation requirements on employing motor carriers. Motor carriers are currently required to obtain a copy of the medical certificate from each driver they hire prior to letting that driver operate a CMV in interstate commerce. Motor carriers are also required to obtain from the drivers' SDLAs the MVR for all drivers they employ. This proposed rule change would enable motor carriers to get both the medical examiner's certificate and MVR from the licensing SDLA with one transaction. This proposed change would therefore reduce the current reporting and recordkeeping requirements for all motor carriers.

(4) A description of the proposed reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

These proposed rules would change the source from which motor carriers gather medical certification status for CDL drivers operating in interstate commerce. Currently, drivers provide an original or copy of the medical

[4] See for instance: Ogden, E.J.D. and Moskowitz, H. ''Effects of Alcohol and Other Drugs on Driver Performance.'' *Traffic Injury Prevention*. 5:185–198. 2004.

J. Terran-Santos, M.D., A. Jimenez-Gomez, M.D., J. Cordero-Guevara, M.D., and the Cooperative Group Burgos-Santander. 1999. ''The Association Between Sleep Apnea and the Risk of Traffic Accidents.'' *New England Journal of Medicine*. 340:11. pp. 847–851

examiner's certificates to motor carriers. If this proposed rule were to go into effect, motor carriers would instead obtain driver medical certification status information for interstate CDL drivers from the driver's licensing SDLA, as part of the driver's MVR that the motor carrier must already collect when hiring a new driver. This NPRM would also reduce recordkeeping requirements for those drivers who must comply with the proposed requirements because they would no longer be required to carry a copy of their medical examiner's certificate with them while driving a CMV. However, driver reporting requirements would be increased very slightly—most interstate CDL drivers would need to mail a copy of their medical examiner's certificates to their SDLA each time they receive a new certificate rather than provide their current employing motor carrier with a copy.

(5) An identification, to the extent practicable, of all Federal rules which may duplicate, overlap, or conflict with the proposed rule.

This proposed rule would make information from the medical certificate a part of the commercial driver's license. FMCSA is not aware of any other regulations which would duplicate, overlap, or conflict with the proposed rule.

The entire Regulatory Flexibility analysis is available in the docket for this proposal. FMCSA has preliminarily determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

FMCSA seeks comments on the Regulatory Flexibility analysis set forth in this NPRM.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FMCSA analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This proposed action was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (64 FR 43255, August 10, 1999), which requires agencies to develop ''an accountable process to ensure meaningful and timely input by State and local government officials in the development of regulatory policies that have Federalism implications.'' Policies that have Federalism implications are defined in the Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, Federal agencies may not issue a regulation that has Federalism implications, that imposes substantial direct costs, and that is not required by statute unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the Agency consults with State and local officials early in the process of developing the proposed regulation. Also, Federal agencies may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with local government officials early in the process of developing the proposed regulation.

If FMCSA believes it complies by having consulted with the States, Executive Order 13132 requires FMCSA to provide to OMB in a separately identified section of the preamble to the rulemaking a ''Federalism Summary Impact Statement (FSIS).'' The FSIS must include: (1) A description of the extent of FMCSA's prior consultation with State and local government officials; (2) a summary of the nature of their concerns; (3) the Agency's position supporting the need to issue the regulation; and (4) a statement of the extent to which the concerns of State and local government officials have been met. Also, when FMCSA transmits a draft final rule with Federalism implications to OMB for review pursuant to Executive Order 12866, FMCSA must include a certification from the Agency's Federalism official stating that FMCSA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Nothing in this proposal would directly preempt any State law or regulation. However, FMCSA believes this proposed action has Federalism implications because it would impose new direct operational costs on States, which would no longer be funded by FMCSA beginning 3 years after implementation, and limit State policymaking discretion if the State chooses to issue CDLs in compliance with the proposed revisions. Thus, the requirements of section 6 of the Executive Order regarding consultation would apply to this proposed rule. FMCSA will consult with State officials, including elected officials, on this proposal. In addition, FMCSA requests comments to the docket from elected State officials regarding the proposals in this NPRM.

Preliminary Federalism Summary Impact Statement (FSIS)

Over the years, State officials have been consulted on a variety of possible approaches for addressing the issue of including the medical certification information with the CDL. Alternative models for how the 1999 congressional mandate could be implemented were prepared and discussed with the American Association of Motor Vehicle Administrators (AAMVA) which sought additional feedback from some of its members regarding the models. AAMVA provided a document of their members' comments on those models, which is included in the docket. Most recently, FMCSA sent a letter to the States through the National Governors' Association advising them this proposed rule would be published this fall proposing requirements for the States to make changes to their CDL process and CDLIS implementations. A copy of the letter is included in the docket for this rulemaking.

In addition to consultation, State and local officials have had the opportunity to provide official comments on this proposal. An ANPRM on this subject was published July 15, 1994 (59 FR 36338). Comments are in the docket, as is a summary of the comments prepared by FMCSA. An Advisory Committee was convened for a negotiated rulemaking. Materials from that Committee are in the docket.

Summary of the Nature of State and Local Government Officials' Concerns. States have consistently expressed concern about what resources would be necessary to achieve compliance with whatever alternative is proposed as a

regulation. This NPRM would require States to obtain a medical examiner's certificate from the driver and post specified current medical certification status information on the CDLIS driver record. States would also be required to check the driver's medical certification status: (1) Prior to the CDL issuance, renewal, transfer and upgrade processes; (2) during the licensing period to detect expiration of the medical certification; and (3) as part of roadside and traffic enforcement activities. If the medical certification expires, the State would be required to downgrade the CDL and notify the driver that his/her CDL would be downgraded. To facilitate gathering information about possible impacts on States, FMCSA previously prepared draft concept models. These models were based in part on the work of the previous Committee and the public comments received in response to the ANPRM. Those draft models were presented to staff members of the AAMVA on June 17, 2003, for feedback about the feasibility of the models from a technical standpoint, potential costs with regard to modifications of State information systems necessary to implement various possible requirements, and preferred approach.

The first model was based on using the medical examiner's certificate paper approach developed and recommended by the Committee. That model was expanded to include State capability for identifying problems and trends associated with medical certification, *e.g.*, a driver passing a medical examination after recently failing an examination conducted by a different examiner (possible ''medical examiner shopping''). That capability is not included in this NPRM. The second model was premised on a more technology-based approach, which included processes to monitor medical examiners' performance (*e.g.*, certifying individuals as meeting the physical qualification standards when, in fact, such individuals do not meet the requirements). A copy of the two models provided to AAMVA, and the feedback received from AAMVA, is included in the rulemaking docket. FMCSA seeks comments from States and other interested parties regarding the impacts the Agency assessed previously in its draft concept models for this proposed rule.

An alternative FMCSA discussed with the States as part of the negotiated rulemaking for more explicitly addressing whether a driver is physically qualified within the CDL program was to require States to obtain, review, and approve the medical examination report (long form.) The States opposed that proposal.

Another alternative examined in the Regulatory Impact Analysis for this proposal was to make the medical examiner's certificate and the CDL the same document and to require the driver to obtain a new CDL each time the driver is reexamined by a medical examiner. FMCSA determined that the costs of that approach would be extremely high because the medical examination schedule (maximum duration of 2 years) is dramatically shorter than the current CDL renewal cycle (on average, every 5 years). The approximate 5-year CDL renewal cycle would need to be changed to require drivers to renew their CDL, on average, much more often than every 2 years.

Currently, 49 CFR 391.45 requires that all drivers who operate CMVs in interstate commerce must be medically examined and certified as physically qualified at least once every 2 years. Section 391.45(c) essentially requires a driver to be medically reexamined at any time an employer is concerned the driver's abilities to perform his/her usual duties may be impaired. FMCSA guidance to medical examiners says drivers should be given less than a 2-year certification if they have medical conditions that need more frequent monitoring. The medical exemptions for vision and diabetes granted by FMCSA under 49 CFR part 381 require annual reexamination and recertification. It is documented in a report available from the American Trucking Research Institute that there is a large turnover in employment among drivers.[5] Each time a driver changes employers, the new employer has the opportunity, as a condition of employment, to require a new medical examination, and a number of larger carriers do so. Because of these reasons, FMCSA estimates that at least 20 percent of the drivers granted a 2-year medical examiner's certificate are required to obtain at least one additional certificate during that 2-year period.

Another alternative suggested by the States as part of the negotiated rulemaking, was that, as part of the requirement for each driver to submit his/her medical examiner's certificate to the State, the State would only record specified information from it on the CDLIS driver record, and make no other changes to the existing licensing processes. This alternative is potentially the least intrusive on existing CDL procedures used by the States, and is the one proposed in this NPRM.

This NPRM would require the driver to maintain a valid medical certification status on his/her CDLIS driver record. Drivers would accomplish this by providing the SDLA with a current medical examiner's certificate documenting current medical certification status before the SDLA issues, renews, upgrades, or transfers a CDL, and every time the certificate expires. The SDLA would record the medical certification status information on the CDLIS driver record within 2 business days of receiving it. If the medical certification expires, the State would be required to downgrade the driver's CDL.

The States would be required to notify the driver of the impending CDL downgrade as part of the process. This would be an incremental addition to existing driver notification systems operated by all States, but would increase the number of notifications they would send out. However, because CDL drivers are only a small percentage of the total number of CMV drivers, this should be a relatively small percentage increase in the volume of driver notifications required of States. This NPRM also proposes a revised standard for how employers and enforcement personnel would verify a driver's current medical certification status as part of their responsibilities.

FMCSA Position Supporting Need to Issue this Regulation. This proposed requirement is congressionally-mandated by section 215 of MCSIA, which requires FMCSA to initiate rulemaking to provide for a medical qualification certificate to be made a part of the commercial driver's license program. This requirement is national in scope, requiring regulation of an aspect of safety for drivers engaged in interstate commerce. This proposal would establish a requirement for States to obtain a medical examiner's certificate from the CDL driver and record the information from it within 2 business days, documenting his or her physical qualifications to drive a CMV in interstate commerce.

In developing this NPRM, FMCSA intends for States to have the maximum administrative discretion possible to determine how they choose to satisfy the proposed minimum medical certification and CDL regulations set forth in this NPRM. Through AAMVA, FMCSA works to develop and oversee technical details necessary for the CDLIS to successfully operate in compliance with the Agency's

[5] ''Empty Seats and Musical Chairs; Critical Success Factors in Truck Driver Retention'', Chapter III, prepared by the Gallup Organization for the American Trucking Associations (ATA) Foundation, October 1997. A copy of this report is available online at *http://www.atri-online.org/research/safety/images/Musical_Chairspdf.*

regulations. There is no preemption of State law.

After the 3-year phase-in period proposed in this NPRM to allow for development and implementation of the proposed new CDLIS capabilities, FMCSA would begin monitoring whether the new requirements are being met as part of the standard State CDL compliance review process. If a State is determined, as part of the State CDL compliance review, not to have implemented the required minimum changes required by this proposal, the normal process specified in the 49 CFR 384, CDL compliance regulations for notifying the State about potential withholding of Federal-aid highway funds, would apply.

FMCSA estimates the States would incur approximately the following costs to implement, and then operate the new procedures and CDLIS capabilities proposed in this NPRM.

TABLE 7.—SUMMARY STATE COSTS

Year	Total national cost	Average cost/ state
Year 1	$6.7 million	$131,000
Year 2	6.7 million	131,000
Year 3	4.9 million	96,000
Continuing Years	4.0 million	78,400

FMCSA Anticipates Federal Funds Would Be Available for the First 3 years to Pay Most of the Direct Costs Incurred by the States and Local Governments in Complying with the Regulation. SAFETEA–LU provides two grant programs to assist the States in improving the CDL program, and for modernizing CDLIS as required by 49 U.S.C. 31309(e)(1)(D). FMCSA would consult with AAMVA and the States on how the CDLIS changes proposed in this NPRM could be included as part of the CDLIS modernization specifications. An additional possible source of limited grant funds would be from the SAFETEA–LU State MCSAP grant funds. (49 U.S.C. 31102). Expenses to implement the proposed CDL changes would be allowable as part of these grant programs for the first 3 years of implementing these requirements. These are 80 percent federal grant funds, and 20 percent State matching funds that cannot come from any other grant. Beyond the first 3 years, the Agency assumes that the States would adjust their fees to cover the remaining costs to comply with this proposal.

Statement of Extent to Which FMCSA Has Addressed the Concerns of State and Local Government Officials. FMCSA believes the approach proposed for implementing the congressional requirement in section 215 of MCSIA responds to the concerns raised by State and local officials prior to the Agency's development of this NPRM to minimize any potential unfunded impacts on the States. The Agency has proposed steps necessary to achieve the objectives of the statute, and is providing all affected State and local officials notice and an opportunity for appropriate participation in the proceedings. In addition to the required publication of this notice in the **Federal Register,** FMCSA also proposes to continue to work through AAMVA early in the rulemaking process to bring these issues to the immediate attention of AAMVA's members, and to foster the maximum participation of elected State and local governmental officials in developing a final rule on the subject.

FMCSA requests comments from elected State or local officials on these Federalism implications. All comments should be submitted to the docket for this rulemaking.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires that Agencies prepare analyses of proposals that would result in the expenditure by State, local and tribal governments, or by the private sector, of $100 million or more in any 1 year. Department of Transportation guidance requires that we use a revised threshold figure of $120.7 million, which is the value of $100 million in 2005 after adjusting for inflation. FMCSA has preliminarily determined that the impact of this proposed rulemaking would not be that large in any projected year.

The estimated costs of this proposed rule are presented in the table below. The estimated costs to States of this proposed rule would not exceed $7 million in any 1 year. This figure is well below the $120.7 million threshold used by the Department in making an unfunded mandate determination.[6] Total 5 year costs are estimated at $26.3 million, so costs average slightly more than $5 million per year. This proposed rule would not impose a Federal mandate resulting in the net expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $120.7 million or more (adjusted annually for inflation) in any one year. 2 U.S.C. 1531, *et seq.*

TABLE 8.—STATE COSTS OF PROPOSAL

[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Planning and Design	$1,785	$1,785	$0	$0	$0	$3570
State Computer System Development	4,250	4,250	4,250	0	0	12,750
State Computer System Operation	0	0	0	510	510	1020
State Staff Training	425	425	425	0	0	1275
Data Entry Costs	0	0	0	2,200	2,200	4,400
Mailing Costs	0	0	0	1,288	1,288	2,576
CDLIS Testing Costs	250	250	250	0	0	750
5 Year Total						26,341

[6] Memorandum titled: *Departmental Guidance:* Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995, From Assistant Secretary for Transportation Policy, April 5, 2004.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal Agency must obtain approval from OMB for each collection of information it conducts, sponsors or requires through regulations. FMCSA analyzed this proposal and determined that its implementation would increase the currently approved information collection burdens covered by OMB Control No. 2126–0006, titled ''Medical Qualification Requirements,'' which must be renewed by December 31, 2006; and OMB Control No. 2126–0011, titled ''Commercial Driver Licensing and Test Standards,'' which must be renewed by April 30, 2007. Table 9 captures the current and proposed burden hours associated with the two approved information collections.

TABLE 9.—CURRENT AND PROPOSED INFORMATION COLLECTION BURDENS

OMB approvals number	Annual burden hours currently approved	Adjustment burden hours proposed	Change burden hours proposed	Annual burden hours proposed
2126–0006	1,185,876	0	118,449	1,304,325
2126–0011	1,272,988	(62,597)	0	1,210,391
Totals	2,458,864	(62,597)	118,449	2,514,716

Following is an explanation of how each of the two information collections shown above would be impacted by this proposal.

2126–0006 Medical Qualification Requirement. This rulemaking would increase slightly the information collection burden associated with the medical qualification requirement. The increase is attributed to FMCSA adjusting its estimate of the total number of medical examinations and the associated burden hours from 1,185,876 to 1,304,325 hours, and the proposed requirement for motor carriers to maintain a copy of the vision or diabetes exemption in the driver qualification file. Currently, FMCSA manages vision and diabetes exemption programs under its authority provided at 49 U.S.C. 31136(e) and 31315. Drivers that are granted an exemption are required under the terms and conditions of the exemption programs to carry on their person a copy of the exemption at all times but motor carriers are not required to maintain a copy of the exemption that may be granted from the physical qualifications standards. If a final rule is adopted, the estimated information collection burden for the medical qualification requirement would increase from 1,185,876 to 1,304,325 hours annually [1,301,378 hours for medical certificates + 11 hours for resolution of medical conflicts + 167 hours for SPE certificates + 946 hours for vision exemptions + 3 hours for migrant workers + 1,820 hours for diabetes exemptions].

FMCSA notes that the proposed rule would eliminate the requirement for motor carriers to maintain a copy of the medical certificate in the driver qualifications file of CDL holders. However, because the proposed rule would require the SDLA to maintain a copy of the CDL driver's certificate for at least 6 months from the date it is filed with the licensing agency, and to maintain the information from the certificate on the CDLIS driver record for interstate CDL holders, the information collection burden reductions for motor carriers are offset by the information collection burden increases for the SDLAs. The Agency would retain the requirement for a carrier to place a copy of the medical certificate in the driver qualification file for non-CDL drivers so that portion of the information collection burden remains unchanged. A copy of FMCSA's preliminary supporting statement is included in the docket referenced at the beginning of this NPRM. FMCSA requests comments on its estimates of the information collection burdens proposed in OMB Control Number 2126–0006.

2126–0011, Commercial Driver Licensing and Test Standards. This information collection supports the DOT Strategic Goal of Safety by requiring that CDL drivers of CMVs subject to part 391 are properly licensed according to all applicable Federal requirements. The information being collected ensures that CDL drivers are qualified to hold a CDL and operate CMVs, and that States are administering their CDL programs in compliance with the Federal requirements.

There would be a new requirement for SDLAs to collect and post to the CDLIS driver record the information contained on the medical examiner's certificate of CDL driver applicants and holders who are subject to part 391.

A driver applicant applying for a CDL for the first time who is subject to the requirements of 49 CFR part 391 would provide an original or a copy of the medical examiner's certificate to the SDLA before it would issue the CDL. The SDLA would then post the information from the certificate to the driver's electronic CDLIS driver record for access by authorized personnel. When the driver renews, updates or transfers the CDL, the SDLA would verify whether the driver must have a medical certification, and if so that the driver's current medical certification is still valid before taking the licensing action.

For drivers required to have a medical certification, in addition to providing the medical examiner's certificate to the SDLA for the initial application for a CDL, whenever a driver renews his/her medical certification either because it is about to expire, because there is a change in a medical condition or because it is requested by his/her employer, the driver must provide an original or copy of the new medical certificate to the SDLA. It is expected that the driver would mail the certificate to the SDLA. The SDLA would post the new medical examiner's certificate information to the electronic CDLIS driver record within 2 business days of receipt.

If at any time the driver is no longer medically certified to operate in interstate commerce, the SDLA would notify the driver. The SDLA would also change the medical status on the electronic CDLIS driver record within 2 business days to either ''not qualified,'' ''excepted'' or ''intrastate only,'' if the driver can meet the State's intrastate medical requirements. If the status is

''not qualified,'' the SDLA would proceed with established State procedures for downgrading the CDL privilege. The process would be completed and recorded on the electronic CDLIS driver record by the State within 60 days of the driver becoming not qualified.

This proposed medical certification status information on the CDLIS driver record would not be required to start until 3 years after the effective date of a final rule on this subject; thus, there would be no change in the total annual burden hours due to this new program change. During these 3 years, the SDLAs would, however, incur a combined one-time estimated cost of $18,245,006 to make systems revisions in order to accommodate the recordkeeping requirements of this proposed new requirement. This includes development of capabilities to record information from the medical examiner's certificate on the CDLIS driver record. It also includes updating all necessary systems to provide medical certification status information as part of the responses to inquiries by all users authorized under 49 CFR 394.225(e). During the first 3 years, there would be a change in the total annual burden hours due to the net results of: (1) Program adjustments in regard to the increase in the number of CDLIS driver records from 11.3 to 12.2 million and (2) the decease in the number of active CDLIS driver records (*i.e.* records of former drivers that must be retained to meet State and/or Federal record retention requirements).

Starting in the 4th and subsequent years, the additional decease in proposed total annual burden hours is due to the implementation of the new program change requiring States to collect and post the driver medical certification information on the interstate CDL holder's electronic CDLIS driver record.

The major assumptions used for calculation of the information collection annual burden hours include the following: (1) Currently, approximately 10% of the 12.2 million (or 1.22 million) CDLIS driver records are inactive drivers; (2) it will take 3 years for States to pass legislation and make the necessary system revisions before the first medical certificate would be posted to the CDLIS driver record; (3) there are approximately 4.2 million active CDL holders and 74% (or 3.1 million) are interstate drivers; and (4) of the remaining 6.78 million inactive CDL holders (12.2 − 1.22 − 4.2 million = 6.78 million), approximately 55% of these drivers (or 2.76 million) would not retain their CDL once the proposed requirements are implemented in the 4th year.

The following table summaries the annual information collection burden hours for current and proposed information collection activities for the first 3 years and the subsequent years. The total proposed annual burden of 1,210,401 hours for the first 3 years represents a decrease of 62,597 hours from the currently-approved total annual burden of 1,272,998 hours due to program adjustments discussed above. The additional decease in proposed total annual burden of 163,786 hours in subsequent years is due to the program changes implementing the new requirement as described above. A detailed analysis of the annual burden hour changes for each information collection activity can be found in the Supporting Statement of OMB Control Number 2126–0011. The Supporting Statement and its attachments are in the public docket for this rulemaking.

Current and proposed information collection activities for states and CDL drivers	Currently approved annual burden hours	Proposed annual burden hours for first 3 Years (program adjustment)	Proposed annual burden hours for subsequent years (program change)
State to obtain and record the medical certificate information	0	0	127,667
State recording of medical certification status	0	0	3,118
State to verify the medical certification status of all interstate CDL drivers	0	0	1,710
Driver to notify employer of convictions/disqualifications	629,445	610,000	456,667
Driver to complete previous employment paperwork	395,500	384,300	287,700
States to complete compliance certification documents	1,632	1,632	1,632
CDLIS recordkeeping	237,004	204,302	158,064
Drivers to complete the CDL application	9,417	10,167	10,167
Total Current Burden	1,272,998	1,210,401	1,046,725

Comments. FMCSA requests your comments on whether the proposed information collection is necessary for FMCSA to achieve the goal of reducing truck and bus crashes, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments on this information collection burden directly to OMB. The OMB must receive your comments by December 18, 2006. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The Agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this proposed action is covered by a Categorical Exclusion (CE) under Appendix 2, paragraph 6(t) in the Order from further environmental documentation. The CE relates to regulations that ensure States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986 by having appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license. In addition, the Agency believes that the proposed action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the FMCSA preliminarily

determines that the proposed action does not require an environmental assessment or an environmental impact statement.

The Agency analyzed this proposed rule under section 176(c) of the Clean Air Act, as amended (CAA), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this proposed action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance. (Refer to 40 CFR 93.153(c)(2).) It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonable that the proposed rule would not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet mix of motor carriers. Drivers are currently required to obtain and maintain medical certification as proof they meet the physical qualification standards of 49 CFR part 391. This proposed rulemaking would establish a requirement for States to record this medical certification information for CDLIS driver records accessible to FMCSA and State licensing and enforcement agencies through CDLIS and CDLIS equivalent for NLETS, and to drivers and employers on the CDLIS MVR. FMCSA requests public comment on these preliminary determinations.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency determined, preliminarily, that it would not be a ''significant energy action'' under that executive order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this proposed rule as required by Section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form and related matters. The entire privacy impact assessment is available in the docket for this proposal.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Highway safety, and Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Highway safety, and Motor carriers.

49 CFR Part 390

Motor carriers, Reporting and recordkeeping requirements, Safety.

49 CFR Part 391

Motor carriers, Reporting and recordkeeping requirements, Safety.

In consideration of the foregoing, FMCSA proposes to amend parts 383, 384, 390 and 391 of title 49, Code of Federal Regulations (49 CFR parts 383, 384, 390 and 391) as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. Revise the authority citation for part 383 to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1766, 1767 (Dec. 9, 1999); sec. 1012(b) of Pub. L. 107–56; 115 Stat. 397 (October 26, 2001); sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726 (Aug. 10, 2005); and 49 CFR 1.73.

2. Amend § 383.5 to add definitions for ''CDLIS driver record'' and ''CDL Downgrade'' in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

CDL downgrade means the State either: (1) Restricts an unrestricted CDL to intrastate transportation, or interstate transportation excepted from part 391 as provided in 49 CFR 390.3(f) or 391.2; or (2) the State removes the CDL privilege entirely from the driver license.

CDLIS driver record means the electronic record in the Commercial Driver's License Information System established under 49 U.S.C. 31309 containing a CDL driver's individual status and history.

* * * * *

3. Amend § 383.71 by revising paragraph (a) introductory text and paragraph (a)(1) and by adding a new paragraph (g) to read as follows:

§ 383.71 Driver application procedures.

(a) *Initial Commercial Driver's License.* Prior to obtaining a CDL, an applicant must meet the following requirements:

(1) An applicant must certify either:

(i) He or she operates or expects to operate in interstate commerce, and is both subject to and meets the qualification requirements under part 391 of this chapter; or

(ii) He or she operates in interstate commerce, but engages exclusively in transportation or operation excepted from the qualification requirements of part 391 of this chapter, or he or she operates only in intrastate commerce and therefore is subject to State driver qualification requirements.

* * * * *

(g) An applicant who certifies according to (a)(1)(i) of this section must:

(1) At his or her first licensing action (new CDL, renewal, transfer or upgrade) on or after [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], provide the State with an original or copy of a medical examiner's certificate prepared by a qualified medical examiner, as defined in § 390.5 of this chapter, and

(2) In order to maintain a medical certification status of ''qualified,'' on or after [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], provide the State with all subsequently issued medical examiner's certificates.

4. Amend § 383.73 to:

a. Redesignate existing paragraph (a)(5) to be (a)(6);

b. Add a new paragraph (a)(5);

c. Amend paragraph (b)(4)(ii) by removing the ''and'' from the end;

d. Amend paragraph (b)(5) by removing the period and adding ''; and'' at the end;

e. Add paragraph (b)(6);

f. Amend paragraph (c)(3) by removing ''and'' at the end;

g. Amend paragraph (c)(4) by removing the period and adding ''; and'' at the end;

h. Add paragraph (c)(5);

i. Amend paragraph (d)(1) by removing ''and'' at the end;

j. Amend paragraph (d)(2) by removing the period and adding ''; and'' at the end; and

k. Add paragraphs (d)(3) and (j), to read as follows:

§ 383.73 State procedures.

(a) * * *

(5) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], record on the CDLIS driver record the certification made by the driver according to § 383.71(a)(1). If the driver certified according to § 383.71(a)(1)(i), then record all required information from the medical examiner's certificate to the CDLIS driver record in

accordance with paragraph (j) of this section.

* * * * *

(b) * * *

(6)(i) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], verify from the CDLIS driver record that the medical certification status is qualified if the CDLIS driver record indicates the applicant is subject to part 391 of this chapter under the provisions of § 383.71(a)(1)(i).

(ii) Exception. A driver may present a currently valid medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE]. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(c) * * *

(5)(i) Beginning [DATE 3 YEARS AFTER THE EFECTIVE DATE OF A FINAL RULE] verify from the CDLIS driver record that the medical certification status is qualified if the CDLIS driver record indicates the applicant is subject to part 391 of this chapter under the provisions of § 383.71(a)(1)(i).

(ii) Exception. A driver may present a currently valid medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE]. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(d) * * *

(3)(i) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE] verify from the CDLIS driver record that the medical certification status is qualified if the CDLIS driver record indicates the applicant is subject to part 391 of this chapter under the provisions of § 383.71(a)(1)(i).

(ii) Exception. A driver may present a current medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE]. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

* * * * *

(j) *Medical certification recordkeeping.* (1) *Application for CDL.* Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], for each operator of a commercial motor vehicle required to have a commercial driver's license, the current licensing State must record the driver's certification information from § 383.71(a)(1). For drivers subject to part 391 of this chapter, the State must date stamp the medical examiner's certificate required by § 383.71(g) when received, retain the certificate, a copy, or an image for 6 months, and within 2 business days record the information from the medical examiner's certificate, including:

(i) Medical examiner's name;

(ii) Medical examiner's license or certificate number and the State that issued it;

(iii) Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, required by 49 U.S.C. 31149(d), as added by section 4116(a) of SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144, 1726 (Aug. 10, 2005)), requires one);[7]

(iv) Date of physical examination/issuance of the medical examiner's certificate to the driver;

(v) Medical certification status determination;

(vi) Expiration date of the medical examiner's certificate;

(vii) Existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification or grandfather provisions;

(viii) Any restriction (*e.g.*, corrective lenses, hearing aid, etc.); and

(ix) Date the medical examiner's certificate information was posted to the CDLIS driver record.

(2) *Medical certification status updates.* (i) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], the State must, within 2 business days of receiving the original or copy of a medical examiner's certificate from the driver, post the medical examiner's certificate information specified in paragraph (a) of this section to the CDLIS driver record.

(ii) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], if a driver's medical certification or medical variance expires, or the FMCSA notifies the State that a medical variance was removed/rescinded, the State must:

(A) Update the CDLIS driver record within 2 business days to show the driver's current CMV medical certification status as ''not qualified'' and proceed with established State procedures for downgrading the license. The CDL downgrade must be completed and recorded within 60 days of the driver becoming not qualified to operate a CMV.

(B) Notify the CDL holder of his/her CDL not-qualified status and that the CDL is being downgraded.

(iii) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], the State must, within 2 business days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, update the CDLIS driver record to include the medical variance information provided by FMCSA.

(iv) Beginning [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], if a driver subject to part 391 of this chapter has failed to provide a current medical examiner's certificate, the State must mark that CDLIS driver record as ''not qualified'' and downgrade the CDL following procedures in paragraph (j)(2)(ii) of this section.

5. Revise § 383.95 to read as follows:

§ 383.95 Restrictions.

(a)(1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(2) For the purposes of the skills test, and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

(b) If the State is notified according to § 383.73(j)(2)(iii) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDL document by placing a ''W'' restriction on the CDL, if issued, indicating there is information about a medical variance on the CDLIS driver record.[8]

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

6. Revise the authority citation for 49 CFR part 384 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1753, 1767 (Dec. 9, 1999); and 49 CFR 1.73.

7. Amend § 384.105(b) by adding in alphabetical order the definition for

[7] Section 31149(d) becomes effective August 10, 2006. (SAFETEA–LU section 4116(f)). Although the FMCSA plans to implement regulations establishing the National Registry of Medical Examiners in the future, in order to minimize the number of times States have to upgrade their licensing systems, States may want to make provisions in the CDLIS driver record to accept this information should it be required.

[8] In accordance with the agreement between Canada and the United States (see footnote to § 391.41), drivers with a ''W'' restriction on their commercial driver license are restricted from operating a CMV in the other country.

CDLIS Motor Vehicle Record to read as follows:

§ 384.105 Definitions.

* * * * *

(b) * * *

CDLIS motor vehicle record (CDLIS MVR) means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by States to users authorized in § 384.225(e)(3) and (4).

* * * * *

8. Revise § 384.107(b) to read as follows:

§ 384.107 Matter incorporated by reference.

* * * * *

(b) *Materials incorporated.* The AAMVA, Inc.'s ''Commercial Driver License Information System (CDLIS) State Procedures Manual,'' Version 4.0.2, March 2006, IBR approved for §§ 384.225(f) and 384.231(d).

* * * * *

9. Amend § 384.206 to:

a. Amend paragraphs (a)(2)(ii) and (iii) to replace the phrase ''driving record'' with the phrase ''driver record'' wherever it occurs; and

b. Revise paragraphs (a)(1) and (b) to read as follows:

§ 384.206 State record checks.

(a) *Required checks.*

(1) *Issuing State's records.* Before issuing, renewing, upgrading or transferring a CDL to any person, the driver's State of domicile must, within the period of time specified in § 384.232, check its own records as follows:

(i) The driver record of the person in accordance with § 383.73(a)(3) of this chapter; and

(ii) For a driver certifying according to § 383.71(a)(1)(i) of this chapter, the information on the person's CDLIS driver record about medical certification by a medical examiner, as defined in § 390.5 of this chapter.

* * * * *

(b) *Required action.* Based on the findings of the State record checks prescribed in this section, the State of domicile must do one of the following as appropriate:

(1) Issue, renew, upgrade or transfer the applicant's CDL;

(2) In the event a State obtains adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials, or penalties that are called for in any applicable sections of this subpart; or

(3) In the event the State has no information concerning the applicant's medical certification from drivers subject to part 391 of this chapter, or the medical certification status is ''not-qualified,'' the State must deny the requested CDL licensing action and downgrade an existing CDL.

§ 384.208 [Amended]

10. Amend § 384.208(b) by replacing the phrase ''driver's record'' with the phrase ''CDLIS driver record''.

11. Amend § 384.225 to:

a. Revise the section heading;

b. Amend paragraphs (b), (c) introductory text, and (d) by replacing the term ''driver history'' wherever it occurs with the term ''CDLIS driver record''; and

c. Revise paragraphs (a) and (e) and add a new paragraph (f) to read as follows:

§ 384.225 CDLIS driver recordkeeping.

The State must:

(a) Record and maintain as part of the CDLIS driver record:

(1) All convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(2) Medical certification status information.

* * * * *

(e) Only the following users or their authorized agents may receive the designated information:

(1) States—All information on all CDLIS driver records.

(2) Secretary of Transportation—All information on all CDLIS driver records.

(3) Driver—Only information on that driver's CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(4) Motor Carrier or Prospective Motor Carrier—After notification to a driver, all information on that driver's, or prospective driver's, CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(f) The content of the report provided a user authorized by paragraph (e) of this section from the CDLIS driver record, or a copy of this record maintained for this purpose, must be comparable to the applicable report that would be generated by a CDLIS State-to-State request for a driver status (SG) or driver history (SB), as defined in the March 2006 edition of the ''CDLIS State Procedures Manual,'' version 4.0.2., (incorporated by reference, see § 384.107) and must include the medical certification status information of the driver.

§ 384.226 [Amended]

12. Amend § 384.226 by replacing the phrase ''driver's record'' with the phrase ''CDLIS driver record''.

§ 384.231 [Amended]

13. Revise § 384.231(d) by replacing the phrase ''October 1998 edition of the AAMVAnet, Inc.'s 'Commercial Driver License Information System (CDLIS) State Procedures,' Version 2.0.'' with the phrase ''March 2006 edition of the AAMVA, Inc.'s 'CDLIS State Procedures Manual,' Version 4.0.2 and all other CDLIS documents referenced in the manual.''

14. Add new § 384.234 to read as follows:

§ 384.234 Driver medical certification recordkeeping.

The State must meet the medical certification recordkeeping requirements of § 383.73(j) of this chapter regarding the driver's physical qualification as specified in the qualification standards of part 391 of this chapter.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

15. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

16. Amend § 390.5 by adding in alphabetical order the definitions for ''medical variance'' and ''motor vehicle record'' as follows:

§ 390.5 Definitions.

* * * * *

Medical variance means a driver has received one of the following that allows issuance of a medical certification:

(1) An exemption from FMCSA permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or § 391.64 of this chapter;

(2) A skill performance evaluation certificate from FMCSA permitting operation of a commercial motor vehicle pursuant to § 391.49 of this chapter.

* * * * *

Motor vehicle record means the report generated from the driver record and provided to a driver or employer about the driving status and history of a driver.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

17. Revise the authority citation for part 391 to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

18. Amend § 391.2 by revising the heading to read as follows:

§ 391.2 General exceptions.

* * * * *

19. Amend § 391.23 to:

a. Revise paragraphs (a)(1) and (b); and

b. Add paragraph (m) to read as follows:

§ 391.23 Investigation and inquiries.

(a) * * *

(1) An inquiry to the State driver license agency in every State where the driver held a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each State driver license agency required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from the State or States, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State. The inquiry to the State driver license agencies must be made in the form and manner each agency prescribes.

* * * * *

(m)(1) The motor carrier must obtain a copy of, and place in the driver qualification file, the medical examiner's certificate required by § 391.43, and any medical variance on which the certification is based, before allowing the driver to operate a CMV.

(2) *Exception.* Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], before allowing the operation of a CMV by any driver required to have a commercial driver's license under part 383 of this chapter, and subject to the requirement of § 391.41(a) to be physically qualified to operate a CMV, the employing motor carrier must verify and document in the driver qualification file that the driver is currently medically certified, using the CDLIS motor vehicle record defined at 49 CFR 384.105 and obtained from the current licensing State in response to the inquiry required by paragraph (a)(1) of this section. Until [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE] for CDL drivers subject to part 391, if there is no medical certification status information on the CDLIS motor vehicle record obtained from the current State driver licensing agency, the employing motor carrier may accept an original or copy of a medical examiner's certificate issued for that driver prior to [DATE 3 YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE] and place a copy of it in the driver qualification file before allowing the driver to operate a CMV.

§ 391.25 [Amended]

20. Amend § 391.25 to:

a. Amend paragraph (a) by replacing the phrase ''into the driving record'' with the phrase ''to obtain the motor vehicle record'';

b. Amend paragraph (b) introductory text by replacing the phrase ''driving record'' with the phrase ''motor vehicle record''; and

c. Amend paragraph (c)(1) by replacing the phrase ''response from each State agency to the inquiry'' with the phrase ''motor vehicle record''.

21. Amend § 391.41 to revise paragraph (a) to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) (1) A person subject to this part must not drive a commercial motor vehicle unless he/she is medically certified as physically qualified to do so, and, except as provided in paragraph (a)(3) of this section, has on his/her person the original, or a copy, of a medical examiner's certificate that he/she is physically qualified to drive a commercial motor vehicle.[9]

(2) A person is physically qualified to drive a commercial motor vehicle if:

(i) That person meets the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirements in § 391.43; or

(ii) That person obtained a medical variance and has complied with the medical examination requirement in § 391.43.

(3) Exception. Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(g) of this chapter documenting that he/she meets the physical qualification requirements of this part, no longer needs to carry on his/her person the medical examiner's certificate specified at § 391.43(h), or a copy. If there is no medical certification information on that driver's CDLIS motor vehicle record defined at 49 CFR 384.105, a current medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE] will be accepted until [DATE 5 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE].

* * * * *

22. Amend § 391.43 by revising paragraph (g) to read as follows:

§ 391.43 Medical examination; certificate of physical qualification.

* * * * *

(g) If the medical examiner finds that the person he/she examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), the medical examiner shall complete a certificate in the form prescribed in paragraph (h) of this section and furnish it to the person who was examined. The medical examiner shall retain a copy of the certificate for the duration of the certificate and give the original to the person examined.

* * * * *

23. Amend § 391.51 to:

a. Amend paragraph (b)(2) by replacing the phrase ''response by each State agency concerning a driver's driving record'' with the phrase ''motor vehicle record received from each State driver licensing agency''.

b. Amend paragraph (b)(4) by replacing the phrase ''response of each State agency'' with the phrase ''motor vehicle record received from each State driver licensing agency''.

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[9] Effective December 29, 1991, the Administrator determined that the new Licencia Federal de Conductor issued by the United Mexican States is recognized as proof of medical fitness to drive a CMV. The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian commercial driver's license is proof of medical fitness to drive a CMV. Therefore, Canadian and Mexican CMV drivers are not required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid commercial driver license issued by the United Mexican States, or a Canadian Province or Territory and whose license and medical status, including any waiver or exemption, can be electronically verified. Drivers from any of the countries who have received a medical authorization that deviates from the mutually accepted compatible medical standards of the resident country are not qualified to drive a CMV in the other countries. For example, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers, but are issued a waiver by one of the Canadian Provinces or Territories, are not qualified to drive a CMV in the United States. U.S. drivers who received a medical variance from FMCSA are not qualified to drive a CMV in Canada.

c. Amend paragraph (d)(1) by replacing the phrase ''response of each State agency'' with the phrase ''motor vehicle record received from each State driver licensing agency''; and

d. Revise paragraphs (b)(7), (b)(8), (d)(4) and (d)(5) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(7) The Medical Examiner's Certificate as required by § 391.43(g) or a legible copy of the certificate. Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], the motor carrier employer meets this requirement for drivers subject to this part who are required to have a commercial driver's license under part 383 of this chapter by including the CDLIS motor vehicle record defined at 49 CFR 384.105 and obtained from the current licensing State in the driver qualification file, if that record contains medical certification status information. If that driver obtained the medical certification based on having a medical variance, the motor carrier must also include a copy of the medical variance in the driver qualification file; and

(8) A Skill Performance Evaluation certificate obtained from a Field Administrator, Division Administrator, or State Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter.

* * * * *

(d) * * *

(4) The Medical Examiner's Certificate as required by § 391.43(g) or a legible copy of the certificate, and any supporting medical variance; and

(5) A Skill Performance Evaluation Certificate issued in accordance with § 391.49; or the Medical Exemption document issued by a Federal medical program in accordance with part 381 of this chapter.

Issued on: November 9, 2006.

John H. Hill,

Administrator.

[FR Doc. E6–19246 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102006A]

New England and Mid-Atlantic Fishery Management Councils; Public Hearings

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

ACTION: Rescheduling of a public hearing.

SUMMARY: NOAA Fisheries Service and the Mid-Atlantic Fishery Management Council (MAFMC) have rescheduled a public hearing on a draft amendment that would establish standardized bycatch reporting methodology (SBRM) for every fishery management plan (FMP). The New England and Mid-Atlantic Fishery Management Councils (Councils) previously announced public hearings and requested comment on the draft amendment (October 31, 2006). The New England Fishery Management Council's (NEFMC) hearing date is unchanged.

DATES: The MAFMC's public hearing will be on December 13, 2006, in New York City, NY. The NEFMC's public hearing will be on November 14, 2006, in Gloucester, MA. Written comments must be received at the appropriate address, e-mail address, or fax number (see **ADDRESSES**) by 5 p.m., local time, on December 29, 2006.

ADDRESSES: NMFS and the Councils will accept comments at two public hearings. For specific locations, see **SUPPLEMENTARY INFORMATION**. You may submit comments on the draft amendment by any of the following methods:

- E-mail: *SBRMcomment@noaa.gov*
- Mail: Patricia A. Kurkul, Regional Administrator, NOAA Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester MA 01930. Mark the outside of the envelope: ''Comments on SBRM Amendment.''
- Fax: (978) 281–9135, Attention: Patricia A. Kurkul.

Copies of the draft SBRM amendment and the public hearing document may be obtained by contacting the NMFS Northeast Regional Office at the above address. The documents are also available via the internet at: *http://www.nero.noaa.gov/nero/regs/com.html*.

FOR FURTHER INFORMATION CONTACT: Michael Pentony, Senior Fishery Policy Analyst, (978) 281–6283.

SUPPLEMENTARY INFORMATION: The initial notice of the public hearings by both Councils was published in the **Federal Register** on October 31, 2006, (71 FR 63749). The New York City hearing has been moved one day to relieve a scheduling conflict.

Meeting Dates, Times, and Locations

The public hearings have been scheduled to coincide with the date and location of New England and Mid-Atlantic Fishery Management Council meetings.

Tuesday, November 14, 2006, at 5:30 p.m. – Tavern on the Harbor, 30 Western Ave., Gloucester, MA 01930, telephone: (978) 283–4200.

Wednesday, December 13, 2006, at 7 p.m. – Skyline Hotel, 725 10th Ave, New York, NY 10019, telephone: (212) 586–3400.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids at the Gloucester, MA, meeting should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Requests for such services at the New York, NY, meeting should be directed to M. Jan Saunders, (302) 674 2331 extension 18. Requests for accessibility accommodations must be received at least at least 5 days prior to the meeting dates.

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

Dated: November 09, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–19398 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 71, No. 221

Thursday, November 16, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. DA–07–02]

Milk in the Northeast and Other Marketing Areas; Notice of Intent To Hold Public Information Session Prior to Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; notice of intent to hold public information session prior to hearing.

SUMMARY: This notice announces a public information session to be held addressing proposals received to amend the Federal order Class III and Class IV product price formulas. The purpose of the pre-hearing information session is for interested parties to learn about the intent of proposals that have been submitted to amend Class III and Class IV product price formulas and how the proposals would accomplish that intent. The session is intended to clarify the intent and effect of proposed amendments. The session will enable proponents to better prepare testimony and evidence in support of, or in opposition to, proposals that may be included in the Hearing Notice announcing the Class III/IV hearing.

DATES: The session will begin at 8:30 a.m. on December 5, 2006.

ADDRESSES: The information session will be held in the USDA Whitten Building, 1400 Independence Avenue, SW., Room 107–A, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–7182, e-mail address: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: The N*otice of Intent to Reconvene National Hearing* published in the **Federal Register** on June 28, 2006 (FR 71 36715) solicited proposals regarding product price formulas that establish Federal order Class III and Class IV prices. Proposals were due on or before September 30, 2006.

The Department recognizes the importance of Class III and IV product pricing formulas and is hosting a public information session to ensure that all proposals received are fully understood. Participation in the information session is strongly encouraged by all parties who have submitted proposals. Submitted proposals and information regarding the purpose and procedure of the information session are available through all Market Administrator offices and Dairy Programs Web site at *http://www.ams.usda.gov/dairy*.

The Department will issue a hearing notice announcing the date, location and the proposals to be considered at the hearing.

Dated: November 9, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–19316 Filed 11–15–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–875

Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review for the Period April 1, 2004 through March 31, 2005

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

EFFECTIVE DATE: November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0414.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the second administrative review on non–malleable cast iron pipe fittings from the People's Republic of China (''PRC''). *See Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 30116 (May 25, 2006) (''*Preliminary Results*''). On September 12, 2006, the Department published a notice extending the time limit for the final results of the administrative review from September 22, 2006, to October 23, 2006. *See Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review: Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China*, 71 FR 53661 (September 12, 2006). On October 30, 2006, the Department published a notice extending the time limit for the final results of the administrative review from October 23, 2006, to November 10, 2006. *See Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review:* , 71 FR 63285 (October 30, 2006). The final results of this administrative review are currently due no later than November 10, 2006.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue final results within 120 days of the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120-day period to a maximum of 180 days. Completion of the final results of this review within the 120-day period is not practicable because the Department needs additional time to evaluate the arguments and issues raised by the petitioners and respondents in their respective case briefs and rebuttal briefs.

Because it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final results of this review an

additional 11 days to 180 days, in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results will be due no later than November 21, 2006. This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: November 8, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–19402 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–601

Notice of Extension of Final Results of the 2004–2005 Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

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

EFFECTIVE DATE: November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0414 and (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2006, the Department published its preliminary results. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of 2003–2004 Antidumping Administrative Review, and Notice of Intent to Rescind in Part*, 71 FR 40069 (July 14, 2006) (''*Preliminary Results*''). In the *Preliminary Results* we stated that we would make our final determination for the antidumping duty review no later than 120 days after the date of publication of the preliminary results (*i.e.*, November 11, 2006).

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue the final results in an administrative review within 120 days of publication date of the preliminary results. However, if it is not practicable to complete the review within this time period, the Department may extend the time limit for the final results to 180 days. Completion of the final results within the 120-day period is not practicable because this review involves certain complex issues, such as a tariff classification and surrogate financial ratios that both Petitioner and respondent addressed in their briefs.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is partially extending the time period for issuing these final results of review by 30 days until December 11, 2006.

Dated: November 7, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–19403 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC), Request for Nominations

AGENCY: International Trade Administration, Trade Development, Commerce.

ACTION: Notice.

SUMMARY: The Environmental Technologies Trade Advisory Committee (ETTAC) was established pursuant to provisions under Title IV of the Jobs Through Trade Expansion Act, 22. U.S.C. 2151, and under the Federal Advisory Committee Act, 5 U.S.C. App. 2. ETTAC was first chartered on May 31, 1994. ETTAC serves as an advisory body to the Environmental Trade Working Group of the Trade Promotion Coordinating Committee (TPCC), reporting directly to the Secretary of Commerce in his capacity as Chairman of the TPCC. ETTAC advises on the development and administration of policies and programs to expand United States exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements.

Membership in a committee operating under the Federal Advisory Committee Act must be balanced in terms of economic subsector, geographic location, and company size. Committee members serve in a representative capacity, and must be able to generally represent the views and interests of a certain subsector of the U.S. environmental industry. We are seeking senior executive-level company or environmental technologies association candidates. Members of the ETTAC have experience in exporting the full range of environmental technologies products and services including:

(1) Air Pollution Control/Monitoring Equipment;

(2) Analytic Services;

(3) Environmental Energy Sources;

(4) Environmental Engineering and Consulting Services;

(5) Financial Services;

(6) Process and Prevention Technologies;

(7) Solid and Hazardous Waste Equipment and Management;

(8) Water and Wastewater Equipment and Services.

The Secretary of Commerce invites nominations to ETTAC of U.S. citizens who will represent U.S. environmental goods and services companies that trade internationally, or trade associations whose members include U.S. companies that trade internationally. Companies must be at least 51 percent beneficially-owned by U.S. persons. U.S.-based subsidiaries of foreign companies in general do not qualify for representation on the committee.

Nominees will be considered based upon their ability to carry out the goals of ETTAC's enabling legislation as further articulated in its charter. ETTAC's Charter is available on the internet at *http://www.environment.ita.doc.gov*. Priority will be given to a balanced representation in terms of point of view represented by various sectors, product lines, firm sizes, and geographic areas. Appointments are made without regard to political affiliation.

Nominees must be U.S. citizens, representing U.S. environmental goods and services firms that trade internationally or provide services in direct support of the international trading activities of other entities.

Self-nominations are accepted. If you are interested in nominating someone to become a member of ETTAC, please provide the following information (2 pages maximum):

(1) Name;

(2) Title;

(3) Work phone; fax; and, email address;

(4) Company or trade association name and address including Web site address;

(5) Short bio of nominee including credentials;

(6) Brief description of the company or trade association and its business activities; company size (number of employees and annual sales); and export markets served.

Please, do not send company or trade association brochures or any other information.

This information may be e-mailed to *ellen.bohon@mail.doc.gov*, or faxed to the attention of Ellen Bohon at 202–482–5665, and must be received before the deadline. Nominees selected to ETTAC will be notified.

Deadline: This request will be open until November 24, 2006, from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ellen Bohon, Office of Environmental Technologies Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; phone 202–482–0359; fax 202–482–5665; e-mail *Ellen.Bohon@mail.doc.gov.*

Dated: November 9, 2006.

Joseph O. Neuhoff, III,

Director, Office of Energy and Environmental Industries.

[FR Doc. E6–19309 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

(C–580–851)

Dynamic Random Access Memory Semiconductors from the Republic of Korea: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister at (202) 482–1174 or Julie Santoboni at (202) 482–4194; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2005, the Department of Commerce (the Department) published a notice of initiation of administrative review of the countervailing duty order on dynamic random access memory semiconductors (DRAMs) from the Republic of Korea, covering the period January 1, 2004 through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631. On January 12, 2006, the petitioner, Micron Technology, Inc., alleged that the respondent, Hynix Semiconductor, Inc., received new subsidies. The Department published the preliminary results of this administrative review on August 11, 2006. *See Dynamic Random Access Memory Semiconductors from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*, 71 FR 46192.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results of review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limits for Final Results

This administrative review is extraordinarily complicated due to the complexity of the countervailable subsidy practices alleged in the new subsidy allegations. Because the Department requires additional time to review and analyze arguments raised by interested parties in their case and rebuttal briefs, it is not practicable to complete this review by the original deadline of December 9, 2006. Therefore, the Department is extending the time limit for completion of the final results to not later than February 7, 2007, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 8, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–19401 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101706B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper and Grouper Off the Southern Atlantic States

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

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from the Gulf and South Atlantic Fisheries Foundation, Inc. If granted, the EFP would authorize the applicants, with certain conditions, to collect limited numbers of undersized and out-of-season snapper and grouper in South Atlantic Federal waters. This study is intended to characterize catch and discard mortality within the South Atlantic commercial hook and line snapper-grouper fishery.

DATES: Comments must be received no later than 5 p.m., eastern time, on December 18, 2006.

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

- E-mail: *Steve.Branstetter@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''FND__EFP''.
- Mail: Steve Branstetter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, 727–824–5305; fax: 727–824–5308; e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The described research is part of a Cooperative Research Program Grant (Cooperative Agreement No. NA06NMF4540059). The Cooperative Research Program is a means of involving commercial and/or recreational fishermen in the collection of fundamental fisheries information. Resource collection efforts support the development and evaluation of fisheries management and regulatory options.

The proposed collection for scientific research involves activities otherwise prohibited by regulations implementing the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region. The applicants require authorization to harvest and possess undersized and out-of-season snapper and grouper for scientific research

activities during the period from November 1, 2006, through May 31, 2008. Specimens would be collected from Federal waters off the east coast of Florida and Federal waters off the coasts of Georgia, South Carolina, and North Carolina. Sampling would occur during normal fishing operations of the commercial snapper-grouper vertical hook-and-line fishery. Sampling would occur year-round, collecting up to 500 fish during the course of the sampling. Data collections for this study would support improved information about the catch, bycatch, discards, and discard mortality for species in the snapper-grouper complex. These data would provide insight on a stock's resilience to fishing, and would help refine estimates of long-term biological productivity of the stocks. Currently, these data are unavailable, and it is anticipated project results would yield valuable data within this fishery.

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, or special management zones, without additional authorization. Additionally, NMFS may prohibit the possession of Nassau or goliath grouper, and require any sea turtles taken incidentally during the course of fishing or scientific research activities to be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, consultations with the affected states, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws.

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

Dated: November 9, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–19394 Filed 11–15–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates.

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 250. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 250 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* December 1, 2006.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 249. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: November 9, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGE IN CIVILIAN BULLETIN 250 IS AN UPDATE TO THE RATE FOR OTHER, HAWAII.				
ALASKA				
ADAK	120	79	199	07/01/2003
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
BARROW	159	95	254	05/01/2002
BETHEL	125	78	203	05/01/2006
BETTLES	135	62	197	10/01/2004
CLEAR AB	90	82	172	10/01/2006
COLD BAY	90	73	163	05/01/2002
COLDFOOT	165	70	235	10/01/2006
COPPER CENTER				
05/01 - 09/30	129	75	204	04/01/2006
10/01 - 04/30	89	71	160	04/01/2006
CORDOVA				
05/01 - 09/30	95	74	169	05/01/2006
10/01 - 04/30	85	72	157	04/01/2005
CRAIG				
04/15 - 09/14	125	67	192	04/01/2006
09/15 - 04/14	95	64	159	04/01/2006
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	90	82	172	04/01/2006
DENALI NATIONAL PARK				
06/01 - 08/31	122	66	188	04/01/2006
09/01 - 05/31	70	61	131	04/01/2006
DILLINGHAM	114	69	183	06/01/2004
DUTCH HARBOR-UNALASKA	121	84	205	04/01/2006
EARECKSON AIR STATION	90	82	172	10/01/2006
EIELSON AFB				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
ELMENDORF AFB				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
FAIRBANKS				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	90	82	172	04/01/2006
FT. RICHARDSON				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
FT. WAINWRIGHT				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
GLENNALLEN				
05/01 - 09/30	129	75	204	04/01/2006

10/01 - 04/30	89	71	160	04/01/2006
HAINES	90	69	159	04/01/2006
HEALY				
06/01 - 08/31	122	66	188	04/01/2006
09/01 - 05/31	70	61	131	04/01/2006
HOMER				
05/15 - 09/15	139	80	219	05/01/2006
09/16 - 05/14	79	74	153	05/01/2006
JUNEAU				
05/01 - 09/30	129	89	218	04/01/2006
10/01 - 04/30	79	84	163	04/01/2006
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
05/01 - 08/31	129	92	221	04/01/2006
09/01 - 04/30	79	87	166	04/01/2006
KENNICOTT	189	85	274	04/01/2005
KETCHIKAN				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK				
04/15 - 09/14	125	67	192	04/01/2006
09/15 - 04/14	95	64	159	04/01/2006
KODIAK				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
KOTZEBUE				
05/15 - 09/30	151	90	241	05/01/2006
10/01 - 05/14	135	89	224	05/01/2006
KULIS AGS				
05/01 - 09/15	170	93	263	05/01/2006
09/16 - 04/30	95	85	180	05/01/2006
MCCARTHY	189	85	274	04/01/2005
MCGRATH	165	69	234	10/01/2006
MURPHY DOME				
05/01 - 09/15	169	88	257	04/01/2006
09/16 - 04/30	75	79	154	04/01/2006
NOME	125	86	211	05/01/2006
NUIQSUT	180	53	233	05/01/2002
PETERSBURG	80	62	142	06/01/2005
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/01 - 09/30	171	79	250	04/01/2006
10/01 - 04/30	69	69	138	04/01/2006
SITKA-MT. EDGECUMBE				
05/01 - 09/30	119	75	194	04/01/2006
10/01 - 04/30	99	73	172	04/01/2006
SKAGWAY				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
SLANA				
05/01 - 09/30	139	55	194	02/01/2005

10/01 - 04/30	99	55	154	02/01/2005
SPRUCE CAPE				
05/01 - 09/30	123	91	214	04/01/2006
10/01 - 04/30	99	88	187	04/01/2006
ST. GEORGE	129	55	184	06/01/2004
TALKEETNA	100	89	189	07/01/2002
TANANA	125	86	211	05/01/2006
TOGIAK	100	39	139	07/01/2002
TOK	90	65	155	05/01/2006
UMIAT	350	35	385	10/01/2006
VALDEZ				
05/01 - 10/01	129	80	209	04/01/2006
10/02 - 04/30	79	75	154	04/01/2006
WASILLA				
05/01 - 09/30	134	84	218	04/01/2006
10/01 - 04/30	80	79	159	04/01/2006
WRANGELL				
05/01 - 09/30	135	82	217	04/01/2005
10/01 - 04/30	98	78	176	04/01/2005
YAKUTAT	110	68	178	03/01/1999
[OTHER]	90	82	172	10/01/2006
AMERICAN SAMOA				
AMERICAN SAMOA	122	73	195	12/01/2005
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	90	225	06/01/2005
HAWAII				
CAMP H M SMITH	149	100	249	05/01/2006
EASTPAC NAVAL COMP TELE AREA	149	100	249	05/01/2006
FT. DERUSSEY	149	100	249	05/01/2006
FT. SHAFTER	149	100	249	05/01/2006
HICKAM AFB	149	100	249	05/01/2006
HONOLULU (INCL NAV & MC RES CTR)	149	100	249	05/01/2006
ISLE OF HAWAII: HILO	112	93	205	05/01/2006
ISLE OF HAWAII: OTHER	150	95	245	05/01/2006
ISLE OF KAUAI	188	102	290	05/01/2006
ISLE OF MAUI	159	95	254	05/01/2006
ISLE OF OAHU	149	100	249	05/01/2006
KEKAHA PACIFIC MISSILE RANGE FAC	188	102	290	05/01/2006
KILAUEA MILITARY CAMP	112	93	205	05/01/2006
LANAI	175	130	305	05/01/2006
LUALUALEI NAVAL MAGAZINE	149	100	249	05/01/2006
MCB HAWAII	149	100	249	05/01/2006
MOLOKAI	153	95	248	05/01/2006
NAS BARBERS POINT	149	100	249	05/01/2006
PEARL HARBOR [INCL ALL MILITARY]	149	100	249	05/01/2006
SCHOFIELD BARRACKS	149	100	249	05/01/2006
WHEELER ARMY AIRFIELD	149	100	249	05/01/2006
[OTHER]	112	93	205	12/01/2006
MIDWAY ISLANDS				
MIDWAY ISLANDS				
INCL ALL MILITARY	100	45	145	06/01/2006
NORTHERN MARIANA ISLANDS				
ROTA	129	91	220	05/01/2006
SAIPAN	121	94	215	05/01/2006
TINIAN	85	80	165	06/01/2005
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				

AGUADILLA	87	70	157	07/01/2006
BAYAMON	195	77	272	08/01/2006
CAROLINA	195	77	272	08/01/2006
CEIBA				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
FAJARDO [INCL ROOSEVELT RDS NAVS				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
FT. BUCHANAN [INCL GSA SVC CTR,	195	77	272	08/01/2006
HUMACAO				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
LUIS MUNOZ MARIN IAP AGS	195	77	272	08/01/2006
LUQUILLO				
05/01 - 11/30	155	57	212	08/01/2006
12/01 - 04/30	185	57	242	08/01/2006
MAYAGUEZ	109	73	182	07/01/2006
PONCE				
01/01 - 05/31	139	73	212	07/01/2006
06/01 - 07/31	230	82	312	07/01/2006
08/01 - 11/30	139	73	212	07/01/2006
12/01 - 12/31	230	82	312	07/01/2006
SABANA SECA [INCL ALL MILITARY]	195	77	272	08/01/2006
SAN JUAN & NAV RES STA	195	77	272	08/01/2006
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	135	92	227	05/01/2006
12/15 - 04/14	187	97	284	05/01/2006
ST. JOHN				
04/15 - 12/14	163	98	261	05/01/2006
12/15 - 04/14	220	104	324	05/01/2006
ST. THOMAS				
04/15 - 12/14	240	105	345	05/01/2006
12/15 - 04/14	299	111	410	05/01/2006
WAKE ISLAND				
WAKE ISLAND	152	15	167	06/01/2006

[FR Doc. 06–9222 Filed 11–15–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the annual meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on February 1, 2006 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: November 30–December 1, 2006.

Time: 8:30 a.m. to 12 p.m. (November 30) and 8:30 a.m. to 1 p.m. (December 1).

Location: Building 35, 7011 Morrison Ave., Fort Benning, GA 31905.

Proposed Agenda: The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting on June 15, 2006 as well as receive other information appropriate to its interests.

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Secretariat at (703) 614–3818 or (703) 614–8721.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment by individuals and organizations may be made from 12 p.m. to 1 p.m. on Friday, December 1, 2006. Public comments will be limited to five minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with their name, phone number, e-mail address, and the full text of their comments by 5 p.m. EST on Monday, November 27, 2006. The first twelve requestors will be notified by 5 p.m. EST on Tuesday, November 28, 2006 of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available only on a first come, first serve basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–9219 Filed 11–15–06; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board

AGENCY: Defense Information Systems Agency.

ACTION: Notice of Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of members to the Defense Information Systems Agency (DISA) Performance Review Board. The Performance Review Board provides a fair and impartial review of Senior Executive Service (SES) Performance appraisals and makes recommendations to the Director, Defense Information Systems Agency, regarding final performance ratings and performance awards for DISA SES members.

EFFECTIVE DATE: November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Beth Shelley, SES Program Manager, Defense Information Systems Agency, P.O. Box 4502, Arlington, Virginia 22204–4502, (703) 607–4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4214(c)(4), the following are the names and titles of DISA career executives appointed to serve as members of the DISA Performance Review Board. Appointees will serve one-year terms, effective upon publication of this notice.

MG Marilyn A. Quagliotti, USA, Vice Director, DISA, Chairperson.

Ms. Diann L. McCoy, Component Acquisition Executive, DISA, Member.

Mr. John J. Garing, Director for Strategic Planning and Information/Chief Information Officer, DISA, Member.

Mr. John J. Penkoske, Jr., Director for Manpower, Personnel, and Security, DISA, Member.

Dated: November 8, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9221 Filed 11–15–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Hearing To Receive Comments for the San Luis Rey River Flood Control Project, From College Blvd. to the Pacific Ocean, San Diego County, CA, Operation and Maintenance for Vegetation and Sediment Management, Draft Supplemental Environmental Impact Statement

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of hearing.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Corps) will hold a public hearing to receive comments on the proposed project action as described and evaluated in Draft Supplemental Environmental Impact Statement (SEIS) for the operation and maintenance, related to vegetation and sediment management, of the San Luis Rey River Flood Control Project.

DATES: The public hearing will be held on Thursday, November 30, 2006, at 7 p.m.

ADDRESSES: The public hearing will be held in the Community Meeting Room at Oceanside City Hall, 300 N. Pacific Coast Highway, Oceanside, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Kayama, Project Environmental Coordinator, (213) 452–3845.

SUPPLEMENTARY INFORMATION: The Draft SEIS addresses potential environmental impacts associated with the proposed changes to the operation and maintenance for vegetation and sediment management of the San Luis Rey River Flood Control Project, and identifies measures to reduce such impacts. Modifications to existing operation and maintenance procedures are necessary to address new conditions within the project area, including the presence of Federal and state listed endangered and/or threatened species and listing of their critical habitat within the project footprint. The proposed modification is designed to convey flows of approximately 71,200 cubic feet per second (cfs).

The Federal lead agency that is responsible for implementing the National Environmental Policy Act (NEPA) is the Corps. The local lead agency that is responsible for implementing the California Environmental Quality Act (CEQA) is the City of Oceanside.

A range of alternatives, conceptual and a more refined set, were developed during coordination between the Corps and various regulatory and resource agencies and focused on variation in patterns of vegetation management, and the ''implementability'' and hydraulic acceptability of these patterns inside the existing leveed flood control channel, and their relative benefit to riparian species. Four alternatives are evaluated in the Draft SEIS. The public review period for the Draft SEIS began on November 3, 2006 and extends through December 18, 2006. Interested parties are invited to attend the meeting and submit any comments. Written comments may also be sent to the following address: U.S. Army Corps of Engineers, Los Angeles District, San Luis Rey River Flood Control Project, ATTN: CESPL–PD–RN, P.O. Box 532711, Los Angeles, CA 90053–2325. Comments concerning the Draft EIS should be submitted on or before December 18, 2006.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–9220 Filed 11–15–06; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 16, 2007.

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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 9, 2006.

Angela C. Arrington,

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

Federal Student Aid

Type of Review: Extension.

Title: Student Right-to-Know (SRK).

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 10,300.

Burden Hours: 228,150.

Abstract: The SRK requires institutions that participate in any program under Title IV of the HEA to make available to students and prospective student-athletes and their parents, high school coaches and high school counselors the graduation rates as well as enrollment data and the graduation rates of student athletes, by race, gender, and sport.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3229. 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. E6–19298 Filed 11–15–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–21–000]

Algonquin Gas Transmission, LLC; Notice of Abbreviated Application for a Certificate of Public Convenience and Necessity for Authorization To Abandon Transportation Services

November 9, 2006.

Take notice that on November 3, 2006, Algonquin Gas Transmission, LLC (Algonquin) filed an abbreviated application for a certificate of public convenience and necessity pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for authorization to abandon certain inactive services performed pursuant to Algonquin Rate Schedules X–27 and X–28 all more fully set forth in the application on file with the Commission and open to public inspection.

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

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19352 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–596–001]

Columbia Gulf Transmission Company; Notice of Compliance Filing

November 9, 2006.

Take notice that on November 6, 2006 Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of October 19, 2006:

First Revised Sheet No. 171A
First Revised Sheet No. 172A
Eighth Revised Sheet No. 191A
Third Revised Sheet No. 196A

Columbia Gulf states that it is making this filing in compliance with the Commission's Letter Order in this docket issued October 19, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19358 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–22–000]

Georgia-Pacific Corporation; Notice of Application

November 9, 2006.

Take notice that on October 31, 2006, pursuant to Section 7(b) of the Natural Gas Act and 18 CFR Parts 157 and 284 of the regulations of the Commission, Georgia-Pacific Corporation (GP Corp) filed with the Commission an Abbreviated Application of GP Corp to Abandon Certificate and Request to Obtain Part 284 Blanket Certificate.

GP Corp requests authorization pursuant to section 7(b) of the NGA to abandon its certificate to provide transportation through its existing facility consisting of a 19.5 mile, 8-inch natural gas pipeline (Crossett Pipeline). At the same time, pursuant to section 7 of the NGA and Part 284, Subpart G of the Commission's regulations, GP Corp requests that the Commission issue a blanket certificate authorizing GP Corp to provide open-access natural gas transportation services through the Crossett Pipeline to its three affiliates that will be leasing the Crossett Plants.

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

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19353 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–22–000]

Jump Power, LLC; Notice of Issuance of Order

November 8, 2006.

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

On November 6, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Jump should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 6, 2006.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19327 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–58–000]

Northern Border Pipeline Company; Notice of Tariff Filing

November 8, 2006.

Take notice that on November 3, 2006, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 4, to become effective December 3, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19334 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–34–000]

Plains End II, LLC; Notice of Issuance of Order

November 8, 2006.

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

On November 3, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Plains End II should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 4, 2006.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19328 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1502–000, ER06–1502–000]

Round Rock Energy, LLC; Notice of Issuance of Order

November 8, 2006.

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

On November 6, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Round Rock should file a motion to

intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 6, 2006.

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19326 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–19–000]

Southern Natural Gas Company; Notice of Application

November 9, 2006.

Take notice that on October 30, 2006, Southern Natural Gas Company (Southern), 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed an application in Docket No. CP07–19–000, pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, by removal, the Olga Compressor Station (Olga Station), located offshore, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed Patrick B. Pope, Vice President and General Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7126, or Patricia S. Francis, Senior Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7696.

Southern states that due to severe damage following Hurricane Katrina, it now seeks to abandon a total of 4,620 horsepower at its Olga Station. Southern's Olga Station is located at Coquille Point off of the Coquille Bay on Southern's Main Pass/Franklinton Loop Line, offshore, Louisiana.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 30, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19359 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–20–000]

Texas Eastern Transmission, LP; Notice of Abbreviated Application for a Certificate of Public Convenience and Necessity for Authorization To Abandon Transportation Services

November 9, 2006.

Take notice that on November 6, 2006, Texas Eastern Transmission, LP (Texas Eastern) filed an abbreviated application with the Commission for a

certificate of public convenience and necessity pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's Rules and Regulations for authorization to abandon certain inactive services performed pursuant to Texas Eastern Rate Schedules X–10, X–48, X–55, X–61, X–97, X–116 and X–119.

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

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19351 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–075]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 9, 2006.

Take notice that on November 6, 2006, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with an effective date of November 4, 2006.

Fourteenth Revised Sheet No. 21
Fourth Revised Sheet No. 22
First Revised Sheet No. 22.01
Original Sheet No. 22A.01
Eleventh Revised Sheet No. 22B

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado further states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect an amended negotiated-rate contract, delete terms and footnotes associated with negotiated rate contracts which have terminated pursuant to their terms and, for purposes of clarity, to add contract numbers to the remaining negotiated rate agreements listed.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19350 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–59–000]

Transcontinental Gas Pipe Line Corporation; Notice of Penalty Revenue Sharing Filing

November 8, 2006.

Take notice that on November 3, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report showing that on October 27, 2006, Transco submitted penalty sharing amounts to the affected shippers. The total sharing amount, including interest, was $2,807,652.52.

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

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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

Comment Date: 5 p.m. Eastern Time November 15, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19322 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–57–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 8, 2006.

Take notice that on November 3, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2006:

Second Revised Forty-Fourth Revised Sheet No. 27

Second Revised Fifty-Ninth Revised Sheet No. 28A

Transco states that the purpose of the instant filing is to track rate changes attributable to storage services purchased from Dominion Transmission, Inc. (DTI) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedule GSS and LSS. This filing is being made pursuant to tracking provisions under Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS. Included in Appendix B attached to the filing is the explanation of the rate changes and details regarding the computation of the revised GSS and LSS rates.

Transco states that copies of the filing are being mailed to each of its GSS and LSS customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19333 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–54–000, ER03–55–000, ER03–56–000]

WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC, WPS Syracuse Generation, LLC; Notice of Issuance of Order

November 8, 2006.

WPS Empire State, Inc. (Empire) and its subsidiaries, including WPS Beaver Falls Generation, LLC, WPS Niagara Generation, LLC and WPS Syracuse Generation, LLC, an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Empire also requested waivers of various Commission regulations. In particular, Empire requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Empire.

On December 3, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Empire should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is December 8, 2006.

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

The Commission reserves the right to require a further showing that neither

public nor private interests will be adversely affected by continued approvals of Empire's issuance of securities or assumptions of liability.

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19325 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC06–152–000]

WPS Resources Corporation, Peoples Energy Corporation; Notice of Filing

November 8, 2006.

Take notice that on November 6, 2006 WPS Resources Corporation and Peoples Energy Corporation filed a supplemental affidavit of Diane L. Ford, pursuant to the Commission's November 2, 2006 letter order.

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

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

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

Comment Date: 5 p.m. Eastern Time on November 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19324 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–15–000]

Ontelaunee Power Operating Company, LLC, Complainant, v. Metropolitan Edison Company, Respondent; Notice of Complaint

November 9, 2006.

Take notice that on November 7, 2006, Ontelaunee Power Operating Company, LLC (Ontelaunee) filed a formal complaint against Metropolitan Edison Company (Met Ed) pursuant to section 206 of the Federal Power Act. Ontelaunee states that Met Ed is imposing excessive charges for interconnection facilities that are unjust, unreasonable, unduly discriminatory and, moreover, are inconsistent with the Commission's Interconnection Policy, because Met Ed is refusing to allow Ontelaunee pay off its true interconnection costs as a reasonable lump sum, assessing charges that are not supported by Met Ed's filings with the Commission, improperly imposing operation and maintenance charges on Network Upgrades, charging an excessive capital recovery rate on such charges, and failing to provide transmission credits for facilities that are properly classified as Network Upgrades under the Commission's Interconnection Policy.

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

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

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

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

Magalie R. Salas,

Secretary.

[FR Doc. E6–19354 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 07, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–11–000.

Applicants: American Electric Power Service Corp.

Description: AEP Operating Companies' request for disclaimer of jurisdiction or, in the alternative, application for approvals under Section 203 of the Federal Power Act.

Filed Date: 10/31/2006.

Accession Number: 20061106–0134.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER95–1528–013; ER97–2758–013; ER96–1088–038; ER96–1858–018; ER01–2659–007; ER02–2199–005; ER03–54–005; ER03–55–005; ER03–56–005; ER03–674–005; ER01–1114–006; ER05–89–006.

Applicants: Wisconsin Public Service Corporation; Advantage Energy, Inc.; Wisconsin Power Development, LLC; WPS Energy Services; Mid-American Power, LLC; Combined Locks Energy Center, LLC; WPS Empire State, Inc.; WPS Beaver Falls Generation, LLC; WPS Niagara Generation, LLC; WPS Syracuse Generation, LLC; Quest Energy, LLC; WOS Canada Generation, Inc. and WPS New England Generation, Inc.; Upper Peninsula Power Company.

Description: WPS Resources Corp on behalf of WPS Energy Services Inc submits a Notice of Change in Status set forth in the Commission's Order 652.

Filed Date: 11/02/2006.

Accession Number: 20061107–0060.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER00–1049–007; ER00–1895–007; ER00–3696–006; ER01–1044–007; ER01–140–006; ER01–141–006; ER01–1619–009; ER01–3109–007; ER01–943–006; ER02–2202–010; ER02–443–008; ER02–506–007; ER02–553–006; ER03–42–011; ER05–1266–004; ER96–1947–020; ER98–2680–012; ER98–2681–012; ER98–2682–012; ER98–2783–010; ER99–1567–006; ER99–1785–011; ER99–2157–007; ER99–2602–006; ER99–3822–009; ER99–4160–010.

Applicants: Calcasieu Power, LLC; Dynegy Midwest Generation, Inc.; Griffith Energy LLC; Riverside Generating Company, LLC; Dynegy Danskammer, L.L.C.; Dynegy Roseton, LLC; Duke Energy Mohave, LLC; Renaissance Power, L.L.C; Heard County Power, LLC; Duke Energy Arlington Valley, LLC; Bluegrass Generation Company, L.L.C.; Rolling Hills Generating, LLC; Sithe/Independence Power Partners, L.P.; Ontelaunee Power Operating Company, LLC; LS POWER MARKETING LLC; Duke Energy Moss Landing LLC; Duke Energy Morro Bay LLC; Duke Energy Oakland LLC; BRIDGEPORT ENERGY LLC; ROCKINGHAM POWER LLC; Duke Energy South Bay, LLC; Rocky Road Power LLC; LSP-Kendall Energy, LLC; Casco Bay Energy Company, L.L.C.; Dynegy Power Marketing, Inc.

Description: Dynegy Entities and LSP Entities submits notice of non-material change in status and request for expedited review under ER02–506 *et al.*

Filed Date: 11/02/2006.

Accession Number: 20061107–0082.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER06–18–004.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to their Open Access Transmission & Energy Markets Tariff, to comply with FERC's 2/3/06 Order.

Filed Date: 11/01/2006.

Accession Number: 20061107–0084.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER06–360–004; ER06–361–004; ER06–362–004; ER06–363–004; ER06–366–004; ER06–372–004; ER06–373–004.

Applicants: Midwest Independent Transmission System Operator, Inc.; Miswest ISO Transmission Owners.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submit proposed revisions to Schedule 23 etc pursuant to FERC's 10/4/06 order under ER06–360 *et al.*

Filed Date: 11/03/2006.

Accession Number: 20061107–0061.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER06–993–002.

Applicants: Orion Power MidWest, LP.

Description: Orion Power MidWest LP submits proposed revisions to its tariff sheets to implement Cost of Service Recovery Rates in compliance with FERC's directives in the October 13 Order.

Filed Date: 11/01/2006.

Accession Number: 20061107–0083.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER06–1201–002.

Applicants: E.On U.S. Services, Inc.

Description: E.ON US, LLC on behalf of Louisville Gas and Electric Co and Kentucky Utilities submit a joint Interconnection Agreement with East Kentucky Power Cooperative pursuant to the 10/4/06 letter order.

Filed Date: 11/03/2006.

Accession Number: 20061107–0059.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER06–1252–002.

Applicants: E.On U.S. Services, Inc.

Description: E.ON U.S. LLC on behalf of Louisville Gas and Electric Co submits a Transmission Lease Agreement with East Kentucky Power Cooperative.

Filed Date: 11/03/2006.

Accession Number: 20061107–0056.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER06–1401–002.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits a Second Substitute Allegheny Ridge Interim Service Agreement, designated as Second Substitute Original Service Agreement 1541.

Filed Date: 11/01/2006.

Accession Number: 20061107–0085.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER06–1438–001.

Applicants: Louisville Gas & Electric Company/KU.

Description: Louisville Gas and Electric Co *et al.* submit revised cost-based tariff sheets containing a 9/1/06 effective date pursuant to the 10/4/06 letter order etc.

Filed Date: 11/03/2006.

Accession Number: 20061107–0062.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–147–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas and Electric Co. submits Amendment 2 to the Interconnection Agreement designated as Service Agreement 14 to FERC Electric Tariff, Second Revised Volume 6.

Filed Date: 11/02/2006.

Accession Number: 20061106–0002.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–148–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas and Electric Company submits Amendment 2 to Interconnection Agreement designated as Service Agreement 18 to its FERC Electric Tariff, Second Revised Volume 6.

Filed Date: 11/02/2006.

Accession Number: 20061106–0003.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–149–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits Notice of Cancellation of its FERC Rate Schedule 207 the Must-Run Service Agreement with California Independent System Operator *et al.*

Filed Date: 11/01/2006.

Accession Number: 20061106–0004.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER07–150–000.

Applicants: Public Service Company of New Mexico; Texas-New Mexico Power Company, TNP Enterprises, Inc.

Description: Public Service Company of New Mexico submits an Open Access Transmission Tariff under FERC Electric Tariff, Original Volume 6, effective 1/1/07.

Filed Date: 11/02/2006.

Accession Number: 20061106–0129.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–151–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits transmittal letter along with counterpart signature pages of the New England Power Pool Agreement dated as of 9/1/71.

Filed Date: 11/01/2006.

Accession Number: 20061106–0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER07–152–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits the October 31, 2006 Confirmation of a Master Power Purchase and Sale Agreement with Progress Energy Carolinas, Inc. pursuant to Section 205 of the Federal Power Act.

Filed Date: 11/02/2006.

Accession Number: 20061106–0121.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–153–000.

Applicants: Ameren Services Company.

Description: Ameren Services Company on behalf of Central Illinois Light Company submits Original Sheet 1 *et al.* to FERC Electric Tariff, Original Volume No. 1.

Filed Date: 11/02/2006.

Accession Number: 20061106–0058.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–154–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits Third Revised Sheets 1 and 4 of First Revised Rate Schedule FERC 233, Electric Power Supply Agreement with the City of Robinson, Kansas.

Filed Date: 11/02/2006.

Accession Number: 20061106–0005.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–155–000.

Applicants: LBPC Power, Inc.

Description: LBPC Power, Inc. submits a Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority and request acceptance of FERC Tariff, Original Volume No. 1.

Filed Date: 11/02/2006.

Accession Number: 20061106–0007.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–156–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator Inc. submits Proposed Revisions regarding the shortening of the NYISO submit customer Settlement Cycle.

Filed Date: 11/02/2006.

Accession Number: 20061106–0014.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–157–000.

Applicants: Macquarie Cook Power, Inc.

Description: Macquarie Cook Power, Inc. submits an Application for Order Accepting Initial Rate Schedule for Filing, Waiving Regulations and Granting Blanket Approvals.

Filed Date: 11/02/2006.

Accession Number: 20061106–0008.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–158–000.

Applicants: Williams Power Company, Inc.

Description: Williams Power Company, Inc. submits a Notice of Cancellation of its FERC Second Revised Rate Schedule 19 Reliability Must-Run Agreement with California Independent System Operator Corporation.

Filed Date: 11/02/2006.

Accession Number: 20061106–0009.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–159–000.

Applicants: Williams Power Company, Inc.

Description: Williams Power Company Inc., submits Notice of Cancellation of its Second Revised FERC Rate Schedule 17 Reliability Must-Run Agreement with California Independent System Operator Corporation.

Filed Date: 11/02/2006.

Accession Number: 20061106–0010.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–160–000.

Applicants: Goose Haven Energy Center, LLC.

Description: Goose Haven Energy Center LLC submits a Notice of Termination of its FERC Rate Schedule 2 Reliability Must-Run Agreement with California Independent System Operator Corporation.

Filed Date: 11/02/2006.

Accession Number: 20061106–0011.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–161–000.

Applicants: LOS Esteros Critical Energy Center, LLC.

Description: Los Esteros Critical Energy Facility, LLC submits a Notice of Termination of its FERC Rate Schedule 2 Reliability Must-Run Agreement with California Independent System Operator Corporation.

Filed Date: 11/02/2006.

Accession Number: 20061106–0012.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–162–000.

Applicants: Delta Energy Center, LLC.

Description: Delta Energy Center LLC submits Notice of Termination of its FERC Rate Schedule 2 the Reliability Must-Run Agreement with California Independent System Operator Corporation.

Filed Date: 11/02/2006.

Accession Number: 20061106–0006.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–163–000.

Applicants: Creed Energy Center, LLC.

Description: Creed Energy Center LLC submits Notice of Termination of its FERC Rate Schedule 2 Reliability Must-Run Agreement with California Independent System Operator Corporation.

Filed Date: 11/02/2006.

Accession Number: 20061106–0013.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–164–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits notices of cancellation of PNM Rate Schedules & Service Agreements currently on file with the Commission etc. under ER07–164 *et al.*

Filed Date: 11/02/2006.

Accession Number: 20061106–0122.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–166–000.

Applicants: Texas New Mexico Power Company; Public Service Company of New Mexico.

Description: Texas-New Mexico Power Company, *et al.* submit certain notices of cancellation of Rate Schedules and Service Agreements etc.

Filed Date: 11/02/2006.

Accession Number: 20061106–0196.

Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–167–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Co. submits a Notice of Cancellation of the Reliability Must Run Agreement with the California Independent System Operator Corp. for the Palomar Energy Center Facility, dated 1/27/06.

Filed Date: 11/01/2006.
Accession Number: 20061107–0087.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER07–168–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co. submits a Notice of Cancellation of the Reliability Must Run Agreement with the California Independent System Operator Corp.
Filed Date: 11/01/2006.
Accession Number: 20061107–0086.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER07–169–000.
Applicants: AmerenEnergy Resources Generating Company; Ameren Energy Generating Company.
Description: AmerenEnergy Resources Generating Company et al. submit rate schedules to implement Cost of Service Recovery Rates for the sale of Regulation & Frequency Response, Spinning, & Supplemental Reserve ancillary service.
Filed Date: 11/03/2006.
Accession Number: 20061107–0053.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–170–000.
Applicants: Ameren Energy, Inc.
Description: Ameren Energy Inc. submits a rate schedule to implement Cost of Service Recovery Rates for the sale of Spinning and Supplement Reserve ancillary services etc.
Filed Date: 11/03/2006.
Accession Number: 20061107–0054.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–171–000.
Applicants: Michigan Electric Transmission Co., LLC.
Description: Michigan Electric Transmission Company, LLC submits the executed Midwest Grain Processor Interconnection Facilities Agreement w/ Wabash Valley Power Association, effective 10/4/06.
Filed Date: 11/03/2006.
Accession Number: 20061107–0055.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–172–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits notice of cancellation of two Service Agreements with Duke Energy Marketing America, LLC pursuant to Section 35.15 of FERC's Regulations.
Filed Date: 11/03/2006.
Accession Number: 20061107–0063.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–6–000.
Applicants: MDU Resources Group, Inc.
Description: MDU Resources Group, Inc. submits an Application for authority to issue short-term securities in the form of unsecured promissory notes and/or commercial paper not to exceed 150,000,000 at any one time.
Filed Date: 10/31/2006.
Accession Number: 20061106–0054.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 21, 2006.

Docket Numbers: ES07–7–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corp submits an application requesting authorization to borrow on a short-term, revolving basis up to a maximum of $200 million in connection with an existing unsecured credit facility.
Filed Date: 10/30/2006.
Accession Number: 20061106–0194.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified Comment Date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–19321 Filed 11–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Thursday, November 9, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–13–000.
Applicants: Milford Power Company, LLC; Morgan Stanley & Company, Inc.
Description: Milford Power Company, LLC and Morgan Stanley & Company Incorporated submit an application for order authorizing disposition of jurisdictional facilities under section 203 of the Federal Power Act.
Filed Date: 11/01/2006.
Accession Number: 20061108–0045.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: EC07–14–000.
Applicants: Wisconsin Energy Corporation.
Description: Joint application of Wisconsin Energy Corps, Wisconsin Electric Power Co, *et al.* for authorization to dispose of jurisdictional facilities and for expedited consideration.
Filed Date: 11/02/2006.
Accession Number: 20061109–0195.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–9–000.
Applicants: Buffalo Gas Wind Farm 2, LLC.
Description: Buffalo Gap Wind Farm 2, LLC submits a notice of self-certification as an exempt wholesale generator.

Filed Date: 11/07/2006.
Accession Number: 20061109–0060.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 28, 2006.

Docket Numbers: EG07–10–000; EG99–142–000.
Applicants: Rathdrum Power, LLC.
Description: Rathdrum Power, LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/30/2006.
Accession Number: 20061030–5058.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–2801–015: ER03–478–013.
Applicants: PacifiCorp and PPM Energy, Inc.
Description: PacifiCorp & PPM Energy, Inc submits a corrected version of their 3/29/06 compliance filing.
Filed Date: 11/06/2006.
Accession Number: 20061109–0069.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER01–2230–004.
Applicants: New York Independent System Operator, Inc.
Description: Niagara Mohawk Power Corp dba National Grid and New York Independent System Operator, Inc submit a Joint Refund Report and Request for Waiver to Permit Filing Out of Time.
Filed Date: 11/02/2006.
Accession Number: 20061109–0084.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER04–47–002.
Applicants: PB Financial Services, Inc.
Description: PB Financial Services submits its triennial updated market analysis.
Filed Date: 11/07/2006.
Accession Number: 20061109–0104.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 28, 2006.

Docket Numbers: ER06–432–005.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revised tariff language to its 3/30/06 compliance filing.
Filed Date: 11/06/2006.
Accession Number: 20061108–0096.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER06–1219–002.
Applicants: ISO New England Inc.
Description: Unitil Energy Systems Inc and Fitchburg Gas & Electric Light Co in compliance submit Second Revised Sheet 3801 and Second Revised Sheet 4001.
Filed Date: 10/30/2006.
Accession Number: 20061108–0095.
Comment Date: 5 p.m. Eastern Time on Monday, November 20, 2006.

Docket Numbers: ER07–4–002.
Applicants: Southwest Power Pool, Inc.
Description: The Empire District Electric Company submits a Notice of Cancellation regarding the Interconnection Agreement with Empire and Southwestern Electric Power Co for the Flint Creek Power Plant.
Filed Date: 11/06/2006.
Accession Number: 20061109–0103.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–4–003.
Applicants: Southwest Power Pool, Inc.
Description: Southwestern Electric Power Co submits a Notice of Cancellation of the Interconnection Agreement with Empire District Electric Co under ER82–135 *et al.*
Filed Date: 11/07/2006.
Accession Number: 20061109–0102.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 28, 2006.

Docket Numbers: ER07–37–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Co dba Progress Energy Carolina Inc submits a notice of withdrawal.
Filed Date: 11/06/2006.
Accession Number: 20061108–0087.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–165–000.
Applicants: Southern Company Services, Inc.
Description: Southern Companies Services Inc on behalf of Southern Operating Companies submits 2007 Informational Filing to its OATT, FERC Electric Tariff, Fourth Revised Volume 5.
Filed Date: 11/02/2006.
Accession Number: 20061106–0015.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–173–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Co's application for order accepting amendment to market-based rate wholesale power sales tariff, FERC Electric tariff, First Revised Volume No. 5.
Filed Date: 11/03/2006.
Accession Number: 20061108–0046.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–174–000.
Applicants: Osceola Windpower, LLC.
Description: Osceola Windpower, LLC's request for authorization to sell energy and capacity at market-based rates.
Filed Date: 11/03/2006.
Accession Number: 20061108–0044.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–176–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas and Electric Company submits application for the approval of final electric interconnection cost charged to Kumeyaay Wind, LLC.
Filed Date: 11/01/2006.
Accession Number: 20061108–0039.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 22, 2006.

Docket Numbers: ER07–177–000.
Applicants: NCSU Energy, Inc.
Description: NCSU Energy, Inc submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority and request acceptance of its FERC Electric Tariff, Original Volume No. 1.
Filed Date: 11/02/2006.
Accession Number: 20061108–0038.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–178–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits correction to a typographical error on Schedule 11, Retail Network Integration Transmission Service and Ancillary Services.
Filed Date: 11/02/2006.
Accession Number: 20061108–0037.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–179–000.
Applicants: Central Hudson Gas & Electric Corp.
Description: Central Hudson Gas and Electric Corporation submits Notice of Cancellation of its Rate Schedule FERC No. 50.
Filed Date: 11/02/2006.
Accession Number: 20061108–0036.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–180–000.
Applicants: Central Hudson Gas & Electric Corp.
Description: Central Hudson Gas & Electric Corp submits a Notice of Cancellation of its Rate Schedule No. 52.
Filed Date: 11/02/2006.
Accession Number: 20061108–0042.
Comment Date: 5 p.m. Eastern Time on Friday, November 24, 2006.

Docket Numbers: ER07–181–000.
Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement among PJM, Mt. Storm Wind Force, LLC and Monongahela Power Company d/b/a Allegheny Power Company.
Filed Date: 11/06/2006.
Accession Number: 20061108–0040.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–182–000.
Applicants: Boston Edison Company.
Description: Boston Edison Company submits First Amendment to Interconnection Agreement with the Massachusetts Bay Transportation Authority along with Boston Edison Company's Rate Schedule 201 effective 1/2/07.
Filed Date: 11/06/2006.
Accession Number: 20061108–0033.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–183–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corporation submits Seventh Revised Interconnection and Local Delivery Service Agreement with Buckeye Power, Inc.
Filed Date: 11/06/2006.
Accession Number: 20061108–0034.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–184–000.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corporation submits Third Revised to the Interconnection and Local Delivery Service Agreement 1253 under OATT with Hoosier Energy Rural Electric Cooperative, Inc.
Filed Date: 11/06/2006.
Accession Number: 20061108–0035.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–185–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an executed Interconnection Service Agreement with the Dayton Power and Light Company pursuant to section 205 of the Federal Power Act.
Filed Date: 11/06/2006.
Accession Number: 20061109–0059.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: ER07–186–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits an informational filing intended to provide notice to the revised transmission Access Charges effective 9/1/06.
Filed Date: 11/07/2006.
Accession Number: 20061109–0101.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 28, 2006.

Docket Numbers: ER07–187–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc *et al.* submits a new alternative Pro Forma Market Participant Service Agreement etc. pursuant to section 205 of the Federal Power Act.
Filed Date: 11/07/2006.
Accession Number: 20061109–0105.
Comment Date: 5 p.m. Eastern Time on Friday, November 17, 2006.

Take notice that the Commission received the following foreign utility company status filings:
Docket Numbers: FC07–4–000.
Applicants: InterGen (International) B.V.
Description: Notification of Self Certification of Foreign Utility Company Status of InterGen (International) B.V.
Filed Date: 11/06/2006.
Accession Number: 20061106–5013.
Comment Date: 5 p.m. Eastern Time on Monday, November 27, 2006.

Docket Numbers: FC07–5–000.
Applicants: Tipitapa Power Company, Ltd.
Description: El Paso Corporation submits Notice of Self Certification of Foreign Utility Company Status.
Filed Date: 11/07/2006.
Accession Number: 20061108–0167.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 28, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified *Comment Date.* It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Magalie R. Salas,
Secretary.
[FR Doc. E6–19349 Filed 11–15–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–027]

PacifiCorp, Oregon and California; Notice of Intent To Hold an Additional Public Meeting for Discussion of the Draft Environmental Impact Statement for the Klamath Hydroelectric Project

November 9, 2006.

On September 25, 2006, Commission staff delivered the Draft Environmental Impact Statement (DEIS) for the relicensing of the Klamath Hydroelectric project to the Environmental Protection Agency and mailed it to resource and land management agencies, interested organizations, and individuals.

The DEIS was noticed in the **Federal Register** on September 29, 2006 (71 FR 57503). The DEIS evaluates the environmental consequences of the issuance of a new license for the continued operation and maintenance of the Klamath Hydroelectric, located primarily on the Klamath River, in Klamath County, Oregon and Siskiyou County, California. The existing project occupies a total of 219 acres of land administered by the U.S. Bureaus of Land Management and Reclamation. It

also evaluates the environmental effects of implementing the licensee's proposals, agency and NGO recommendations, staff's recommendations, and the no-action alternative. The comment deadline is December 1, 2006.

On October 6, 2006, and November 2, 2006, we noticed a total of five public meetings to receive comments on the DEIS, which will be recorded by an official stenographer, as follows.

Date: Tuesday, November 14, 2006.

Time: 9 a.m.–12 noon (PST).

Place: Shilo Inn.

Address: 2500 Almond Street, Klamath Falls, Oregon.

Date: Wednesday, November 15, 2006.

Time: 9 a.m.–12 noon (PST).

Place: Yreka Community Theatre.

Address: 812 North Oregon Street, Yreka, California.

Date: Wednesday, November 15, 2006.

Time: 7–10 p.m. (PST).

Place: Yreka Community Theatre.

Address: 812 North Oregon Street, Yreka, California.

Date: Thursday, November 16, 2006.

Time: 7–10 p.m. (PST).

Place: Red Lion Hotel.

Address: 1929 Fourth Street, Eureka, California.

Date: Wednesday, November 29, 2006.

Time: 7–10 p.m. (PST).

Place: North Bend Community Center.

Address: 2222 Broadway Street, North Bend, Oregon.

We are now providing notice that we will be holding one additional meeting to receive comments on our DEIS:

Date: Thursday, November 30, 2006.

Time: 7–10 p.m. (PST).

Place: Shilo Inn.

Address: 536 SW Elizabeth, Newport, Oregon.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

For further information, please contact John Mudre at e-mail address *john.mudre@ferc.gov*, or by telephone at (202) 502–8902.

Magalie R. Salas,

Secretary .

[FR Doc. E6–19356 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–3–000]

Natural Gas Pipeline Company of America; Notice of Intent To Prepare an Environmental Assessment for the Proposed Louisiana Line Expansion Project and Request for Comments on Environmental Issues

November 8, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the operation of facilities for the Louisiana Line Expansion Project involving operation of facilities by Natural Gas Pipeline Company of America (Natural) in Cameron Parish, Louisiana and Liberty and Montgomery Counties, Texas (Project).[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Natural seeks authorization to construct and operate:

(a) A 36 inch diameter, 4.43 mile pipeline extension of the existing Louisiana Line 2 in northeast Cameron Parish, LA (the extension would include the 36 inch diameter pipeline, cross-over pipeline to connect the end of the proposed extension to the existing parallel Natural Louisiana Line 1, associated block valves, blowdowns and a pigging receiver attachment);

(b) One 10,000 HP electric motor-driven compressor, 200 MMSCFD natural gas cooling unit and additional capacity in the electrical sub-station to accommodate the increased electrical load from the motor-driven compressor at Station 302 in Montgomery County, Texas;

(c) One 11,000 HP electric motor-driven compressor with variable speed drive, one 600 MMSCFD natural gas cooling unit, and additional capacity in the electrical sub-station to accommodate the increased electrical load from the motor-driven compressor at Station 343 in Liberty County, Texas;

(d) One Solar Taurus 60 combustion gas turbine-driven compressor operating at approximately 7,800 HP site-rated capacity; the re-wheeling of one existing 4,200 HP Allison/Ingersoll-Rand combustion gas turbine-driven compressor and additional platform space at Station 342 in Cameron Parish, Louisiana;

(e) One Solar Centaur 50 combustion gas turbine driven compressor operating at approximately 6,200 HP site-rated capacity, the re-wheeling of all existing compressor units, a 200 MMSCFD Gemini outlet filter separator and a 325 MMSCFD inlet filter separator at Station 346 in Cameron Parish, Louisiana;

(f) Turbine meters to replace three of the existing orifice meter tubes at the existing Henry Hub meter facility site in Vermilion Parish, Louisiana; and

(g) Piping to provide bi-directional compression at Compressor Station 304 in Harrison County, Texas.

Natural also proposes to abandon one 16W–330 Cooper-Bessemer reciprocating engine and three Solar Saturn combustion gas turbines having a combined rating of approximately 10,300 HP at the Station 343 in Liberty County, Texas.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

The Project would require a total of approximately 89.28 acres for construction. Approximately 30.33 acres would be permanently utilized for operation of the facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff

[1] Natural's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we [3] will discuss impacts that could occur as a result of the construction and operation of the project under these general headings:

- Air quality and noise
- Cultural resources
- Fisheries
- Geology and soils
- Land use
- Public safety
- Water resources
- Wetlands
- Wildlife

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Natural.

- Air quality and noise
- Cultural resources
- Land use
- Public safety
- Water resources

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP07–3–000.
- Mail your comments so that they will be received in Washington, DC on or before December 11, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. This includes all landowners who are potential right-of-way grantors or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19323 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 8, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 12379–029.

c. *Date Filed:* September 7, 2006.

d. *Applicant:* Alaska Electric Light and Power Company.

e. *Name of Project:* Lake Dorothy Project.

f. *Location:* The project is located on the Dorothy Creek, near Juneau, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Corry V. Hildebrand, Lake Dorothy Hydro Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201.

i. *FERC Contact:* Any questions on this notice should be addressed to: Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: *anumzziatta.purchiaroni@Ferc.fed.us.*

j. *Deadline for filing comments and or motions:* November 24, 2006.

k. *Description of Request:* The licensee is requesting the Commission's approval to excavate a 150-feet long starter tunnel section prior construction of the powerhouse. The licensee proposes to construct the starter tunnel as part of the contract for the Lake Dorothy tap tunnel currently under construction. The purpose of the tunnel is to minimize disturbance or damage to the powerhouse and adjacent facilities from blasting activities associated with the tunnel excavation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19329 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 8, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12699–000.

c. *Date Filed:* June 21, 2006 and revised October 19, 2006.

d. *Applicant:* Erie Boulevard Hydropower, LP.

e. *Name and Location of Project:* The proposed Indian Lake Dam Project would be located on the Indian River in the Town of Indian Lake and Hamlet of Sabael, Hamilton County, New York. The project would include the existing Indian Lake Dam which is owned by Hudson River-Black River Regulating District, a New York Public Benefit Corporation.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Mr. Jeffrey M. Auser, Erie Boulevard Hydropower, LP, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, (315) 413–2821.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12699–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Proposed Project:* The proposed project would include the existing earth embankment and stone masonry Indian Lake Dam, 490-foot-long and 47-foot-high, which is owned by Hudson River-Black River Regulating District, and its existing impoundment. The Indian Lake Dam impounds the Indian Lake Reservoir which has a surface area of 4,404 acres at an elevation of 1,651 feet above mean sea level. The proposed project would also consist of the following new facilities: (1) A 50-foot-long, 60-inch-diameter penstock, (2) a powerhouse containing one generating unit with an installed capacity of 1.0 megawatt, (3) a 2,000-foot-long, 4.2-kilovolt transmission line connecting to an existing power line, and (4) appurtenant facilities. The project would have an annual generation of 3.8 GWh, which would be sold to a local utility.

k. *Location of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19330 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

November 8, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 1494–300.

c. *Date Filed:* October 24, 2006.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* The Pensacola Project.

f. *Location:* The project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. The proposed non-project use would occupy project lands and waters on Grand Lake O' the Cherokees in Sections 9 and 15, Township 24 North, and in Range 23 East in Delaware County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Gretchen Zumwalt-Smith, General Counsel; Grand River Dam Authority; P.O. Box 409; Vinita, OK 74301; (918) 256–5545.

i. *FERC Contact:* Any questions on this notice should be addressed to Lesley Kordella at (202) 502–6406, or by e-mail: *Lesley.Kordella@ferc.gov.*

j. *Deadline for filing comments and or motions:* December 8, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–1494–300) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* GRDA requests Commission approval to permit Peter Boylan, Shangri-La Marina Group, LLC to install 170 boat slips, 4 fuel slips, 4 personal watercraft (PWC) fueling ramps, 322 PWC lifts, and a ship store, fuel service, boat ramp and a breakwater for commercial purposes. In addition, GRDA requests Commission approval to permit the applicant to dredge two ponds located on the Shangri-La golf course adjacent to the lake and install four docks with 57 boat slips and 50 PWC slips for use by the Shangri-La residential community. The proposed action would require a waiver of current GRDA policies to allow docks to exceed the 125-foot maximum length and slips to be perpendicular to the shoreline.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19331 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: 2232–522]

Duke Power Company LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 9, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2232–522.

c. *Date filed:* August 29, 2006.

d. *Applicant:* Duke Power Company LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On the Catawba River, in Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg Counties, North Carolina, and on the Catawba and Wateree Rivers in Chester, Fairfield, Kershaw, Lancaster, and York counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Jeffrey G. Lineberger, Catawba-Wateree Hydro Relicensing Manager (or E. Mark Oakley, Catawba-Wateree Relicensing Project Manager), Duke Energy, Mail Code EC12Y, P.O. Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contact:* Sean Murphy at 202–502–6145; *Sean.Murphy@ferc.gov.*

j. *Deadline for filing motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Catawba-Wateree Project consists of eleven developments:

(1) The Bridgewater development consists of the following existing facilities: (1) the Catawba dam consisting of: (a) A 1,650-foot-long, 125-foot-high earth embankment; (b) a 305-foot-long, 120-foot-high concrete gravity ogee spillway; and (c) an 850-foot-long, 125-foot-high earth embankment; (2) the Paddy Creek dam consisting of: a 1,610-foot-long, 165-foot-high earth embankment; (3) the Linville dam consisting of: a 1,325-foot-long, 160-foot-high earth embankment; (4) a 430-foot-long uncontrolled low overflow weir spillway situated between Paddy Creek Dam and Linville Dam; (5) a 6,754 acre reservoir formed by Catawba, Paddy Creek, and Linville with a normal water surface elevation of 1,200 feet above msl; (6) a 900-foot-long concrete-

lined intake tunnel; (7) a powerhouse containing two vertical Francis-type turbines directly connected to two generators, each rated at 10,000 kW, for a total installed capacity of 20.0 MW; and (8) other appurtenances.

(2) The Rhodhiss development consists of the following existing facilities: (1) The Rhodhiss dam consisting of: (a) A 119.58-foot-long concrete gravity bulkhead; (b) an 800-foot-long, 72-foot-high concrete gravity ogee spillway; (c) a 122.08-foot-long concrete gravity bulkhead with an additional 8-foot-high floodwall; and (d) a 283.92-foot-long rolled fill earth embankment; (2) a 2,724 acre reservoir with a normal water surface elevation of 995.1 feet above msl; (4) a powerhouse integral to the dam, situated between the bulkhead on the left bank and the ogee spillway section, containing three vertical Francis-type turbines directly connected to three generators, two rated at 12,350 kW, one rated at 8,500 kW for a total installed capacity of 28.4 MW; and (5) other appurtenances.

(3) The Oxford development consists of the following existing facilities: (1) The Oxford dam consisting of: (a) A 74.75-foot-long soil nail wall; (b) a 193-foot-long emergency spillway; (c) a 550-foot-long gated concrete gravity spillway; (d) a 112-foot-long embankment wall situated above the powerhouse; and (e) a 429.25-foot-long earth embankment; (2) a 4,072 acre reservoir with a normal water surface elevation of 935 feet above msl; (4) a powerhouse integral to the dam, situated between the gated spillway and the earth embankment, containing two vertical Francis-type turbines directly connected to two generators, each rated at 18,000 kW for a total installed capacity of 35.7 MW; and (5) other appurtenances.

(4) The Lookout Shoals development consists of the following existing facilities: (1) The Lookout Shoals dam consisting of: (a) A 282.08-foot-long concrete gravity bulkhead section; (b) a 933-foot-long uncontrolled concrete gravity ogee spillway; (c) a 65-foot-long gravity bulkhead section; and (d) a 1,287-foot-long, 88-foot-high earth embankment; (2) a 1,155 acre reservoir with a normal water surface elevation of 838.1 feet above msl; (3) a powerhouse integral to the dam, situated between the bulkhead on the left bank and the ogee spillway, containing three main vertical Francis-type turbines and two smaller vertical Francis-type turbines directly connected to five generators, the three main generators rated at 8,970 kW, and the two smaller rated at 450 kW for a total installed capacity of 25.7 MW; and (4) other appurtenances.

(5) The Cowans Ford development consists of the following existing facilities: (1) The Cowans Ford dam consisting of: (a) A 3,535-foot-long embankment; (b) a 209.5-foot-long gravity bulkhead; (c) a 465-foot-long concrete ogee spillway with eleven Taintor gates, each 35-feet-wide by 25-feet-high; (d) a 276-foot-long bulkhead; and (e) a 3,924-foot-long earth embankment; (2) a 3,134-foot-long saddle dam (Hicks Crossroads); (3) a 32,339 acre reservoir with a normal water surface elevation of 760 feet above msl; (4) a powerhouse integral to the dam, situated between the spillway and the bulkhead near the right embankment, containing four vertical Kaplan-type turbines directly connected to four generators rated at 83,125 kW for a total installed capacity of 332.5 MW; and (5) other appurtenances.

(6) The Mountain Island development consists of the following existing facilities: (1) The Mountain Island dam consisting of: (a) A 997-foot-long, 97-foot-high uncontrolled concrete gravity ogee spillway; (b) a 259-foot-long bulkhead on the left side of the powerhouse; (c) a 200-foot-long bulkhead on the right side of the powerhouse; (d) a 75-foot-long concrete core wall; and (e) a 670-foot-long, 140-foot-high earth embankment; (2) a 3,117 acre reservoir with a normal water surface elevation of 647.5 feet above msl; (3) a powerhouse integral to the dam, situated between the two bulkheads, containing four vertical Francis-type turbines directly connected to four generators rated at 15,000 kW for a total installed capacity of 55.1 MW; and (4) other appurtenances.

(7) The Wylie development consists of the following existing facilities: (1) The Wylie dam consisting of: (a) A 234-foot-long bulkhead; (b) a 790.92-foot-long ogee spillway section that contains 2 controlled sections with a total of eleven Stoney gates, each 45-feet-wide by 30-feet-high, separated by an uncontrolled section with no gates; (c) a 400.92-foot-long bulkhead; and (d) a 1,595-foot-long earth embankment; (2) a 12,177 acre reservoir with a normal water surface elevation of 569.4 feet above msl; (3) a powerhouse integral to the dam, situated between the bulkhead and the spillway near the left bank, containing four vertical Francis-type turbines directly connected to four generators rated at 18,000 kW for a total installed capacity of 69 MW; and (4) other appurtenances.

(8) The Fishing Creek development consists of the following existing facilities: (1) The Fishing Creek dam consisting of: (a) A 114-foot-long, 97-foot-high uncontrolled concrete ogee spillway; (b) a 1,210-foot-long concrete gravity, ogee spillway with twenty-two Stoney gates, each 45-feet-wide by 25-feet-high; and (c) a 214-foot-long concrete gravity bulkhead structure; (2) a 3,431 acre reservoir with a normal water surface elevation of 417.2 feet above msl; (3) a powerhouse integral to the dam, situated between the gated spillway and the bulkhead structure near the right bank, containing five vertical Francis-type turbines directly connected to five generators two rated at 10,530 kW and three rated at 9,450 kW for a total installed capacity of 48.1 MW; and (4) other appurtenances.

(9) The Great Falls-Dearborn development consists of the following existing facilities: (1) The Great Falls diversion dam consisting of a 1,559-foot-long concrete section; (2) the Dearborn dam consisting of: (a) A 160-foot-long, 103-foot-high, concrete embankment; (b) a 150-foot-long, 103-foot-high intake and bulkhead section; and (c) a 75-foot-long, 103-foot-high bulkhead section; (3) the Great Falls dam consisting of: (a) A 675-foot-long, 103-foot-high concrete embankment situated in front of the Great Falls Powerhouse (and joined to the Dearborn dam embankment); and (b) a 250-foot-long intake section (within the embankment); (4) the Great Falls bypassed spillway and headworks section consisting of: (a) A 446.7-foot-long short concrete bypassed reach uncontrolled spillway with a gated trashway (main spillway); (b) a 583.5-foot-long concrete headworks uncontrolled spillway with 4-foot-high flashboards (canal spillway); and (c) a 262-foot-long concrete headworks section situated perpendicular to the main spillway and the canal spillway, containing ten openings, each 16-feet-wide; (5) a 353 acre reservoir with a normal water surface elevation of 355.8 feet above msl; (6) two powerhouses separated by a retaining wall, consisting of: (a) Great Falls powerhouse: containing eight horizontal Francis-type turbines directly connected to eight generators rated at 3,000 kW for an installed capacity of 24.0 MW, and (b) Dearborn powerhouse: Containing three vertical Francis-type turbines directly connected to three generators rated at 15,000 kW for an installed capacity of 42.0 MW, for a total installed capacity of 66.0 MW; and (7) other appurtenances.

(10) The Rocky Creek-Cedar Creek development consists of the following existing facilities: (1) A U-shaped concrete gravity overflow spillway with (a) A 130-foot-long section (on the east side) that forms a forebay canal to the Cedar Creek powerhouse and contains

two Stoney gates, each 45-feet-wide by 25-feet-high; (b) a 1,025-foot-long, 69-foot-high concrete gravity overflow spillway; and (c) a 213-foot-long section (on the west side) that forms the upper end of the forebay canal for the Rocky Creek powerhouse; (2) a 450-foot-long concrete gravity bulkhead section that completes the lower end of the Rocky Creek forebay canal; (3) a 748 acre reservoir with a normal water surface elevation of 284.4 feet above msl; (4) two powerhouses consisting of: (a) Cedar Creek powerhouse (on the east): containing three vertical Francis-type turbines directly connected to three generators, one rated at 15,000 kW, and two rated at 18,000 kW for an installed capacity of 43.0 MW; and (b) Rocky Creek powerhouse (on the west): containing eight horizontal twin-runner Francis-type turbines directly connected to eight generators, six rated at 3,000 kW and two rated at 4,500 kW for an installed capacity of 25.8 MW, for a total installed capacity of 68.8 MW; and (5) other appurtenances.

(11) The Wateree development consists of the following existing facilities: (1) The Wateree dam consisting of: (a) A 1,450 foot-long uncontrolled concrete gravity ogee spillway; and (b) a 1,370-foot-long earth embankment; (2) a 13,025 acre reservoir with a normal water surface elevation of 225.5 feet above msl; (3) a powerhouse integral to the dam, situated between the spillway and the earth embankment, containing five vertical Francis-type turbines directly connected to five generators, two rated at 17,100 kW and three rated at 18,050 kW for a total installed capacity of 82.0 MW; and (4) other appurtenances.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19357 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–13–000]

Hydroelectric Infrastructure Technical Conference; Supplemental Notice of Technical Conference With Agenda

November 8, 2006.

On September 7, 2006, the Federal Energy Regulatory Commission issued a notice of a Commissioner-led technical conference on December 6, 2006, from 1 p.m. to 5:00 p.m. Eastern Standard Time. The conference will be held in the Commission Meeting Room on the second floor of the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons may attend; there is no fee or registration. This supplemental notice provides more detailed information and establishes an agenda, which is attached.

The purpose of the conference is to discuss the status of new technologies in hydroelectric generation from ocean waves, tides, and currents and from free-flowing rivers, and to explore the environmental, financial, and regulatory issues pertaining to the development of these new technologies.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available to the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. A free webcast of this event will be available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.gmu.edu* or contact Danelle Perkowski or David Reininger at 703–993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Anyone interested in participating in the workshop via video teleconference from one of the Commission's regional offices should call or e-mail the following staff, by November 22, 2006, to make arrangements. Seating capacity is limited.

Regional office	Staff contact	Telephone number	E-mail address
Atlanta	Charles Wagner	770–452–3765	Charles.wagner@ferc.gov.
Chicago	Michael Davis	312–596–4434	michael.davis@ferc.gov.
New York	Peter Valeri	212–273–5930	peter.valeri@ferc.gov.
Portland	Pat Regan	503–552–2741	patrick.regan@ferc.gov.
San Francisco	John Wiegel	415–369–3336	john.wiegel@ferc.gov.

The agenda for the workshop and other related materials will be made available on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx*. For more information about the conference, please contact Tim Welch at 202–502–8760 (*timothy.welch@ferc.gov*) or Kristen Murphy at 202–502–6236 (*kristen.murphy@ferc.gov*).

Magalie R. Salas,
Secretary.

Federal Energy Regulatory Commission

HYDROELECTRIC INFRASTRUCTURE TECHNICAL CONFERENCE

Hydroelectric Generation from Ocean Waves, Tides, and Currents And from Free-Flowing Rivers

December 6, 2006.

1 p.m. Opening Remarks and Introductions

Chairman Joseph T. Kelliher, Commissioner Suedeen G. Kelly, Commissioner Marc Spitzer, Commissioner Philip D. Moeller, Commissioner Jon Wellinghoff

1:15 p.m. Agenda Overview

John Katz, Facilitator, Office of the General Counsel

1:20 p.m. Energy from Waves, Tides, Ocean Currents, and Free-Flowing Rivers: An Overview of Resource, Technology, and Business Issues

- George Hagerman, Senior Research Associate, Virginia Tech Advanced Research Institute

1:40 p.m. Panel: Environmental Issues

What are the known and potential effects of these new technologies on the environment and other resources?

- Jim Gibson, Senior Regulatory Specialist, Devine Tarbell and Associates
- Dr. Glenn Cada, Research Staff Member, Oak Ridge National Laboratory
- Dr. Mary Boatman, Alternative Energy Programmatic EIS Coordinator, Minerals Management Service
- John Novak (invited), Executive Director of Generation and Environment Sectors, Electric Power Research Institute

2:30 p.m. Panel: Financial Issues

What are the costs of these new technologies?

- Wayne F. Krouse, Chairman and CEO, Hydro Green Energy
- Alla Weinstein, President and CEO, AquaEnergy Group Ltd.
- Andrew Dzykewicz, Chief Energy Advisor to the Rhode Island Governor
- Dr. George Taylor, CEO, Ocean Power Technologies, Inc.

3:10 p.m. Panel: Regulatory Issues

Do the FERC permitting and licensing processes work for these new technologies?

- Gil Sperling, Corporate Counsel, Verdant Power, Inc.
- Thomas Bigford, Chief of Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service
- Sarah Bittleman, Director, Washington DC Office of the Governor of Oregon
- Richard Roos-Collins, Director of Legal Services, Natural Heritage Foundation
- Des McGinnes, Business Development Manager, Ocean Power Delivery, Ltd.

4:20 p.m. Open Forum

4:50 p.m. Closing Remarks

5 p.m. Adjourn

[FR Doc. E6–19335 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendence at Entergy Independent Coordinator of Transmission (Southwest Power Pool) Near-Term Transmission Issues Group Meeting, Long-Term Transmission Issues Working Group Meeting, and Stakeholders Policy Committee Meeting

November 9, 2006.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Near-Term Transmission Issues Group

November 13, 2006 (1 p.m.–5 p.m. CST), Double Tree Hotel-Houston Intercontinental Airport, 15747 John F. Kennedy Blvd., Houston, Texas 77032, 281–848–4000.

ICT Long-Term Transmission Issues Working Group

November 14, 2006 (8 a.m.–12 p.m. CST), Double Tree Hotel-Houston Intercontinental Airport, 15747 John F. Kennedy Blvd., Houston, Texas 77032, 281–848–4000.

ICT Stakeholders Policy Committee Meeting

November 14, 2006 (1 p.m.–5 p.m. CST), Double Tree Hotel-Houston Intercontinental Airport, 15747 John F. Kennedy Blvd., Houston, Texas 77032, 281–848–4000.

The discussions may address matters at issue in the following proceedings:

Docket No. EL01–88	Entergy Services, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER03–171	Entergy Mississippi, Inc.
Docket No. EL02–107	Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, Duke Energy North America, LLC. v. Entergy Services, Inc., Entergy Operating Companies.
Docket No. ER02–405	Entergy Services, Inc.
Docket No. EL02–88	Wrightsville Power Facility, L.L.C. v. Entergy Arkansas, Inc.
Docket Nos. EL03–3, ER02–1472	Entergy Gulf States, Inc.
Docket Nos. EL03–4, ER02–1151	Entergy Services, Inc.
Docket No. EL03–5, ER02–1609	Entergy Services, Inc.
Docket No. EL03–3	Entergy Operating Companies.
Docket No. ER02–1472	Entergy Operating Companies.
Docket No. EL03–4	Entergy Operating Companies.

Docket No. ER02–1069	Entergy Operating Companies.
Docket No. EL03–13	Entergy Operating Companies.
Docket No. ER02–2243	Entergy Operating Companies.
Docket No. EL05–15	Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc.
Docket No. EL06–76	Arkansas Public Service Commission v. Entergy Services, Inc., et al.
Docket No. ER03–583	Entergy Services, Inc. and EWO Marketing, L.P.
Docket No. ER03–681, ER03–682	Entergy Services, Inc. and Entergy Power, Inc.
Docket No. ER03–744	Entergy Services, Inc. and Entergy Louisiana, Inc.
Docket No. TX06–1	Louisiana Energy and Power Authority.
Docket No. EL04–20	Carville Energy LLC v. Entergy Services, Inc.
Docket No. EL04–49	Quachita Power LLC v. Entergy Services, Inc.
Docket No. EL04–99	Mississippi Delta Entergy Agency, et al. v. Entergy Services, Inc.
Docket No. EL05–1	Union Power Partners v. Entergy Services, Inc.
Docket No. EL05–21	Tenaska Frontier Partners v. Entergy Services, Inc.
Docket No. ER06–1555–000	Entergy Services, Inc.
Docket No. ER03–1272, EL05–22	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Tony Ingram, Office of Energy Markets and Reliability, Federal Energy Regulatory Commission at (202)502–8938 or *tony.ingram@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–19355 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–614–000]

Transwestern Pipeline Company, LLC; Notice of Technical Conference

November 8, 2006.

Take notice that the Commission will convene a technical conference on Thursday November 30, 2006, at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The technical conference will deal with issues related to Transwestern Pipeline Company, LLC's proposal to modify certain tariff sheets in the General Terms and Conditions of its tariff and rate schedules, as discussed in the October 31, 2006 order, Transwestern Pipeline Company, LLC, 117 FERC ¶ 61,134.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Russell Mamone at (202) 502–8744 or e-mail *russell.mamone@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–19332 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

November 9, 2006.

The following notice of meeting is published pursuant to section (a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission, DOE.

DATE AND TIME: November 16, 2006, 10 a.m.

PLACE: Room 2c, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

For a recording listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

910th—Meeting

Regular Meeting

November 16, 2006—10 a.m.

Item No.	Docket No.	Company
	ADMINISTRATIVE AGENDA	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	ELECTRIC	
E–1	RM06–8–001	Long-Term Firm Transmission Rights in Organized Electricity Markets.
E–2	EL01–88–004	Louisiana Public Service Commission v. Entergy Services Inc., et al.
E–3	ER05–17–002	Trans-Elect NTD Path 15, LLC.
E–4	EL02–107–001	Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, Duke Energy North America, LLC v. Entergy Services, Inc., and Entergy Operating Companies.
	EL02–107–002	
	ER02–405–004	Entergy Services, Inc.
	ER02–405–005	
E–5	ER06–278–000	The Nevada Hydro Company, Inc.
	ER06–278–001	
	ER06–278–002	
	ER06–278–003	
	ER06–278–004	
E–6	ER06–1513–000	ISO New England Inc.
E–7	ER06–1094–003	ISO New England Inc.
E–8	OMITTED.	
E–9	ER06–1094–001	Western Electricity Coordinating Council.
E–10	ER06–1094–004	New York Independent System Operator, Inc.
E–11	ER06–1094–009	California Independent System Operator.
E–12	ER06–1094–007	NorthWestern Corporation.
E–13	EL00–95–135	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange Corporation.
	EL00–95–188	
	EL00–98–122	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange.
	EL00–98–173	
E–14	ER03–171–002	Entergy Mississippi, Inc.
	ER03–171–003	
	ER03–171–004	
	ER03–171–005	
E–15	ER04–981–000	Connecticut Yankee Atomic Power Co.
E–16	OMITTED.	
E–17	EL04–137–000	Cabazon Wind Partners, LLC v. Southern California Edison Company.
	EL04–137–001	
E–18	OMITTED.	
E–19	ER06–451–003	Southwest Power Pool, Inc.
	MISCELLANEOUS	
M–1	RM07–1–000	Revisions to, and Interpretations of, the Standards of Conduct for Transmission Providers.
	GAS	
G–1	RP06–437–000	Northern Natural Gas Company.
	HYDRO	
H–1	P–2042–031	Public Utility District No. 1 of Pend Oreille County, Washington.
	P–2042–086	
H–2	OMITTED.	
H–3	P–2833–094	Public Utility District No. 1 of Lewis County, Washington.
H–4	P–2539–023	Erie Boulevard Hydropower, L.P.
	P–2539–024	
	P–2539–025	
	P–2539–026	
	P–2539–027	
	P–2539–028	
	P–2539–029	
	P–2539–030	
H–5	P–2192–002	Consolidated Water Power Company.
	CERTIFICATES	
C–1	RM05–23–001	Rate Regulation of Certain Natural Gas Storage Facilities.
	AD04–11–001	
C–2	RM06–12–000	Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities.
C–3	CP04–411–001	Crown Landing LLC.

Magalie R. Salas,

Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E6–19444 Filed 11–15–06; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

BXC, Incorporated, 870 Springfield Road South, Union, NJ 07083. Officers: Angela Flynn, Vice President (Qualifying Individual) Bernard X. Conlon, President.

Quisqueyana Express, Inc., 4468 Broadway, New York, NY 10040. Officers: Francisco J. Julia, Secretary (Qualifying Individual) Ernesto J. Armenteros, Director.

Overseas Transport USA Corp., 3752 S.W. 30th Avenue, Ft. Lauderdale, FL 33312. Officers: Luca Minna, Vice President (Qualifying Individual) Riccardi Caropreso, President.

c&c International, Inc., 482 Thomas Drive, Bensenville, IL 60106. Officer: Si Yong Chang, President (Qualifying Individual).

Non-Vessel—-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Jet Air Delivery, Inc. dba Transgroup International, dba Transfreight Express Lines dba Transgroup International, 4980 Amelia Earhart Drive, Salt Lake City, UT 84116. Officer: John C. Knowlton, President (Qualifying Individual).

ORD ICO, LLC dba Transgroup International, dba Transfreight Express Lines dba Transgroup International, 1400 Mittel Blvd., Suite A, Wood Dale, IL 60191. Officers: Greg Vernoy, Manager (Qualifying Individual).

Trans LAX, LLC dba Transgroup International dba Transfreight Express Lines dba Transgroup International, 13200 Broadway, Los Angeles, CA 90061. Officers: Greg Vernoy, Manager/Member (Qualifying Individual) Christine Dearden, Member.

Trans ICO, LLC dba Transfreight Express Lines dba Transgroup International, 235 Trumbull Street, Elizabeth, NJ 07206. Officer: Greg Vernoy, Manager (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Coastal International Logistics, LLC, 1420 Vantage Way, Suite 112, Jacksonville, FL 32218. Officers: Christopher S. Hood, Vice President (Qualifying Individual) Haddon N. Allen, President.

Dated: November 13, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–19391 Filed 11–15–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 16, 2007.

ADDRESSES: You may submit comments, identified by FR 2004 (OMB No. 7100–0003), by any of the following methods:

• Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

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

• E–mail: *regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.

• FAX: 202–452–3819 or 202–452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

Report title: The Government Securities Dealers Reports: Weekly Report of Dealer Positions (FR 2004A), Weekly Report of Cumulative Dealer Transactions (FR 2004B), Weekly Report of Dealer Financing and Fails (FR 2004C), Weekly Report of Specific Issues (FR 2004SI), Daily Report of Specific Issues (FR 2004SD), and Daily Report of Dealer Activity in Treasury Financing (FR 2004WI)

Agency form number: FR 2004

OMB control number: 7100–0003

Frequency: Weekly, Daily

Reporters: Primary dealers in the U.S. government securities market

Annual reporting hours: FR 2004A, 1,716 hours; FR 2004B, 2,288 hours; FR 2004C, 1,430 hours; FR 2004SI, 2,288 hours; FR 2004SD, 1,100 hours; FR 2004WI, 3,520 hours

Estimated average hours per response: FR 2004A, 1.5 hours; FR 2004B, 2.0 hours; FR 2004C, 1.25 hours; FR 2004SI, 2.0 hours; FR 2004SD, 2.0 hours; FR 2004WI, 1.0 hour

Number of respondents: 22

General description of report: This information collection is required to obtain or retain a benefit [12 U.S.C. §§ 248(a)(2), 353–359, and 461(c)] and is given confidential treatment [5 U.S.C. §§ 552 (b)(4) and (b)(8)].

Abstract: The FR 2004A collects weekly data on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects cumulative weekly data on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects weekly data on the amounts of dealer financing and fails. The FR 2004SI collects weekly data on outright, financing, and fails positions in current or on–the–run issues. Under certain circumstances this information is also collected on a daily basis on the FR 2004SD for on–the–run and off–the–run securities. The FR 2004WI collects daily data on positions in to–be–issued Treasury coupon securities, mainly the trading on a when–issued delivery basis. Data from the FR 2004SI, SD and WI are available to the Interagency Working Group (IAWG), which includes the Department of the Treasury, the Federal Reserve Bank of New York, the Federal Reserve Board, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

Current actions: The Federal Reserve proposes to revise the FR 2004 information collection by adding an attestation requirement to each of the reporting forms. The addition of this attestation requirement from a senior officer would help ensure that the proper level of review occurs before FR 2004 data are submitted, and help to mitigate the risk of the Federal Reserve publishing misleading data. Since all FR 2004 data are sent electronically through the Internet Electronic Submission (IESUB) system to the Federal Reserve, the proposed signature requirement would be completed weekly and retained with the primary dealer's files. To verify that the proper level of management is attesting to the accuracy of the data, an annual requirement to submit a copy of the attestation to the Federal Reserve for all of the FR 2004 reporting forms is also being proposed. These attestations would be required with the submission of the last as–of date of each year.

In addition, the Federal Reserve proposes to revise the FR 2004SI and FR 2004SD reporting forms by replacing the two counterparty data items ''with broker–dealer'' and ''with all others'' with two data items ''Specific'' and ''General'' for financing transactions. The greater detail on the type of transaction used to fund a position would provide more useful information than the identity type of the counterparty and would improve the IAWG's ability to conduct Treasury market surveillance.

Board of Governors of the Federal Reserve System, November 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–19405 Filed 11–15–06; 8:45 am]

BILLING CODE 6210–01–S

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 December 1, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Terry L. Bunnell, Glasgow, Kentucky; Gil R. Cowles, Rockfield, Kentucky; Vernon D. Landers, Jr., Glasgow, Kentucky; Brandon W. Morgan, Paducah, Kentucky; Billy B. Morgan, Benton, Kentucky; Roy D. Phillips, Marion, Kentucky; Patrick B. Ragan, Dickson, Kentucky; and Ted H. Williams, Dickson, Kentucky, as a group acting in concert, to acquire voting shares of Peoples–Marion Bancorp, Inc., Marion, Kentucky, and thereby indirectly acquire voting shares of The Peoples Bank, Marion, Kentucky.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Byron Dirk Bagenstos, individually and as Trustee of the Byron Dirk Bagenstos 2002 Trust; to acquire voting shares of Alfalfa County Bancshares, Inc., and thereby indirectly acquire voting shares of ACB Bank, all of Cherokee, Oklahoma.

Board of Governors of the Federal Reserve System, November 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–19397 Filed 11–15–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 2006.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sir Barton Bancorp, Inc., Lexington, Kentucky (formerly known as First Corbin Bancorp, Corbin, Kentucky); to acquire 100 percent of the voting shares of Boone National Bank, Burlington, Kansas, and the following bank holding companies and their subsidiariy banks; Tri–County Bancorp, Inc., Corbin, KY (Tri–County National Bank, Corbin, KY); Laurel Bancorp, Inc., Corbin, KY (Laurel National Bank, London, KY); Williamsburg Bancorp, Inc., Corbin, KY (Williamsburg National Bank, Williamsburg, KY); Campbellsville Bancorp, Inc., Corbin, KY (Campbellsville National Bank, Campbellsville, KY); PRP Bancorp, Inc., Corbin, KY (PRP National Bank, Pleasure Ridge Park, KY); Somerset Bancorp, Inc., Corbin, KY (Somerset National Bank, Somerset, KY); and Green County Bancshares, Inc., Corbin, KY, (Deposit Bank & Trust, Greensburg, KY).

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. ATB Holdings, LLC, Birmingham, Alabama; to become a bank holding company by acquiring 25 percent of the voting shares of Guardian Bancshares, Inc., and its subsidiary, Alabama Trust Bank, N.A., both of Sylacauga, Alabama.

Board of Governors of the Federal Reserve System, November 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–19396 Filed 11–15–06; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OCAO–2006–N01; Docket GSA 2006–0013; Sequence 1]

Proposed Best Practices Guide for Contractor Performance Data Collection and Use

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice.

SUMMARY: The Director, Integrated Acquisition Environment Division, General Services Administration invites comments on the proposed best practices guide, Contractor Performance in the Acquisition Process, for the collection and usage of contractor performance data.

DATES: Interested parties should submit written comments to the Integrated Acquisition Environment Division, GSA on or before January 16, 2007.

ADDRESSES: Submit comments identified by OCAO–2006–N01 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''General Services Administration'' as the agency of choice. At the ''Keyword'' prompt, type in the notice number OCAO–2006–N01 and click on the ''Submit'' button. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration'', and typing the notice number in the keyword field. Select the ''Submit'' button.
- Fax: 703–872–8598.
- Mail: GSA—Integrated Acquisition Environment Division, 2011 Crystal Drive, Suite 911, ATTN: OCAO–2006–N01, Arlington VA 22202.

Instructions: Please submit comments only and cite OCAO–2006–N01 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Ms. Teresa Sorrenti at 703–872–8610. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite OCAO–2006–N01.

SUPPLEMENTARY INFORMATION:

A. Background

The enactment of the Federal Acquisition Streamlining Act (FASA) of 1994, made contractor performance information a mandatory evaluation factor for all procurements. This is an important factor in making best value decisions in the acquisition of goods and services. In order to do this, agencies moved out in different directions to share the performance data they collected individually. There was no concerted effort to share data Governmentwide. It has long been a vulnerability that Government agencies would award to a vendor who owes another part of the Government money or services, or is in the process of being debarred. This was due to the fact that information about performance was maintained at the local contracting office level.

Evaluating contractor performance is also useful as a tool to encourage outstanding performance throughout the

life of a contract. Contractor performance information can leverage the use of common contracting events such as option extensions, earned value management discussions, and award fee discussions to populate a Governmentwide database and reduce the reliance on external steps and non-value added processes. As additional value, Government agencies could be encouraged to monitor performance and provide evaluations of other Government agencies performing on Memorandum of Understanding agreements and other interagency agreements. The benefit of this effort will result in a unified method of vendor evaluations.

An Office of Management and Budget (OMB) memorandum dated July 3, 2002 announced that all Federal contractor past performance information currently captured through existing tools would be centrally available on-line for use by all Federal agency contracting officials effective July 1, 2002. A Governmentwide past performance retrieval database supports the Administration's E-Government initiatives to ''unify & simplify'' and reduce burden by eliminating collection redundancies. Performance data is currently collected in the Past Performance Information Retrieval System (PPIRS), which is a web-enabled, Governmentwide application. Two of the collection tools have been eliminated: Past Performance Information Management System (PPIS) and Architect-Engineer Contract Administration Support System (ACAAS). Other collection systems are positioned to be turned off in the next year. However, it was determined by senior procurement executives that a lack of widespread use resulted in insufficient information in the Governmentwide shared database. A review of how to streamline the collection of data, simplify the evaluations of vendors, and improve the value of the data in the Governmentwide database was requested.

In a memorandum, OMB's Office of Federal Procurement Policy (OFPP) established a working group to re–visit the regulations, policies, and business considerations associated with contractor performance information.

During this tasking, the working group reviewed some of the thresholds and made the following recommendations:

- The contractor performance information be removed from the Federal Acquisition Regulation (FAR), Part 36 and moved to FAR Subpart 42.15 so that all of the contractor performance information is in one location in the FAR.
- Removed the reference ''past'' from contractor performance information. Evaluating contractor performance is encouraged throughout the life of the contract, not just a completed contract. As such, it is useful both as an evaluation factor in awards and as a tool to encourage continuous outstanding performance.
- Removed duplications in the FAR guidance.
- Clarified the guidance relating to contractor performance information.
- Revisited and discussed the different feeder and retrieval systems.

The working group has prepared proposed language for the FAR and has updated OFPP's guide ''Best Practices for Collecting and Using Current and Past Performance Information'' (June 2002) incorporating the Department of Defense's (DOD), Office of the Under Secretary of Defense for Acquisition, Technology & Logistics (Defense Procurement and Acquisition Policy) guide, ''A Guide to Collection and Use of Past Performance Information'' (Version 3 May 2003).

OFPP's current guide was a joint effort of agency procurement and program officials and representatives from the private sector. The techniques and practices used to implement the current and past performance initiatives that are discussed in the OFPP best practices guide are not mandatory regulatory guidance. They are useful examples of techniques for recording and using contractor performance to better assess contracts and to enhance the source selection process.

DOD's guide was a joint effort by members from the DOD Past Performance Integrated Product Team. The Team's purpose was to serve as a practical reference tool regarding the DOD past performance policy. It was designed to articulate the key techniques and practices for the use and collection of past performance information for use by the entire acquisition workforce in both Government and industry. It explains best practices for the use of past performance information during the periods of source selection, ongoing performance, and collection of information.

The new guide is entitled ''Contractor Performance in the Acquisition Process'' and can be accessed at *http://www.acquisition.gov*. It also is a joint effort of Federal agency and DOD procurement and program officials. In an effort to continue to solicit private sector input, it is distributed for public comment. This guide is designed to help agencies know their role in addressing and using contractor performance information. It addresses the types of performance information that exist, resources for finding the data, and standards to employ. It discusses best use of performance data throughout the acquisition process, from the pre-award and planning phase, through source selection, and into contract evaluation.

The proposed FAR rule reflecting the findings of this tasking is currently being processed by the FAR team and will be issued for comment at a later date.

Dated: November 7, 2006.

Teresa Sorrenti,

Director, Office of Acquisition Systems.

[FR Doc. E6–19392 Filed 11–15–06; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0595]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Performance Evaluation Program for Rapid HIV Testing—Revision—National Center for Health Marketing (NCHM), Coordinating Center for Health Information and Service (CoCHIS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

To support our mission of improving public health and preventing disease through continuously improving laboratory practices, the Model Performance Evaluation Program (MPEP), Division of Laboratory Systems, Coordinating Center for Health Information and Service, Centers for Disease Control and Prevention intends to continue the currently ongoing HIV

rapid testing performance evaluation program (HIV Rapid Testing MPEP). This program offers external performance evaluation (PE) for rapid tests such as the OraQuick® Rapid HIV–1 Antibody Test, approved as a waived test by the U.S. Food and Drug Administration, and for other licensed tests such as the MedMira Reveal®. Participation in PE programs is expected to lead to improved HIV testing performance because participants have the opportunity to identify areas for improvement in testing practices. Participants include facilities and testing sites that perform HIV Rapid Testing. This program helps to ensure accurate testing as a basis for development of HIV prevention and intervention strategies.

This external quality assessment program is made available at *no cost* (for receipt of sample panels) to sites performing rapid testing for HIV antibodies. This program offers laboratories/testing sites an opportunity for:

(1) Assuring that the laboratories/testing sites are providing accurate tests through external quality assessment,

(2) Improving testing quality through self-evaluation in a nonregulatory environment,

(3) Testing well characterized samples from a source outside the test kit manufacturer,

(4) Discovering potential testing problems so that laboratories/testing sites can adjust procedures to eliminate them,

(5) Comparing individual laboratory/testing site results to others at a national and international level, and

(6) Consulting with CDC staff to discuss testing issues.

Participants in the MPEP HIV Rapid Testing program are required to complete a laboratory practices questionnaire survey annually. In addition, participants are required to submit results twice/year after testing mailed performance evaluation samples. There is no cost to respondents other than their time. The estimated annualized burden is 625.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
HIV Rapid Testing Laboratory Practices Questionnaire	750	1	30/60
HIV Rapid Testing Form EZ	750	2	10/60

Dated: November 9, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–19369 Filed 11–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–0222]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Questionnaire Design Research Laboratory (QDRL) 2007–2009, (OMB No. 0920–0222)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Questionnaire Design Research Laboratory (QDRL) conducts questionnaire pre-testing and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey, OMB No. 0920–0214) and other federally sponsored surveys. The QDRL conducts cognitive interviews, focus groups, mini field-pretests, and experimental research in laboratory and field settings, both for applied questionnaire evaluation and more basic research on response errors in surveys.

In a cognitive interview, a questionnaire design specialist interviews a volunteer participant. QDRL participants are usually recruited by expressing their personal willingness to participate. They read or hear about the study through media advertisements, flyers, and word-of-mouth, and either call the laboratory answering machine number or contact a person coordinating the recruitment. Thus, participation is strictly voluntary and participants are not chosen randomly.

The most common questionnaire evaluation method is the cognitive interview. The interviewer administers the draft survey questions as written, but also probes the participant in depth about interpretations of questions, recall processes used to answer them, and adequacy of response categories to express answers, while noting points of confusion and errors in responding. Interviews are generally conducted in small rounds of 10–15 interviews; ideally, the questionnaire is re-worked between rounds and revisions are tested interactively until interviews yield relatively few new insights. When possible, cognitive interviews are conducted in the survey's intended mode of administration. For example, when testing telephone survey questionnaires, participants often respond to the questions via a telephone in a laboratory room. Under this condition, the participant answers without face-to-face interaction. QDRL staff watch for response difficulties from an observation room, and then conduct a face-to-face debriefing with in-depth probes. Cognitive interviewing provides useful data on questionnaire performance at minimal cost and respondent burden. Similar methodology has been adopted by other Federal agencies, as well as by academic and commercial survey organizations. NCHS is requesting 3 years of OMB Clearance for the project. There are no costs to respondents other than their time. The total estimated annualized burden hours are 600.

ESTIMATED ANNUALIZED BURDEN HOURS

Projects	Number of participants	Number of responses/participant	Average hours per response
QDRL Interviews:			
(1) NCHS Surveys	120	1	1.25
(2) Other questionnaire testing	120	1	1.25
(3) Research on the effects of alternative questionnaire design	500	1	18/60
(4) General Methodological Research	60	1	1.25
Focus Groups (5 groups of 10)	50	1	1.5

Dated: November 9, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–19373 Filed 11–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–07–0607]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

The National Violent Death Reporting System—extension—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Violence is an important public health problem. In the United States, homicide and suicide are the second and third leading causes of death, respectively, in the 1–34 year old age group. Unfortunately, public health agencies do not know much more about the problem than the numbers and the sex, race, and age of the victims, all information obtainable from the standard death certificate. Death certificates, however, carry no information about key facts necessary for prevention such as the relationship of the victim and suspect and the circumstances of the deaths, thereby making it impossible to discern anything but the gross contours of the problem. Furthermore, death certificates are typically available 20 months after the completion of a single calendar year. Official publications of national violent death rates, *e.g.* those in Morbidity and Mortality Weekly Report, rarely use data that is less than two years old. Public health interventions aimed at a moving target last seen two years ago may well miss the mark.

Local and Federal criminal justice agencies such as the Federal Bureau of Investigation (FBI) provide slightly more information about homicides, but they do not routinely collect standardized data about suicides, which are in fact much more common than homicides. The FBI's Supplemental Homicide Report system (SHRs) does collect basic information about the victim-suspect relationship and circumstances, like death certificates, it does not link violent deaths that are part of one incident such as homicide-suicides. It also is a voluntary system in which some 10–20 percent of police departments nationwide do not participate. The FBI's National Incident Based Reporting System (NIBRS) addresses some of these deficiencies, but it covers less of the country than SHRs, still includes only homicides, and collects only police information. Also, the Bureau of Justice Statistics Reports do not use data that is less than two years old.

CDC therefore proposes to continue a state-based surveillance system for violent deaths that will provide more detailed and timely information. It taps into the case records held by medical examiners/coroners, police, and crime labs. Data is collected centrally by each State in the system, stripped of identifiers, and then sent to the CDC. Information is collected from these records about the characteristics of the victims and suspects, the circumstances of the deaths, and the weapons involved. States use standardized data elements and software designed by CDC. Ultimately, this information will guide states in designing programs that reduce multiple forms of violence.

Neither victim families nor suspects are contacted to collect this information. It all comes from existing records and is collected by state health department staff or their subcontractors. Health departments incur an average of 2.0 hours per death in identifying the deaths from death certificates, contacting the police and medical examiners to get copies of or to view the relevant records, abstracting all the records, various data processing tasks, various administrative tasks, data utilization, training, communications, etc.

Violent deaths include all homicides, suicides, legal interventions, deaths from undetermined causes, and unintentional firearm deaths. There are 50,000 such deaths annually among U.S. residents, so the average state will experience approximately 1,000 such deaths each year.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 55,000.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Task name	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
State Health Departments	Case Abstraction	20	1,000	2

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Respondents	Task name	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)
	Record Retrieval	20	1,000	0.5

Dated: November 9, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–19374 Filed 11–15–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Identifying Promising Temporary Assistance for Needy Families (TANF) Diversion Practices.

OMB No.: New Collection.

Description: The Identifying Promising TANF Diversion Practices study is designed to understand States' and local offices' TANF diversion policies and practices. Since the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a majority of States have implemented formal diversion programs that provide assistance to families and/or impose program requirements on them when they apply for TANF in order to reduce the number of families who enroll in the program. These programs can send a strong signal to applicants that TANF is a work-oriented program and/or prevent applicants' need to use time-limited welfare benefits. States have implemented three types of formal diversion programs: (1) Lump-sum payment programs targeted to work-ready applicants to help them through short-term crises; (2) ''up-front'' program requirements, such as mandatory participation in a program orientation or job search as a condition of eligibility; and (3) hybrid programs that provide short-term cash assistance and impose up-front requirements. The Administration for Children and Families has contracted with Mathematica Policy Research, Inc. to learn more about States' implementation of these programs and to identify best practices.

The study consists of a survey of States and in-depth visits to local sites. The survey of States will be administered in four stages: (1) A State survey to the TANF director in all 50 States and the District of Columbia to obtain a profile of States' diversion policies and practices; (2) a semi-structured, one-hour follow-up telephone interview with the State TANF director or designee in an estimated 35 States with States with current diversion programs to gather additional information about these programs; (3) a semi-structured, 20-minute telephone interview with the State TANF director or designee in other States without current diversion programs to learn about future plans for diversion programs; and (4) a semi-structured, one-hour telephone interview with local TANF administrators from 30 selected local offices in States that provide local flexibility in administering diversion policies to learn about their practices.

To further understand the local implementation of diversion policies and practices, the study includes site visits to two local offices in each of three States with promising diversion programs. In each office, interviews will be conducted with one TANF administrator, an average of two supervisors or mid-level management staff members, an average of three line staff members, and an average of two staff members from partner organizations. Site visitors also will observe selected activities, such as intake, orientation, and job search.

Respondents: State TANF directors and administrators and local TANF administrators and line staff.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Survey of States				
Stage 1: State Survey	51	1	0.2	10.2
Stage 2: Interview State TANF Director with Diversion Program	35	1	1.0	35.0
Stage 3: Interview State TANF Director without Diversion Program	16	1	0.3	4.8
Stage 4: Interview Local TANF Administrator	30	1	1.0	30.0
Site Visit Protocols				
Administrator	6	1	1.5	9.0
Supervisor	12	1	1.0	12.0
Line Staff	18	1	1.0	18.0
Partner Organization	12	1	1.0	12.0
Observation	12	1		

Estimated Total Annual Burden Hours: 131.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing

to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 9, 2006.

Robert Sargis,

Report Clearance Officer.

[FR Doc. 06–9223 Filed 11–15–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Public Education Study on Public Knowledge of Abstinence and Abstinence Education.

OMB No.: New Collection.

Description: In support of the goal to prevent unwed childbearing, pregnancy, and sexually transmitted diseases, Congress has recently authorized funding increases to support abstinence education.

To learn more about the public's views, the Administration for Children and Families (ACF) will conduct a public opinion survey of a nationally representative sample of adolescents (age 12 to 18) and their parents to examine current attitudes on abstinence and knowledge of abstinence education. The survey data will be used to inform current and future public education campaigns. In addition, the information gathered will assist ACF with grant administration and technical assistance activities. The survey will ask parents (one parent per adolescent) and adolescents about their views and attitudes about abstinence until marriage, awareness of abstinence education, and views and attitudes about abstinence education. Each parent and adolescent interview will take approximately 20 minutes to complete.

Respondents: A nationally representative sample of adolescents will be selected through a random-digit-dial sample of households with landline telephones.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Telephone interview	[1] 2,000	1	0.33	660

[1] 1,000 adolescent/parent pairs.

Total annual burden estimates: 660.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 8, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–9224 Filed 11–15–06; 8:45 am]

BILLING CODE 4184–01–M

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 the 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: Health Resources and Services Administration Core Clinical Measures Implementation Feasibility Study

In response to the Health and Human Service's Department-wide objectives and HRSA's strategic goals, a set of core clinical performance measures have been established. These measures will assist in the evaluation of HRSA program performance in defined clinical areas to facilitate quality improvement activities for HRSA and its grantees. The purpose of the proposed voluntary feasibility study is to learn from HRSA's health service delivery grantees, which have different reporting capacities, about their abilities to report national standardized measures. More specifically, the study will help HRSA to understand: (1) The factors involved in the HRSA grantee decision making processes around measure selection/choice; (2) Grantees' data collection capacity including tools, processes and infrastructure; (3) Level of grantee effort involved in measure reporting; and (4) How the performance process will impact the grantees' quality improvement efforts. Overall the feasibility study will allow HRSA to query its grantees related to the newly introduced core clinical performance measure set.

The feasibility study includes the actual data collection of the proposed clinical measures along with a report form to assess burden, data collection and reporting capacity, and technical assistance needs. Additionally, the study will provide HRSA with the opportunity to refine instructions and performance measure definitions accordingly in preparation for the actual implementation of the clinical measures.

The estimated annualized response burden is as follows:

	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Clinical Measures	50	1	50	40	2,000
Report Form	50	1	50	1.5	75
Total	50		50		2075

Send comments to Susan G. Queen, Ph.D., 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: November 8, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–19377 Filed 11–15–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Second Generation Nitric Oxide-Releasing Non-Steroidal Anti-Inflammatory Drugs Possessing a Diazeniumdiolate Group (NONO–NSAIDs)

Description of Technology: Non-steroidal anti-inflammatory drugs (NSAIDs) are one of the most useful clinical therapies for the treatment of pain, fever and inflammation. It is estimated that more than 30 million people take NSAIDs every day. However, the major mechanism by which NSAIDs exert their anti-inflammatory activity is also responsible for the gastrointestinal, renal and hepatic side effects observed in patients undergoing long-term treatment of chronic conditions. The most common side effects associated with NSAID administration are gastroduodenal erosions and ulcerations affecting around 15% of chronic NSAID users. While many of these clinical manifestations are mild, they may develop into serious events such as bleeding, perforation, obstruction, and sudden death. Therefore, the gastric irritant effect of NSAIDs (particularly aspirin) can be a deterrent to its long-term use for the prophylactic prevention of adverse cardiovascular events such as stroke and myocardial infarction, or as a safe chemopreventive agent to avoid the recurrence of colorectal cancer (CRC).

One of the main strategies that have emerged to improve the safety profile of NSAIDs is the linkage of a nitric oxide (NO)-releasing moiety to the structure of classical NSAIDs (NO–NSAIDs). However, all NO-releasing NSAIDs published so far have a nitrooxyalkyl group as the NO-releasing group. An important drawback to this design is the fact that production of NO (only one equivalent) from organic nitrate esters requires a metabolic three-electron reduction *in vivo*, and this activation decreases in efficiency on continued use of the drugs, contributing to ''nitrate tolerance''.

This invention describes the design, synthesis and biological evaluation of novel NO-releasing non-steroidal anti-inflammatory prodrugs (NONO–NSAIDs) possessing a *N*-diazen-1-ium-1,2-diolate (NONOate), which offers additional advantages compared with organic nitrate-based NO–NSAIDs:

(a) Simultaneous release of the corresponding NSAID and NO.

(b) Production of two equivalents of NO (twice as much) by a first-order rate.

(c) Metabolic activation (hydrolysis) mediated by non-specific esterases, which unlike redox metabolism, is not expected to produce tolerance upon long-term treatment.

Applications: This invention provides a group of anti-inflammatory, analgesic, and gastrointestinal safe prodrugs, which are expected to be a suitable alternative for the prophylactic prevention of adverse cardiovascular

events such as stroke and myocardial infarction, as well as cancer chemoprevention.

Market: (1) An estimated 60 million people in the United States use NSAIDs regularly; (2) An estimated $5 billion are spent each year in the United States on prescription NSAIDs and approximately $2 billion are spent on over-the-counter NSAIDs.

Development Status: Pre-clinical data is available.

Inventors: Carlos Velazquez Martinez (*NCI*) *et al.*

Related Publication: C Velazquez, PN Praveen Rao, EE Knaus. Novel nonsteroidal anti-inflammatory drugs possessing a nitric oxide donor diazen-1-ium-1,2-diolate moiety: Design, synthesis, biological evaluation, and nitric oxide release studies. J Med Chem. 2005 Jun16;48(12):4061–4067.

Patent Status: U.S. Provisional Application 60/794,421 filed 24 Apr 2006 (HHS Reference No. E–186–2006/0–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Norbert Pontzer, PhD, J.D.; 301/435–5502; *pontzern@mail.nih.gov.*

Collaborative Research Opportunity: The Chemistry Section of the Laboratory of Comparative Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the prodrugs described, as new and safer analgesic, anti-inflammatory, anti-thrombotic, and cancer chemopreventive agents. Please contact Betty Tong, Ph.D. at 301–594–4263 or *tongb@mail.nih.gov* for more information.

Rat or Mouse Exhibiting Behaviors Associated With Human Schizophrenia

Description of Technology: A newly developed animal model for schizophrenia is valuable for assaying pharmaceutical compounds for treating this disorder. Schizophrenia is a neuropsychiatric disorder characterized by cognitive deficits, bizarre behavior and/or hallucinations. Presently, there has been no satisfactory animal model for testing promising therapies for this disorder.

This invention provides a unique and surprisingly accurate animal model for human schizophrenia. The animals are brain damaged while prepubescent. The brain damage consists of a ventral hippocampus lesion induced by exposure of the hippocampus region to a neurotoxin. When the animal reaches puberty, abnormal behavior and a number of biological phenomena associated with schizophrenic symptoms emerge.

The present invention also provides methods of assaying the anti-schizophrenic potential of pharmaceutical compositions. The methods involve (a) Inducing or creating a lesion in the ventral hippocampus of a prepubescent mammal, (b) nurturing or raising the mammal until postpuberty, (c) administering to the mammal a pharmaceutical composition thought to have anti-schizophrenic properties; and (d) determining the mammal's response to the pharmaceutical composition. The anti-schizophrenic potential of the pharmaceutical composition is assessed by objectively measuring the mammal's behavior following administration of the pharmaceutical composition. The behaviors which are measured typically include the following: locomotor activity in a cage, in unfamiliar or novel environments, after injection or administration of drugs (*e.g.*, amphetamines), after mild electric shock, after exposure to sensory stimuli (*e.g.*, noise), in water (swim test), after immobilization, in social interactions, and in various learning and reward paradigms.

The neurotoxin used can be selected from a number of known agents which lethally affect neurons usually, but not exclusively, by over-exciting their glummate receptors. Examples of such neurotoxins include ibotenic acid, N-methyl-D-aspartic acid, kainic acid, dihydrokainate, DL-homocysteate, L-cysteate, L-aspartate, L-glutamate, colchicine, ferric chloride, omega-conotoxin GVIA, 6-hydroxy-dopamine.

Advantage: This is the first model showing postpubertal emergence of abnormalities similar to those reported in schizophrenia.

Applications: (1) Animal model for human schizophrenia; (2) Screening methods for Anti-schizophrenics.

Development Status: Validated, well characterized and ready for use.

Inventors: Daniel R. Weinberger, Barbara K. Lipska, and George E. Jaskiw (NIMH).

Publications:

1. AHC Wong, BK Lipska, O Likhodi, E Boffa, DR Weinberger, JL Kennedy, HHM Van Tol. Cortical gene expression in the neonatal ventral-hippocampal lesion rat model. Schizophr Res. 2005 Sep 15;77(2–3):261–270.

2. BK Lipska. Using animal models to test a neurodevelopmental hypothesis of schizophrenia. J Psychiatry Neurosci. 2004 Jul;29(4):282–286.

3. BK Lipska and DR Weinberger. To model a psychiatric disorder in animals: schizophrenia as a reality test. Neuropsychopharmacology 2000 Sep;23(3):223–239.

4. BK Lipska, GE Jaskiw, DR Weinberger. Postpubertal emergence of hyperresponsiveness to stress and to amphetamine after neonatal excitotoxic damage: a potential animal model of schizophrenia. Neuropsychopharmacology 1993 Aug;9(1):67–75.

Patent Status: U.S. Patent No. 5,549,884 issued 27 Aug 1996 (HHS Reference No. E–013–1993/0–US–01).

Availability: Available for non-exclusive licensing.

Licensing Contact: Norbert Pontzer, Ph.D., J.D.; 301/435–5502; *pontzern@mail.nih.gov.*

Dated: November 8, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–19408 Filed 11–15–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; ENCODE RFA.

Date: December 6–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9209 Filed 11–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Neural Tube Defects.

Date: November 28, 2006.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Children Living in Rural Poverty: The Continuation of the Family Life Project.

Date: November 30, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jefferson, 2500 Calvert Street, NW., Washington, DC 20037.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, A Prospective Study of Diet and Fibroids in Black Women.

Date: November 30, 2006.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Environmental & Biological Variation and Language Growth.

Date: December 5, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Jefferson Hotel, 1200 Sixteenth Street, NW., Washington, DC 20036.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Translational Analyses of Chronic Aberrant Behavior Across the Life Span.

Date: December 6, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 7, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9210 Filed 11–15–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Drug Testing Advisory Board; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Drug Testing Advisory Board in December 2006.

A portion of the meeting will be open and will include, but not limited to, a Department of Health and Human Services drug testing program update, a Department of Transportation drug testing program update, a Nuclear Regulatory Commission drug testing program update, an update on the pilot performance testing programs for hair and oral fluid, results from a Medical Review Officer data source, and results from a study on the external contamination of hair with cocaine.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with Dr. Donna Bush, Executive Secretary (see contact information below), to make arrangements to comment or to request special accommodations for persons with disabilities.

The Board will also meet to develop the final revisions to the proposed Mandatory Guidelines for Federal Workplace Drug Testing Programs that were published in the **Federal Register** on April 13, 2004 (69 FR 19673). This meeting will be conducted in closed session since discussing these issues in open session will significantly frustrate the Department's ability to develop the revisions to the Mandatory Guidelines. The HHS Office of General Counsel made the determination that such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. and, therefore, may be closed to the public.

To facilitate entering the building for the open session, public attendees are required to contact Mrs. Giselle Hersh, Division of Workplace Programs, 1 Choke Cherry Road, Room 2–1042, Rockville, MD 20857, 240–276–2605 (telephone) or by e-mail to *Giselle.Hersh@samhsa.hhs.gov.*

Substantive program information and a roster of Board members may be obtained by contacting Dr. Bush or by accessing the SAMHSA workplace Web site (*http://workplace.samhsa.gov*). The transcript for the open session will be available on the SAMHSA workplace Web site within 3 weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration Drug Testing Advisory Board.

Meeting Date: December 12–13, 2006.

Place: SAMHSA Building, Rock Creek Room 1, Choke Cherry Road, Rockville, Maryland 20850.

Type: Open: December 12, 2006; 8:30 a.m.–4:30 p.m.

Closed: December 13, 2006; 8:30 a.m.–Noon.

Contact: Donna M. Bush, PhD, Executive Secretary, 1 Choke Cherry Road, Room 2–1033, Rockville, Maryland 20857, 240–276–2600 (telephone) and 240–276–2610 (fax). E-mail: *Donna.Bush@samhsa.hhs.gov.*

November 8, 2006.

Toian Vaughn,

SAMHSA Committee Management Officer.

[FR Doc. E6–19367 Filed 11–15–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2006–26255]

Use of Akers Breath Alcohol .02 Detection System Test Device for Serious Marine Incident Testing

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that the use of a Breath Alcohol .02 Detection System manufactured by Akers Bioscience, Inc., may be used by the maritime industry to conduct alcohol tests in compliance with Coast Guard regulations.

DATES: This notice is effective November 16, 2006.

ADDRESSES: You may send questions regarding this notice to: Drug and Alcohol Program Manager, U.S. Coast Guard Headquarters, Room 2404 (G–PCA); 2100 Second St., SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Robert C. Schoening, Drug and Alcohol Program Manager, G–PCA, Coast Guard, telephone 202–372–1033. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Privacy Act: Anyone can 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 Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose: The Coast Guard is making this announcement to allow the use of the Akers Breath Alcohol .02 Detection System for use in the maritime industry. Akers Bioscience, Inc. has received a letter, dated October 6, 2006, from National Highway Traffic Safety Administration (NHTSA/DOT) that the Breath Alcohol .02 Detection System, has met the requirements of model specifications as required by NHTSA. In order to better serve the interests of the marine industry, Coast Guard is allowing the use of this device by marine employers until NHTSA publishes the next Conforming Products List for Alcohol Screen Devices (ASDs) in the **Federal Register**. This device will meet the requirements in 46 CFR Part 4. Further information on alcohol testing in the maritime industry following a serious marine incident, can be located in the Final rule published on December 22, 2005, in the **Federal Register** (70 FR 75954).

Dated: November 8, 2006.

B.M. Salerno,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Prevention.

[FR Doc. E6–19317 Filed 11–15–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Application for Permission to Reapply for Admission into the United States after Deportation or Removal; Form I–212. OMB Control Number 1615–0018.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 16, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail add the OMB Control Number 1615–0018 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–212. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information furnished on Form I–212 will be used by USCIS to adjudicate applications filed by aliens requesting consent to reapply for admission to the United States after deportation, removal or departure, as provided under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,200 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,400 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529; 202–272–8377.

Dated: November 13, 2006.

Richard Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 06–9225 Filed 11–15–06; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–21]

Notice of Proposed Information Collection for Public Comment; Public Housing, Contracting With Resident-Owned Businesses

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* January 16, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4114, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of proposed forms and/or other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing, Contracting with Resident-Owned Businesses.

OMB Control Number: 2577–0161.

Description of the need for the information and proposed use: Eligible resident-owned businesses submit applications to Housing Agencies (HAs) to be approved for noncompetitive contract work on public housing sites as an alternative to HUD's otherwise-required competitive procurement procedures. In order for a resident-owned business to be eligible for noncompetitive contract work, or the alternative procurement process provided by 24 CFR 963, a business must submit evidence as outlined in 24 CFR 963.10 to the PHA, in the formed described therein, or as the PHA may require, that shows how each requirement as described in 24 CFR 963.10 has been met.

For example, resident-owned businesses must provide, and PHAs must collect various types of information, including, but not limited to:

Certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable (as for example, in the case of corporations), the business also shall submit a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law.

The business shall disclose to the PHA all owners of the business, and each owner's percentage of ownership interest in the business. The business also shall disclose all individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy and operations (management officials). The business shall identify all owners and management officials who are not public housing residents, and shall disclose any relationship that these owners and officials may have to a business (resident- or non-resident-owned) engaged in the type of business activity with which the resident-owned business is engaged. The business also shall submit such evidence as the PHA may require to verify that the owner or owners identified as public housing residents reside within public housing of the PHA.

The business shall submit evidence sufficient to demonstrate to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract.

The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by 24 CFR 963. A resident-owned business is not eligible to participate in the alternative procurement process provided by 24 CFR 963 if the resident-owned business has received under this process one or more contracts with a total combined dollar value of $1,000,000.

For additional information, please refer to 24 CFR 963, 24 CFR 85.36(d) and 85.36(b).

Agency form number, if applicable: Not applicable.

Members of affected public: Individuals or Households, Not-For-Profit Institutions, State, Local or Tribal Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
500		1		17		8,500

Total Estimated Burden Hours: 8,500.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 8, 2006.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiative.

[FR Doc. E6–19299 Filed 11–15–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–MJ; HAG 07–0021]

John Day/Snake Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Prineville District.

ACTION: Notice of public meeting—John Day/Snake Resource Advisory Council.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, BLM John Day/Snake Resource Advisory Council, will meet on November 27, 2006, at the Oxford Suites, 2400 SW. Court Place in Pendleton, OR 97801.

The meeting time will be from approximately 9 a.m. to 4 p.m. A public comment will begin at 1 pm and end at 1:15 p.m. (Pacific Standard Time). The meeting may include such topics as off-highway vehicles, noxious weeds, planning, Sage-grouse, and other matters as may reasonably come before the council.

Meeting Procedures: The meeting is open to the public. The public may present written comments to the John Day/Snake Resource Advisory Council. Depending on the number of persons wishing to provide oral comments and agenda topics to be covered, the time to do so may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM representative indicated below. For a copy of the information to be distributed to the Council members, please submit a written request to the Prineville BLM District Office 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the John Day/Snake Resource Advisory Council may be obtained from Virginia Gibbons, Public Affairs Specialist, Prineville BLM District Office, 3050 NE. Third Street, Prineville, Oregon 97754, (541) 416–6647 or e-mail *vgibbons@or.blm.gov*.

Dated: November 9, 2006.

A. Barron Bail,

District Manager.

[FR Doc. E6–19366 Filed 11–15–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–07–1020PH]

Notice Public Meetings: Northeastern Great Basin Resource Advisory Council

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of fiscal year 2007 meetings locations and times for the Northeastern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will meet as indicated below. Topics for discussion at each meeting will include, but are not limited to: January 18, 2007 (Battle Mountain, Nevada)—Fire Grazing Closures, Vegetation Management, Off-Highway Vehicle Trails; March 15, 2007 (Ely, Nevada)—Grazing Permit Renewals, Mining/Energy Permitting Process, Fire Pre-Suppression Management; May 10 & 11, 2007 (Elko, Nevada)—Range Tour, NEPA/CEQ Training, Minerals activities update; and July 26 & 27, 2007 (Eureka, Nevada)—Tour of Bald Mountain Mine, Rights-of-Way Public Involvement, and Range update. Managers' reports of field office activities will be given at each meeting. The council may raise other topics at any of the three planned meetings.

Dates & Times: The RAC will meet three or four times in Fiscal Year 2007: On January 18, 2007 at the BLM Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, Nevada; on March 15 at the BLM Ely Field Office at 702 North Industrial Way, Ely, Nevada; on May 10 & 11, 2007 at the BLM Elko Field Office, 3900 East Idaho Street, Elko, Nevada; and on July 26 & 27, 2007 at the Eureka Opera House, 31 South Main, Eureka, Nevada. All meetings are open to the public. Each meeting will last from 8 a.m. to 4 p.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 1 p.m. unless otherwise listed in each specific, final meeting agenda.

Final detailed agendas, with any additions/corrections to agenda topics, locations, field trips and meeting times, will be sent to local and regional media sources at least 14 days before each meeting, and hard copies can also be mailed or sent via FAX. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish a hard copy of each agenda, should contact Mike Brown, Elko Field Office, 3900 East Idaho Street, Elko, Nevada 89801, telephone (775) 753–0386 no later than 10 days prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Public Affairs Officer, Elko Field Office, 3900 E. Idaho Street, Elko, NV 89801. Telephone: (775) 753–0386. E-mail: *mbrown@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management (BLM), on a variety of planning and management issues associated with public land management in Nevada. All meetings are open to the public. The public may present written comments to the Northeastern Great Basin Resource Advisory Council.

November 9, 2006.

Susan Elliott,

Acting Associate Field Office Manager.

[FR Doc. E6–19375 Filed 11–15–06; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1103 (Final)]

Certain Activated Carbon From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1103 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether 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 less-than-fair-value imports from China of certain activated carbon, provided for in subheading 3802.10.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as follows:

''Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon. The scope of this investigation covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of this investigation covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the investigation are chemically-activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO2 gas) activated carbons are within this scope, and those containing more than 50 percent chemically activated carbons are outside this scope.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within this scope. The products under investigation are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.'' 71 FR 59721, October 11, 2006.

For further information concerning the conduct of this phase of the investigation, hearing procedures, 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 C (19 CFR part 207).

EFFECTIVE DATE: October 11, 2006.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain activated carbon from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 8, 2006, by Calgon Carbon Corporation, Pittsburgh, PA, and Norit Americas, Inc., Marshall, TX.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

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 the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 12, 2007, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on February 27, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 16, 2007. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 21, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 20, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 6, 2007; witness testimony must be filed

no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before March 6, 2007. On March 22, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 26, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: November 9, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–19404 Filed 11–15–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1105–1106 (Preliminary)]

Lemon Juice From Argentina and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Argentina and Mexico of lemon juice, provided for in subheadings 2009.31.40, 2009.31.60, and 2009.39.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. 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 the investigations.

Background

On September 21, 2006, a petition was filed with the Commission and Commerce by Sunkist Growers, Inc., Sherman Oaks, CA, alleging that an industry in the United States is materially injured and threatened with material by reason of LTFV imports of lemon juice from Argentina and Mexico. Accordingly, effective September 21, 2006, the Commission instituted antidumping duty investigation Nos. 731–TA–1105–1106 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 27, 2006 (71 FR 56550). The conference was held in Washington, DC, on October 13, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 6, 2006. The views of the Commission are contained in USITC Publication 3891 (November 2006), entitled *Lemon Juice from Argentina and Mexico: Investigation Nos. 731–TA–1105–1106 (Preliminary).*

Issued: November 9, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–19318 Filed 11–15–06; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,788]

Ace Products, LLC, Newport, TN; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter dated October 3, 2006, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on September 14, 2006, and published in the **Federal Register** on September 26, 2006 (71 FR 56172).

The initial investigation resulted in a negative determination based on the finding that imports of semi pneumatic and solid rubber tires did not contribute importantly to worker separations at the

subject firm and no shift of production to a foreign source occurred.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th of November, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19339 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,354]

Altana Pharma USA Inc., Florham Park, NJ and Waltham, MA, Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 1, 2006 in response to a worker petition filed a company official on behalf of workers at Altana Pharma USA Inc., in Florham Park, New Jersey and Waltham, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 2nd day of November 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19343 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,825]

High Country Forest Products, A Division Of C&R Milling, Wellington, UT; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at High Country Forest Products, Wellington, Utah. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–59,825; High Country Forest Products Wellington, Utah (October 25, 2006).

Signed at Washington, DC this 1st day of November 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19340 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,327]

Production Products, Bonne Terre, MO; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 30, 2006 in response to a petition filed on behalf of workers at Production Products, Bonne Terre, Missouri.

The petitioner is not an authorized representative and is not an official of the company. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of November, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19342 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,232]

Silder, Inc., Laotto, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 11, 2006 in response to a worker petition filed by a company official on behalf of workers at Silder, Inc., LaOtto, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 7th day of November, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19341 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 27, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 27, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of November, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[47 TAA petitions instituted between 10/23/06 and 10/27/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
60275	Statton Furniture Manufacturing (State)	Hagerstown, MD	10/24/06	10/23/06
60276	Brand ID, LLC (State)	Costa Mesa, CA	10/24/06	10/23/06
60277	CEP Products (Comp)	Belleville, MI	10/24/06	10/23/06
60278	Union Tools (Comp)	Frankfort, NY	10/24/06	10/04/06
60279	Marineland (Comp)	Moorpark, CA	10/24/06	10/20/06
60280	Parkdale America LLC (Comp)	Eden, NC	10/24/06	10/01/06
60281	Airtex Products (State)	Marked Tree, AR	10/24/06	10/20/06
60282	International Truck and Engine Corp. (Union)	Indianapolis, IN	10/24/06	10/17/06
60283	Parker Hannifin Corp. (IAMAW)	Waukesha, WI	10/24/06	10/20/06
60284	B and B Swimwear, Inc. (Comp)	Jefferson, NC	10/24/06	10/20/06
60285	Air Systems Components, LP (Comp)	Richardson, TX	10/24/06	10/20/06
60286	Himmelberger Harrison Mfg Co. (Wrks)	Morehouse, MO	10/24/06	10/24/06
60287	IBM Corporation (State)	Rochester, MN	10/24/06	10/20/06
60288	Pulaski Furniture Corp. (Comp)	Pulaski, VA	10/25/06	10/23/06
60289	Vesuvius USA (Comp)	Beaver Falls, PA	10/25/06	10/24/06
60290	TF Global Gasket, LLC (Comp)	Gordonsville, TN	10/25/06	10/24/06
60291	Photometrics (State)	Tucson, AZ	10/25/06	10/20/06
60292	Forest City Technologies, Inc. (Wkrs)	Wellington, OH	10/25/06	10/18/06
60293	Waterloo Industries (State)	Pocahontas, AR	10/25/06	10/24/06
60294	PMP Fermentation (UAW)	Peoria, IL	10/25/06	10/16/06
60295	Hickory Springs Mfg. Co. (Wkrs)	Micaville, NC	10/26/06	10/18/06
60296	Eaton Aerospace (Comp)	Aurora, CO	10/26/06	10/25/06
60297	Craft Tool and Mold, Inc. (Comp)	South Bend, IN	10/26/06	10/24/06
60298	Newell Rubbermaid (Wkrs)	Madison, WI	10/26/06	10/23/06
60299	North American Philips (Union)	Bath, NY	10/26/06	10/16/06
60300	Wak Industries (Wkrs)	Gastonia, NC	10/26/06	10/25/06
60301	D–M–C Company (Comp)	Charlovoix, MI	10/26/06	10/25/06
60302	BMC Software (Comp)	Waltham, MA	10/26/06	10/25/06
60303	Jeld-Wen Premium Doors (Union)	Oshkosh, WI	10/26/06	10/25/06
60304	Gemtron Corp. (Wkrs)	Vincennes, IN	10/26/06	10/20/06
60305	Steven Labels (Wkrs)	Santa Fe Springs, CA	10/26/06	10/16/06
60306	UAW Local 969 Union Hall (Comp)	Columbus, OH	10/26/06	10/20/06
60307	Dal Tile Corp (Wkrs)	Olean, NY	10/26/06	10/20/06
60308	Lakeland Industries (State)	St. Joseph, MO	10/27/06	10/25/06
60309	Tactical Armor Products (Wkrs)	Rutledge, TN	10/27/06	10/24/06
60310	Ford Motor Company (Wkrs)	Dearborn, MI	10/27/06	10/26/06
60311	Techweld International (Wkrs)	Troy, MI	10/27/06	10/25/06
60312	Dana (Wkrs)	Fulton, KY	10/27/06	10/14/06
60313	Fairystone Fabrics (Wkrs)	Burlington, NC	10/27/06	10/25/06
60314	Arrow Acme, Inc. (UAW)	Webster City, IA	10/27/06	10/26/06
60315	Ferrero Corporation (State)	Somerset, NJ	10/27/06	10/26/06
60316	Eaton Corporation (Comp)	Gainesboro, TN	10/27/06	10/25/06
60317	General Ribbon Corp. (State)	Chatsworth, CA	10/27/06	10/25/06
60318	Delphi Automotive (IUE)	Anaheim, CA	10/27/06	10/11/06
60319	Rose Art Industries, LLC ()	Wood Ridge, NJ	10/27/06	10/21/06
60320	Agilent Technologies (State)	Santa Clara, CA	10/27/06	10/24/06
60321	Meridian Automotive Systems (Comp)	Grand Rapids, MI	10/27/06	10/23/06

[FR Doc. E6–19345 Filed 11–15–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,756]

Volex, Inc., Power Cord Products Division, Clinton, AR; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 14, 2006, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on August 22, 2006, and published in the **Federal Register** on October 2, 2006 (71 FR 58012).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Volex, Inc., Power Cord Products Division, Clinton, Arkansas engaged in production of insulated flexible wire and cable for power cords was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's declining domestic customers. The survey was not conducted, because the investigation revealed that the subject firm produced insulated flexible wire and cable primarily for the export market and no domestic customers were available. The subject firm did not import insulated flexible wire and cable in the relevant period, nor did it shift production to a foreign country.

The petitioner provided additional information in the request for reconsideration and supplied a name of a domestic customer which is allegedly purchasing imported products.

The Department conducted a survey of this customer regarding purchases of insulated flexible wire and cable in 2004, 2005 and January through August of 2006. The survey revealed no purchases of imports of insulated flexible wire and cable during the relevant time period.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd of November, 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19338 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance 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 23 through October 27, 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 issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

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–60,164; ZF Boge Elastametall, Rubber-Metal Technology Division, Paris, IL: September 28, 2005.

TA–W–60,244; Mosey Manufacturing Co., Inc., Plant #7, Richmond, IN: October 12, 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.

None.

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–60,030; M. Wile Company, Rector Sportswear, Rector, AR: September 7, 2005.

TA–W–60,123; De Sta Co Industries, A Wholly Owned Subsidiary of Dover Resources, Canton, MI: September 19, 2005.

TA–W–60,129; M. Wile and Company, dba HMX Tailored, Buffalo, NY: September 12, 2005.

TA–W–60,178; Trafalgar Company (The) Marley Hodgson Division, Norwalk, CT: September 29, 2005.

TA–W–60,180; Cadence Innovation, LLC, Injection Tool Construction Business, Secondary Equipment Construction and Fabrication Business, Chesterfield, MI: October 2, 2005.

TA–W–60,180A; Cadence Innovation, LLC, Injection Tool Construction Business, Secondary Equipment Construction and Fabrication Business, Sterling Heights, MI: October 2, 2005.

TA–W–60,180B; Cadence Innovation, LLC, Injection Tool Construction Business, Fraser, MI: October 2, 2005.

TA–W–60,203; Performance Fibers, Formerly Known As Diolen, Scottsboro, AL: October 4, 2005.

TA–W–60,023; Benchmark Electronics, Loveland Division, Loveland, CO: September 6, 2005.

TA–W–60,077; Oxford Collections, Woman's Catalog Division, New York, NY: August 25, 2005.

TA–W–60,077A; Oxford Collections, Woman's Catalog Division, Gaffney, SC: August 25, 2005.

TA–W–60,091; Bowater Nuway, Benton Harbor, MI: September 14, 2005.

TA–W–60,143; Bloomsburg Mills, A Subsidiary of Penn Columbia Corp., Monroe, NC: September 25, 2005.

TA–W–60,143A; Bloomsburg Mills, Corporate/Sales Office, A Subsidiary of Penn Columbia Corp., New York, NY: September 25, 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–60,075; Eaton Corporation, Hydraulics Division, Spencer, IA: September 13, 2005.

TA–W–60,172; Sunshine School Uniforms and Supply Co., Medley, FL: September 27, 2005.

TA–W–60,189; Sebago USA LLC, A Subsidiary of Wolverine World Wide, Portland, ME: October 2, 2005.

TA–W–60,206; Kentucky Derby Hosiery Co., Plant 6, Also Known As Lynne Plant, Mt. Airy, NC: October 2, 2005.

TA–W–60,206A; Kentucky Derby Hosiery Co., Plant 7, Also Know As Forest Drive Plant, Mt. Airy, NC: October 2, 2005.

TA–W–60,218; Alcoa Global Fasteners, Alcoa Fastening Systems Division, Stoughton, MA: September 25, 2005.

TA–W–60,230; Creative Engineered Polymer Products, LLC, aka CEP Products, LLC, Crestline, OH: October 10, 2005.

TA–W–60,183; Signature Fruit Company, LLC, Plant Number 1, Modesto, CA: September 28, 2005.

TA–W–60,092; Measurement Computing Corp., Norton, MA: September 14, 2005.

TA–W–60,141; ESCO Company, Limited Partnership, Plant 2, Muskegon, MI: September 19, 2005.

TA–W–60,188; Jackson Manufacturing, A Subsidiary of Jackson Furniture Industries, Cleveland, TN: September 15, 2005.

TA–W–60,188A; Catnapper, A Subsidiary of Jackson Furniture Industries, Cleveland, TN: September 15, 2005.

TA–W–60,249; ADVO, Inc., Graphics Print Department, Pittsburgh, PA: October 16, 2005.

TA–W–60,249A; ADVO, Inc., Graphics Print Department, Phoenix, AZ: October 16, 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) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,138; Quaker Fabric Corporation, Plant N, Fall River, MA: September 25, 2005.

TA–W–60,138A; Quaker Fabric Corporation, Plant Q, Fall River, MA: September 25, 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–60,164; ZF Boge Elastametall, Rubber-Metal Technology Division, Paris, IL.

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–60,244; Mosey Manufacturing Co., Inc., Plant #7, Richmond, IN.

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.

Because the workers of the firm are not eligible 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–60,049; Energy and Automation, Norwood, OH.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–60,135; Rothtec Engraving Corp., Charlotte, NC.

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).

TA–W–60,137; Mudd (USA), LLC, New York, NY.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

None.

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 23 through October 27, 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: November 3, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–19346 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the data collection for the Workforce Investment Act: National Emergency Grant (NEG) Assistance—Application and Reporting Procedures (1205–0439, expires January 31, 2007). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or at this Web site: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 16, 2007.

ADDRESSES: Gregory Willis, Office of National Response, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–2759 (this is not a toll-free number), fax (202) 693–3149, or e-mail comments to *willis.gregory@dol.gov.*

Background:

This information collection is necessary for the U.S. Department of Labor (DOL)/ Employment and Training Administration (ETA)'s award of National Emergency Grants (NEGs). These discretionary grants are intended to temporarily expand the service capacity at the state and local area levels by providing funding assistance in response to significant dislocation events for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals. Eligibility is defined in sections 101, 134 and 173 of the Workforce Investment Act (WIA) (Pub. L. 105–220): sections 113, 114 and 203 of the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210): and 20 CFR 671.140.

Funds are available for obligation by the Secretary under Sections 132 and 173 of the WIA, and Section 203 of the Trade Act of 2002. Applications will be accepted on an ongoing basis as the need for funds arises at the state and local level.

WIA and the Regulations define four NEG project types:

- REGULAR, which encompasses plant closures, mass layoffs, and multiple layoffs in a single community.
- DISASTER, which includes all eligible FEMA-declared natural and manmade disaster events.
- TRADE-WIA DUAL ENROLLMENT, which provides supplemental funding to ensure that a full range of services is available to trade-impacted individuals eligible under the Trade Adjustment Assistance program provisions of the Trade Act of 2002.
- TRADE HEALTH INSURANCE COVERAGE ASSISTANCE, which provides specialized health coverage, support services, and income assistance

to targeted individuals, defined in the Trade Adjustment Assistance Reform Act of 2002.

NEG Data Collection Forms are as follows:

ETA–9103, Cumulative Quarterly Planning Form

ETA–9104, Quarterly Report

ETA–9105, Employer Data Form

ETA–9106, Project Synopsis

ETA–9107, Project Operator Data Form

I. Review Focus: The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

II. *Current Actions:* This is a notice to extend the collection period that is currently approved by OMB (1205–0446 expires October 31, 2006).

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Workforce Investment Act: National Emergency Grant (NEG) Assistance—Application and Reporting Procedures.

OMB Number: 1205–0439.

Affected Public: State, local, or tribal government.

Total Respondents: 150.

Estimated Total Burden Hours: 1,096.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 9, 2006.

Erica Cantor,

Administrator, Office of National Response.

[FR Doc. E6–19425 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Ventilation Plans, Tests, and Examinations in Underground Coal Mines

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 75.310, 312, 342, 351, 360, 361, 362, 363, 364, 370, 371, and 382.

DATES: Submit comments on or before January 16, 2007.

ADDRESSES: Send comments to Debbie Ferraro, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk or via E-mail to *Ferraro.Debbie@dol.gov*, along with an original printed copy. Ms. Ferraro can be reached at (202) 693–9821 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and noxious gases and dusts from blasting and other mining activities may be present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents.

Sufficient air must be provided to maintain the level of respirable dust at or below 2 milligrams per cubic meter of air and air quality must be maintained in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. Ground conditions are subject to frequent changes, thus sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination requirements of §§ 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically cased numerous fatalities if not properly maintained and operated.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection that:

• 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the

Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Number: 1219–0088.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 612.

Responses: 300,162.

Total Burden Hours: 1,824,456.

Total Burden Cost (operating/maintaining): $160,203.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 8th day of November, 2006.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. E6–19393 Filed 11–15–06; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL CREDIT UNION ADMINISTRATION

No FEAR Act Notice

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The NCUA is providing to its employees this notice of employee rights and protections under the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (the No FEAR Act).

DATES: The NCUA is required to provide initial notice to employees by November 17, 2006, and at the end of each successive fiscal year. The NCUA must also provide the notice to new employees within 90 calendar days of entering duty.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Annette Tapia, Staff Attorney, Office of General Counsel, at (703) 518–6556, or Chrisanthy Loizos, Director, Equal Opportunity Programs, at (703) 518–6326.

SUPPLEMENTARY INFORMATION: The No FEAR Act requires that each federal agency provide public notification of its initial No FEAR Act Notice to employees. This notice provides employees, former employees and applicants further notification of the rights and remedies available to them under the antidiscrimination laws and whistleblower protection laws.

By the National Credit Union Administration Board on November 7, 2006.

Mary Rupp,

Secretary of the Board.

For the reasons discussed above, NCUA is issuing the No FEAR Act notice to its employees, former employees, and applicants as follows:

No FEAR Act Notice

On May 15, 2002, Congress enacted the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' No FEAR Act, 107 P. L. 174, 116 Stat. 566, Summary (2002). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' *Id.* at 101(1).

The Act also requires the NCUA to provide this notice to federal employees, former federal employees and applicants for federal employment to inform you of the rights and protections available to you under federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action. Alternatively, in a personnel action you must contact an EEO counselor within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See*, e.g., 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). Alternatively, or in some cases additionally, you may be able to pursue a discrimination complaint by filing a grievance through the agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

NCUA employees with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, a personnel action against an employee or applicant because that individual disclosed information that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless an Executive Order specifically requires such information to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the OSC at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

The NCUA may not discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the NCUA or the Attorney General regarding any possible violation of any law or regulation by any credit union or the NCUA; any director, officer, committee member, or employee of any credit union; or any officer or employee of the NCUA. 12 U.S.C. 1790b(a)(2).

In addition, any employee or former employee of the NCUA who believes he or she has been discharged or discriminated against in violation of 12 U.S.C. 1790b(a)(2) may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant must also file a copy of the complaint initiating such action with the NCUA Board. 12 U.S.C. 1790b(b).

If the district court determines that the NCUA violated 12 U.S.C. 1790b(a)(2), it may order the NCUA to reinstate the employee to his or her former position, pay compensatory damages, or take other appropriate actions to remedy any past discrimination. 12 U.S.C. 1790b(c).

Retaliation for Engaging in Protected Activity

NCUA cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the federal antidiscrimination or whistleblower protection laws listed above. If you believe you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the antidiscrimination laws and whistleblower protection laws sections, or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under existing laws, NCUA retains the right, where appropriate, to discipline a federal employee for conduct that is inconsistent with federal antidiscrimination and whistleblower protection laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits NCUA to take unfounded disciplinary action against a federal employee or to violate the procedural rights of a federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within the NCUA (e.g., Equal Opportunity Programs, Office of General Counsel, or Office of Human Resources). Additional information regarding federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Neither the No FEAR Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provision of law specified in 5 U.S.C. 2302(d), providing the rights and remedies available to employees and applicants for discrimination on the basis of race, color, religion, sex, national origin, age, handicap, marital status or political affiliation are not lessened or extinguished by the section.

[FR Doc. E6–19291 Filed 11–15–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

TIME AND DATE: 9:30 a.m., Tuesday, November 21, 2006.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED: 7845—*Highway Accident Report*—Motorcoach Collision with the Alexandria Avenue Bridge Overpass, George Washington Memorial Parkway, Alexandria, Virginia, November 14, 2004.

NEWS MEDIA CONTACT: Terry William: (202) 314–6100.

Individuals requesting specific accommodations should contact Chris Bisett at (202) 314–6305 by Friday, November 17, 2006.

The public may view the meeting via a live or achived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: November 14, 2006.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 06–9265 Filed 11–14–06; 3:19 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* ''Packaging and Transportation of Radioactive Material.''

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion. Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. *Who will be required or asked to report:* All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. *An estimate of the number of annual responses:* 850 responses (600 + 250 recordkeepers).

7. *The estimated number of annual respondents:* 250 licensees.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 42,896 hours (37,304 hours for reporting requirements and 5,592 for recordkeeping requirements).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC regulations in 10 CFR Part 71 establish requirements for packing, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 18, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Sarah P. Garman, Office of Information and Regulatory Affairs (3150–0008), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Sarah_P._Garman@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 8th day of November, 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–19365 Filed 11–15–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Calvert Cliffs Nuclear Power Plant, Inc.; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2; Exemption

1.0 Background

Calvert Cliffs Nuclear Power Plant, Inc. (the licensee), is the holder of Renewed Facility Operating License Nos. DPR–53 and DPR–69, which authorize operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (Calvert Cliffs 1 and 2), respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Calvert County in Maryland.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' requires, in part, that ''each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents [LOCAs] conforms to the criteria set forth in paragraph (b) of this section.'' Appendix K, ''ECCS Evaluation Models,'' to 10 CFR Part 50 requires, in part, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation. The Baker-Just equation assumes that the cladding material is composed of either zircaloy or ZIRLO.

By letter dated January 19, 2006, the licensee requested an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to allow the use of fuel rods clad with advanced zirconium-based alloys from Westinghouse Electric Company and M5 alloy from Framatome ANP, Inc. The advanced zirconium-based and M5 alloys are proprietary alloys and are chemically different from zircaloy or ZIRLO fuel cladding materials, which are approved for use.

The licensee has requested the exemption to support the re-insertion of up to four lead fuel assemblies (LFAs) in the core of either Calvert Cliffs 1 or Calvert Cliffs 2 during the next operating cycle, which is cycle 19 for Unit 1 and cycle 17 for Unit 2. The NRC staff has previously approved the irradiation of 8 LFAs for 2 operating cycles (cycles 15 and 16) in Calvert Cliffs 2, as documented in NRC letter dated April 11, 2003. The licensee has indicated that the LFAs placed back in the core for a third cycle will not exceed the peak fuel rod burnup limitation of 60,000 MWD/MTU and will meet all applicable reload design criteria. The LFAs will be placed in low duty cycle locations on the core periphery to assess the grid-to-rod fretting performance. The other four LFAs will be discharged to the spent fuel pool for detailed post-irradiation examinations. Because the core design is not complete yet, the licensee indicated that, if the Calvert Cliffs 2 cycle 17 core cannot accommodate the LFAs, then the planned alternative is to design the Calvert Cliffs 1 cycle 19 core so that the LFAs can be inserted.

In summary, 10 CFR 50.46 and 10 CFR Part 50, Appendix K make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO. Since the material specifications of the advanced zirconium-based and M5 alloys differ from the specification for Zircaloy or ZIRLO, a plant-specific exemption is required to support the use of the four LFAs in Unit 1 or 2.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under Section 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

Authorized by Law

This exemption would allow the licensee to re-insert up to four LFAs, which contain some fuel rods clad with advanced zirconium-based and M5 alloys that do not meet the definition of Zircaloy or ZIRLO as specified by 10 CFR 50.46, in either Calvert Cliffs 1 or 2. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. Previously, the Westinghouse safety evaluation (WCAP–15874–NP, Revision 0, ''Safety Analysis Report for Use of Improved Zirconium-based Cladding Materials in Calvert Cliffs Unit 2 Batch T Lead Fuel Assemblies,'' dated April 2002) and approved Framatome ANP topical report (BAW–10227P–A, ''Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel,'' Framatome Cogema Fuels, February 2000) demonstrated the acceptability of

the advanced zirconium-based and M5 cladding under LOCA conditions. The unique features of the LFAs were evaluated for effects on the LOCA analysis. The results showed that the LFAs would not adversely affect the ECCS performance. Since the current four LFAs will be located at non-limiting core locations, the licensee concludes that the LOCA safety analyses will remain bounding for these LTAs for Calvert Cliffs Units 1 and 2.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the advanced zirconium-based and M5 alloys for determining acceptable fuel performance. The underlying intent of this portion of the Appendix, is to ensure that analysis of fuel response to LOCAs is conservatively calculated. The Westinghouse safety evaluation and approved Framatome ANP topical report show that due to the similarities in the chemical composition of the advanced zirconium-based and M5 alloys and zircaloy, the application of the Baker-Just equation in the analysis of the advanced zirconium-based and M5 clad fuel rods will continue to conservatively bound all post-LOCA scenarios. Thus, application of Appendix K, Paragraph I.A.5 is not necessary for the licensee to achieve its underlying purpose in these circumstances.

Based on the above, no new accident precursors are created by the exemption to allow use of advanced zirconium-based and M5 alloy clad fuel, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk [since risk is probability × consequences] to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the use of LFAs with advanced cladding materials. This change to the plant core configuration has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for ECCS performance. The licensee stated that the wording of the regulations renders the criteria of 10 CFR 50.46 and Appendix K inapplicable to the advanced zirconium-based cladding, even though the Westinghouse safety evaluation and the approved Framatome ANP topical reports show that the intent of the regulations are met. Therefore, since the underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is achieved with the use of the advanced zirconium-based cladding, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for granting of an exemption from 10 CFR 50.46 and Appendix K exist.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K with respect to the use of LFAs with advanced zirconium-based alloy cladding (already irradiated for two cycles at Calvert Cliffs 1 during cycle 19 or Calvert Cliffs 2 during cycle 17).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (71 FR 64747).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of November 2006.

For The Nuclear Regulatory Commission

Catherine Haney,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–19370 Filed 11–15–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–255]

Nuclear Management Company; Palisades Nuclear Plant; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–20 for Palisades Nuclear Plant (Palisades) currently held by Consumers Energy Company (Consumers) and Nuclear Management Company, LLC (NMC), as licensed operator of Palisades. The transfer would be to Entergy Nuclear Palisades, LLC (Entergy Nuclear Palisades). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by Consumers, NMC, Entergy Nuclear Palisades, and ENO, Entergy Nuclear Palisades would acquire ownership of the facility following approval of the proposed license transfer, and ENO would possess, use, and operate Palisades. No physical changes to the Palisades facility or operational changes are being proposed in the application.

The proposed amendment would replace references to Consumers and NMC in the license with references to Entergy Nuclear Palisades and ENO to reflect the proposed transfer, and revise paragraph 1. B to be consistent with paragraph 2 regarding the disposition of the Provisional Operating License.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the

Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas E. Levanway, Wise, Carter, Child, and Caraway, P.O. Box 651, Jackson, MS 39205, 601–968–5524, facsimile: 601–968–5593, e-mail: DEL@wisecarter.com, and Sam Behrends, LeBoeuf, Lamb, Greene & MacRae, 1875 Connecticut Ave., NW., Suite 1200, Washington, DC 20009, 202–986–8108, facsimile: 202–986–8102, e-mail: *Sbehrend@llgm.com;* the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated August 31, 2006, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at 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 by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 3rd day of November, 2006.

For The Nuclear Regulatory Commission.

L. Mark Padovan,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–19363 Filed 11–15–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263]

Nuclear Management Company, LLC; Monticello Nuclear Generating Plant; Notice of Issuance of Renewed Facility; Operating License No. DPR–22; Record of Decision for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Renewed Facility Operating License No. DPR–22 to Nuclear Management Company, LLC (licensee), the operator of the Monticello Nuclear Generating Plant (MNGP). Renewed Facility Operating License No. DPR–22 authorizes operation of MNGP by the licensee at reactor core power levels not in excess of 1775 megawatts thermal (600 megawatts electric) in accordance with the provisions of the MNGP renewed license and its Technical Specifications.

This notice also serves as the record of decision for the renewal of Facility Operating License No. DPR–22 for MNGP, Unit 1. As discussed in the final Supplemental Environmental Impact Statement (FSEIS) for MNGP, dated September 2006, the Commission has considered a range of reasonable alternatives that included generation from coal, natural gas, oil, coal-gasification, new nuclear, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, other biomass-derived fuels, fuel cells, 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 26 regarding Monticello Nuclear Generating Plant.

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 Facility Operating License No. DPR–22. No license conditions are imposed in connection with mitigation measures.

The MNGP plant is a Boiling Water Reactor located in Monticello, MN.

The application for the renewed license 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 the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the new license was published in the **Federal Register** on May 12, 2005 (70 FR 25117). For further details with respect to this action, see (1) Nuclear Management Company, LLC's license renewal application for Monticello Nuclear Generating Plant, dated March 16, 2005, as supplemented by letters dated through August 18, 2006; (2) the Commission's safety evaluation report (NUREG–1865), dated October 2006; (3) the licensee's updated safety analysis report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 26, for the Monticello Nuclear Generating Plant, dated September 19, 2006). These documents are available at the NRC's 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 No. DPR–22, 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 Monticello Nuclear Generating Plant Safety Evaluation Report (NUREG–1865) and the final environmental impact statement (NUREG–1437, Supplement 26) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161 (*http://www.ntis.gov*), (703) 605–6000, or Attention: 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 requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 8th day of November 2006.

For The Nuclear Regulatory Commission.

Frank P. Gillespie,

Division Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E6–19362 Filed 11–15–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Nureg–0725, Revision 14, ''Public Information Circular for Shipments of Irradiated Reactor Fuel''

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has updated NUREG–0725, ''Public Information Circular for Shipments of Irradiated Reactor Fuel.'' This document provides information on shipments of irradiated reactor fuel (spent fuel) that are subject to regulation by the NRC.

ADDRESSES: Copies are available in the Commission's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852–2738. This document may be accessed through the NRC Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs* or using the NRC Agencywide Document Access and Management System (ADAMS), which provides both text and image files of NRC public documents at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Number ML061780640. 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 at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Bagley, Office of Nuclear Security and Incident Response, Mail Stop T–4D8, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, telephone 301–415–5378, and e-mail *shb@nrc.gov*.

SUPPLEMENTARY INFORMATION: Public Information Circular for Shipments of Irradiated Reactor Fuel The NRC staff has updated NUREG–0725 to provide a brief accounting of spent fuel shipment safety and safeguards requirements of a general interest, a summary of data for 1979–2005 highway and rail shipments and a listing, by State, of recent and expired highway and railway shipment routes. The enclosed route information reflects specific NRC approvals that the agency has granted in response to requests for shipments of spent fuel. This publication does not constitute authority for licensees, carriers or other persons to use the routes to ship spent fuel, other categories of nuclear waste, or other radioactive materials.

Dated at Rockville, Maryland, this 3rd day of November, 2006.

For The Nuclear Regulatory Commission.

Patricia K. Holahan,

Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. E6–19371 Filed 11–15–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54733; File No. SR–BSE–2006–36]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to the Market Opening Pilot Program for the Boston Options Exchange Facility

November 9, 2006.

On September 1, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to retroactively reinstate the pilot program rules related to market opening procedures on the Boston Options Exchange facility (''BOX'') of the Exchange for the period August 6, 2006 through September 1, 2006. On September 18, 2006, BSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on October 2, 2006.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54507 (September 26, 2006), 71 FR 58020.

[5] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Commission believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[6] in general, and Section 6(b)(5) of the Act[7] in specific, which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed rule change, as amended, will retroactively reinstate the rules governing the market opening pilot program currently in use on BOX for the period August 6, 2006 through September 1, 2006.[8] Thus, upon approval of this proposed rule change, there will effectively be no interruption of the pilot program rules governing the market opening on BOX.[9] The Commission finds that the BOX market opening pilot program procedures provide a quicker, more efficient, fair and orderly market opening process to the benefit of BOX market participants and investors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–BSE–2006–36), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19382 Filed 11–15–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] On September 1, 2006, BSE filed a proposed rule change, which was immediately effective, to extend the market opening pilot program from September 1, 2006 through August 6, 2007. *See* Securities Exchange Act Release No. 54467 (September 18, 2006), 71 FR 55530 (September 22, 2006).

[9] Prior to approval of this proposed rule change, however, BOX's market opening was operating without effective rules for the period August 6, 2006 through September 1, 2006.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54729; File No. SR–CBOE–2006–83]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Complex Orders

November 8, 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 20, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] 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 CBOE proposes to amend its rules regarding the execution of complex orders to clarify that the legs of stock-option and security future-option orders may be executed in penny increments. The CBOE also proposes various non-substantive changes designed to simplify the text of several rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.42(3), ''Minimum Increments for Bids and Offers,'' currently provides that complex orders may generally be expressed on a net price basis in any increment, regardless of the minimum increment otherwise appropriate to the individual legs of the order.[6] Thus, for example, a complex order could be entered at a net debit or credit price of $1.03 even though the minimum increment for the individual series is generally $0.05 or $0.10.[7] After a complex order has been executed at the total net debit or credit price, the contract quantities and prices for each individual component leg of the trade are reported as executions. In this regard, CBOE Rule 6.42(3) currently provides that the legs of a complex order may be executed in one-cent increments, regardless of the minimum increments otherwise appropriate to the individual legs of the order.

With respect to the types of complex orders that may be expressed in net price increments and reported in one-cent increments as described above, the rule text currently refers to spreads, straddles, and combinations as defined in CBOE Rule 6.53, ''Certain Types of Orders Defined,'' and any other type of complex order defined in CBOE Rule 6.53C, ''Complex Orders on the Hybrid System.'' The purpose of the proposed rule change is to clarify that the options leg of a stock-option or security future-option order, as defined in CBOE Rules

[1] 1 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CBOE has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] A minimum trading increment is defined in CBOE Rule 6.42 as $0.05 if the options contract is trading at less than $3.00 and $0.10 if the options contract is trading at or above $3.00.

[7] As an exception to this provision, CBOE Rule 6.42(3) provides that complex orders in options on the S&P 500 Index (''SPX'') and the S&P 100 Index (''OEX'') that are not box spreads are to be expressed in decimal increments no smaller than $0.05. A ''box spread'' (also referred to as a ''box/roll spread'') means ''an aggregation of positions in a long call option and short put option with the same exercise price ('buy side') coupled with a long put option and short call option with the same exercise price ('sell side') all of which have the same aggregate current underlying value, and are structured as either: (A) a 'long box spread' in which the sell side exercise price exceeds the buy side exercise price or (B) a 'short box spread' in which the buy side exercise price exceeds the sell side exercise price.'' *See* CBOE Rule 6.42, Interpretation and Policy .05, and CBOE Rule 6.53C(a)(7).

1.1(ii)(a) and 1.1(zz)(a),[8] respectively (collectively ''Type A'' orders), also may be executed in one-cent increments.[9] While there are already references to both Type A and Type B stock-option and security future-option orders in the Exchange's priority rules applicable to complex orders,[10] the Exchange believes that making the proposed clarification in the text of CBOE Rule 6.42(3) should help to avoid any confusion as to the applicable increments for reporting the execution of any options leg of Type A stock-option and security future-option orders. The Exchange believes that this clarification is consistent with Rule 722 of the International Securities Exchange (''ISE''), which permits complex orders, as defined in ISE Rule 722, to be executed in penny increments.[11]

The Exchange also notes that under CBOE rules, a stock-option order or security future-option order may be executed at a total credit or debit price without giving priority to bids (offers) established in the trading crowd but not over bids (offers) in the public customer limit order book. While CBOE is proposing to clarify that the options leg of a Type A stock-option or security future-option order may be executed in penny increments, it is not proposing to change the existing requirement that to have priority over public customer limit orders, the options leg of the order must trade at a price that is better than the corresponding bid (offer) by at least one minimum trading increment. Thus, public customer limit orders will maintain their existing priority.

Finally, the Exchange is proposing various non-substantive changes in an effort to simplify the existing text of several rules. First, rather than list out the various types of complex orders, the Exchange proposes to add a definition of a ''complex order'' in Interpretation and Policy .01 to CBOE Rule 6.42.[12] The Exchange also proposes to add corresponding cross-references to this definition in other CBOE rules.[13] Second, the Exchange proposes to add a reference to CBOE Rule 6.42(3) to clarify that, except as otherwise provided in CBOE Rule 6.53C, a complex order may be expressed in any increment.[14] Third, the Exchange proposes to replace rule text in CBOE Rule 6.42(3), regarding the priority applicable to complex orders that are not net priced in a multiple of the minimum increment, with a cross-reference to the applicable priority requirements described in other CBOE rules, and to add a reference to certain of the Exchange's applicable complex order priority rules providing that at least one leg of a complex order must better the corresponding bid (offer) in the public customer limit order book by at least one minimum trading increment as defined in CBOE Rule 6.42 (*i.e.*, $0.05 or $0.10, as applicable). The Exchange believes that this proposed change to the rule text is substantively the same as one recently made by the ISE.[15] Finally, CBOE Rule 6.42 is being revised to clarify that the terms ''box/roll spread'' and ''box spread,'' both of which are used in the CBOE's rules, have the same meaning.[16]

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) of the Act[17] that a national securities exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will provide investors with more flexibility in pricing stock-option orders and security future-option orders and will increase the opportunity for such orders to be executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the

[8] A ''stock-option order'' is defined as ''an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) The purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying or related security or the number of units of the underlying security necessary to create a delta neutral position or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of units of stock as, and on the opposite side of the market from, the underlying or related security portion of the order.'' *See* CBOE Rule 1.1(ii). A ''security future-option order'' is defined as ''an order to buy or sell a stated number of units of a security future or a related security convertible into a security future ('convertible security future') coupled with either (a) The purchase or sale of option contract(s) on the opposite side of the market representing either the same number of the underlying for the security future or convertible security future or the number of units of the underlying for the security future or convertible security future necessary to create a delta neutral position or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of the underlying for the security future or convertible security future, as and on the opposite side of the market from, the underlying for the security future or convertible security future portion of the order.'' *See* CBOE Rule 1.1(zz).

[9] CBOE Rule 6.42(3) already contains a cross-reference to conversions and reversals (collectively ''Type B'' orders). A conversion (reversal) order is an order involving the purchase (sale) of a put option and the sale (purchase) of a call option in equivalent units with the same strike price and expiration in the same underlying security, and the purchase (sale) of the related instrument. See CBOE Rule 6.53C(a)(9). This definition is also referenced in CBOE Rules 1.1(ii)(b) and 1.1(zz)(b).

[10] CBOE Rule 6.45(e) pertains to the priority of complex orders executed in non-Hybrid Trading System (''Hybrid'') options classes. CBOE Rule 6.45A(b)(iii) pertains to the priority of complex orders in Hybrid equity options classes. CBOE Rule 6.45B(b)(iii) pertains to the priority of complex orders in Hybrid index and exchange-traded fund option classes.

[11] *See* ISE Rule 722(b)(1).

[12] For purposes of the rule, ''complex order'' shall mean a spread, straddle, combination, or ratio order as defined in CBOE Rule 6.53, a stock-option order as defined in CBOE Rule 1.1(ii), a security future-option order as defined in CBOE Rule 1.1(zz), or any other complex order as defined in CBOE Rule 6.53C. *See* CBOE Rule 6.42(3), Interpretation and Policy .01.

[13] The Exchange notes that the definition of a ''complex order'' for purposes of CBOE's priority rules is different from the definition of a ''complex trade'' for purposes of the options intermarket linkage requirements described in CBOE Rules 6.80, ''Definitions,'' and 6.83, ''Order Protection.'' Under the options intermarket linkage-related rules, a ''complex trade'' means the execution of an order in an options series in conjunction with the execution of one or more related order(s) in different options series in the same underlying security occurring at or near the same time for the equivalent number of contracts and for the purpose of executing a particular investment strategy. *See* CBOE Rules 6.80(4) and 6.83(b)(7).

[14] CBOE Rule 6.53C provides that the net price increment applicable to complex orders that are routed to the electronic complex order book (''COB'') will be either a multiple of the minimum increment (*i.e.*, $0.05 or $0.10, as applicable) or a one cent increment, as determined on a class-by-class basis.

[15] *See* ISE Rule 722 and Securities Exchange Act Release No. 54124 (July 11, 2006), 71 FR 40567 (July 17, 2006) (order approving File No. SR–ISE–2005–49).

[16] *See supra* note 7.

[17] 15 U.S.C. 78f(b)(5).

protection of investors and the public interest. In addition, as required under Rule 19b–4(f)(6)(iii),[18] the CBOE provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20]

Pursuant to Rule 19b–4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE has asked the Commission to waive the 30-day operative delay because the CBOE believes that the proposal is substantially similar to ISE Rule 722 and because the proposal clarifies the applicable reporting increments for the options leg of stock-option and security future-option orders. Accordingly, the CBOE believes that its proposal presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will allow stock-option orders and security future-option orders, like other types of complex orders, to be executed in penny increments. Allowing stock-option and security future-option orders to be executed in penny increments could facilitate the execution of such orders by increasing the number of price points at which these orders may be executed. For these reasons, the Commission designates that the proposed rule change become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2006–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2006–83 and should be submitted on or before December 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19378 Filed 11–15–06; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54726; File No. SR–CBOE–2006–89]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Exchange's Open Outcry Crossing Rule

November 8, 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 November 6, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE has filed this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes that are intended to clarify the operation of CBOE Rule 6.74, which pertains to crossing orders in open outcry. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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

CBOE Rule 6.74, ''Crossing Orders,'' is an open outcry crossing rule that was adopted prior to the time that the Exchange established its Hybrid Trading System (''Hybrid''), which, among other things, introduced dynamic electronic quotes and the ability for non-public customer orders to be placed in the electronic book. This proposed rule change therefore seeks to update CBOE Rule 6.74 in certain respects in order to clarify the priority of in-crowd market participants (''ICMPs'') vis-à-vis electronic trading interests. The proposed rule change also seeks to clarify the applicability of Section 11(a)(1) of the Act [5] to crossing transactions conducted pursuant to CBOE Rule 6.74 and to update certain other provisions that have become outdated.

First, the Exchange seeks to update the provisions of CBOE Rule 6.74(d), which describes the procedures for crossing orders when a Floor Broker is seeking a participation entitlement, in order to clarify the priority of members in the trading crowd after the applicable participation entitlements have been satisfied. By way of background, in the event a Floor Broker represents an order that is of the eligible order size or greater (''original order'') and is also holding a facilitation order or a solicited order, the Floor Broker may proceed under the provisions of CBOE Rule 6.74(d) to obtain a crossing participation entitlement.[6] The CBOE Rule 6.74(d) crossing participation entitlement permits the Floor Broker to transact either 20% or 40%, as determined by the appropriate Procedure Committee, of the remainder of the original order against the facilitation or solicited order. Further, if a DPM or LMM is granted participation rights under CBOE Rule 8.87 or CBOE Rule 8.15B, respectively, CBOE Rule 6.74(d)(v) provides that the DPM or LMM participation entitlement is applied if the trade occurs at the DPM's/LMM's market, provided that the DPM/LMM participation entitlement will be limited to the number of contracts that, when combined with the percentage the Floor Broker crossed, does not exceed 40% of the original order size. After the applicable public customer orders and participation entitlements have been satisfied, CBOE Rule 6.74(d)(vi) provides that ''the members of the trading crowd'' are entitled to participate in the balance remaining in the order.[7]

The proposed rule change will clarify which members of the trading crowd are entitled to participate in the balance remaining in the order. Specifically, the proposed rule change provides that the remaining balance of an order will be allocated among the ICMPs who established the market. Therefore, neither electronic quotes received by the Exchange from electronic DPMs and Remote Market-Makers (categories of CBOE market-makers that are not physically located in the trading crowd) nor broker-dealer electronic orders resting on the book would be entitled to participate in the remaining balance of the order if there is sufficient interest among the ICMPs in the trading crowd at the same price or better.

Thus, the CBOE Rule 6.74(d) priority sequence is generally such that, at the same price, public customer orders resting in the book would have first priority, then the Floor Broker to the extent of the crossing entitlement, then the DPM/LMM (to the extent of the DPM/LMM participation entitlement), and then the ICMPs. Further, nothing prohibits a Floor Broker or DPM/LMM from trading more than his percentage entitlement if the other ICMPs do not choose to trade the remaining portion of the order. To the extent there may be any further remaining balance, same-priced broker-dealer orders resting in the book and electronic quotes of market makers would have priority to trade next.

The proposed rule change also clarifies how the remaining balance of the order is allocated among the ICMPs, on which the rule is currently silent. Specifically, the proposed rule change provides that priority to trade the remaining portion of an order being crossed in open outcry shall be afforded to bids (offers) made by ICMPs in the sequence in which they are made. If bids (offers) were made at the same time, or in the event that the sequence cannot be reasonably determined, priority shall be apportioned equally among the ICMPs who established the market. In the event an ICMP declines to accept any portion of the available contracts, any remaining contracts shall be apportioned equally among the other ICMPs who established the market until all contracts have been apportioned.

The proposed rule change also seeks to adopt an introductory paragraph for CBOE Rule 6.74 that generally clarifies the priority principles applicable among ICMPs and electronic trading interest. Specifically, the introduction will provide that, at the same price, bids and offers of ICMPs have first priority, except as is otherwise provided in the Rule with respect to public customer orders resting in the electronic book, and all other bids and offers (including bids and offers of broker-dealers in the electronic book and electronic quotes of Market-Makers) have second priority.

All transactions conducted under CBOE Rule 6.74 must be in compliance with Section 11(a) of the Act and the rules promulgated thereunder. Therefore, the introduction will also make clear that, in order to transact proprietary orders [8] on the floor of the Exchange pursuant to the Rule, members must ensure that they qualify for an exemption from Section 11(a)(1) of the Act.

Members relying on Section 11(a)(1)(G) of the Act [9] and Rule 11a1–1(T) thereunder (the ''G'' exemption) [10] as an exemption must comply with the requirements of that exemption before executing a proprietary order, including the requirement to yield priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member (a ''non-member''), irrespective of the size of any such bid or offer or the time when it was entered. Because CBOE's electronic book does not distinguish between member and non-member broker-dealer orders, the introductory language also clarifies how a member relying on the ''G'' exemption must yield priority. Specifically, before a member that is relying on the ''G'' exemption can execute a proprietary order, the member must first yield priority to all same-priced public customer orders and broker-dealer orders (whether non-member or member) resting in the electronic book, as well as any other bids and offers that would otherwise

[5] 15 U.S.C. 78k(a)(1).

[6] Pursuant to CBOE Rule 6.74(d)(ii), the Floor Broker crossing entitlement takes effect after all public customer orders that were on the limit order book and then represented in the trading crowd at the time the market was established have been satisfied.

[7] CBOE Rule 6.74(d)(vi) currently provides in relevant part that the ''members of the trading crowd who established the market will have priority over all other orders that were not represented in the trading crowd at the time the market was established (but not over customer orders on the book) and will maintain priority over such orders except for orders that improve upon the market.''

[8] For purposes of the Rule, a ''proprietary order'' will mean an order for a member's own account, the account of an associated person, or an account with respect to which the member or an associated person thereof exercises investment discretion.

[9] 15 U.S.C. 78k(a)(1)(G).

[10] 17 CFR 240.11a1–1(T).

have priority over those broker-dealer orders under CBOE Rule 6.74.

For example, assume a Floor Broker is relying on the ''G'' exemption and asserting a participation entitlement when attempting to cross an order with a firm proprietary order pursuant to CBOE Rule 6.74(d). The Floor Broker must yield priority to any same-priced public customer orders and broker-dealer orders resting in the electronic book, as well as any DPM/LMM and other ICMPs that would otherwise have priority over those broker-dealer orders. In such a scenario, the CBOE Rule 6.74(d) priority sequence described above is modified so that, at the same price, public customer orders resting in the book would have first priority, then the DPM/LMM (to the extent of the DPM/LMM participation entitlement), then the ICMPs (to the extent each such participant also qualifies for an exemption from Section 11(a)(1) of the Act but is not relying on a ''G'' exemption), then broker dealer orders resting in the book, and then the Floor Broker's proprietary order (along with any other ICMPs also relying on the ''G'' exemption). As in CBOE Rule 6.74(d)(v), the Floor Broker's percentage entitlement to the remaining contracts, when combined with the DPM/LMM guaranteed participation, may not exceed 40% of the order. However, provided the ''G'' exemption requirements are satisfied, nothing prohibits a Floor Broker or DPM/LMM from trading more than their applicable percentage entitlement if other ICMPs do not choose to trade the remaining portion of the order. To the extent there may be any further remaining balance, same-priced electronic quotes of market makers would have priority to trade next.

Finally, the Exchange proposes various other changes to CBOE Rule 6.74, including conforming changes to reference ''ICMPs'' throughout the text of the Rule. The Exchange also proposes changes to the text of Interpretation and Policy .08 of the Rule to clarify that CBOE Rule 6.74(d) supercedes the priority provisions of paragraph (d) of CBOE Rule 6.9, ''Solicited Transactions,'' with respect to both facilitations and solicitations.[11] The Exchange also proposes to remove an outdated reference to a ''Board Broker,'' a term which no longer is utilized by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, as required under Rule 19b–4(f)(6)(iii),[14] the CBOE provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

Pursuant to Rule 19b–4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal will clarify the operation of CBOE Rule 6.74 and will clarify how Floor Brokers may comply with the requirements of Section 11(a) under the Act.[17] For these reasons, the Commission designates that the proposed rule change become operative immediately.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2006–89. 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

[11] The text of CBOE Rule 6.74, Interpretation and Policy .08 currently refers to ''solicited orders,'' which are defined in CBOE Rule 6.9, Interpretation and Policy .01 to include both facilitation orders and orders resulting from solicitations.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes 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).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2006–89 and should be submitted on or before December 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19381 Filed 11–15–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54728; File No. SR–NASD–2006–114]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Automated Process for Opening Quotations of ITS/CAES Market Makers

November 8, 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 September 29, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish an automatic process for opening quotes in non-Nasdaq securities through the ITS/CAES System. Nasdaq implemented the proposed rule change on October 9, 2006.[5] The text of the proposed rule change is available on the Nasdaq's Web site at *http://www.nasdaq.com*, at Nasdaq'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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to establish a procedure for automated initial display of quotations by ITS/CAES Market Makers. The procedure would be substantially the same as the existing procedure of The NASDAQ Stock Market LLC (the ''Nasdaq Exchange'') for automated opening quotes by market makers in Nasdaq-listed stocks under Nasdaq Exchange Rule 4704(b). Specifically, the ITS/CAES System will display initial quotes of ITS/CAES Market Makers in one of three ways, at the option of the market maker: (i) At the last price and size (either including or excluding reserve size) entered by the market maker on the preceding trading day; (ii) at a price and size entered by the market maker prior to 9:25 a.m., or (iii) at a system-generated price of $0.01 (bid) and $200,001 (ask) and a size of 100 shares.[6] Firms choosing the first two options will have their quotes displayed at such time as they specify, or if no time is specified, then at 9:25 a.m. Firms choosing the third option will have their quotes displayed at 9:25 a.m. Any quotes generated through this process will be replaced as soon as a market maker submits a quote update. The automated process will ensure that market makers do not inadvertently fail to maintain a two-sided quote at market open. The quotes displayed through this process will not be available for execution until 9:30 a.m.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[7] in general, and furthers the objectives of Section 15A(b)(5) of the Act,[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest. The proposed rule change assists ITS/CAES market makers in maintaining a two-sided quote at market open and replicates functionality currently in use by the Nasdaq Exchange with respect to Nasdaq-listed stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

Nasdaq has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Telephone conversation between John Yetter, Senior Associate General Counsel, Nasdaq, and Natasha Cowen, Special Counsel, Division of Market Regulation, Commission, on November 7, 2006.

[6] Nasdaq notes that the default settings are different for ITS/CAES than for the Nasdaq Exchange to reflect the extremely high share prices of a small number of stocks listed on the New York Stock Exchange.

[7] 15 U.S.C. 78o–3.

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

As required under Rule 19b–4(f)(6)(iii) under the Act,[11] Nasdaq provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay and render the proposed rule change operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the 30-day operative delay would enable ITS/CAES market makers to maintain a two-sided quote at market open and would replicate functionality currently in use by the Nasdaq Exchange with respect to Nasdaq-listed stocks. For the reasons stated above, the Commission therefore designated the proposal to become operative upon filing.[14]

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–NASD–2006–114 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–NASD–2006–114. 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 offices of Nasdaq. 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–NASD–2006–114 and should be submitted on or before December 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19379 Filed 11–15–06; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

[13] *Id.*

[14] For purposes of waiving the operative date of this proposal only, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54731; File No. SR–NYSE–2006–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 To List and Trade Two Series of Commodity-Linked Securities of Wachovia Corporation

November 9, 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 July 25, 2006, New York Stock Exchange LLC (the ''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. On November 3, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade two series of Commodity-Linked Securities (the ''Securities'') of Wachovia Corporation, one having an aggregate principal amount of $45,000,000 and the other having an aggregate principal amount of $40,000,000. The return on the Securities, in excess of the principal amount, is linked to the performance of an equally weighted basket (the ''Basket'') of the following five commodities: WTI crude oil, natural gas, copper, aluminum, and gold (each, a ''Component Commodity'' and, collectively, the ''Component Commodities'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

on the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 703.19 of the NYSE Listed Company Manual (the ''Manual''), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided that the issue is suited for auction market trading. The Exchange proposes to list and trade, under Section 703.19 of the Manual, the Securities, the return on which, in excess of the principal amount, is linked to the performance of the Basket. The Securities are debt securities and are part of a series of debt securities entitled ''Medium-Term Notes, Series G'' that Wachovia may issue from time to time. The Securities rank equally with all other unsecured and unsubordinated debt of Wachovia. The principal amount of each Security is $25, and they will be traded on the Exchange's equity trading floor.

The Exchange believes that the Securities conform to the initial listing standards for equity securities under Section 703.19 of the Manual, as Wachovia is a listed company in good standing, each series of Securities has at least 400 holders at the time of listing, each series of Securities has a minimum life of one year, and the minimum public market value of each series of Securities at the time of listing will exceed $4 million.

The Exchange states that the Securities will mature (the ''Maturity Date'') on November 3, 2008, with respect to the Series 1 Securities and August 6, 2009 with respect to the Series 2 Securities. The maturity payment amount, in excess of the principal amount, will be linked to the performance of the Basket, which in turn is based on the performance of the Component Commodities.

Each Component Commodity represents 20% of the Basket. The Component Commodities are set forth below:

- WTI Crude Oil (Bloomberg symbol ''CL1'')
- Natural Gas (Bloomberg symbol ''NG1'')
- Copper (Bloomberg symbol ''LOCADY'')
- Aluminum (Bloomberg symbol ''LOAHDY'')
- Gold (Bloomberg symbol ''GOLDLNPM'')

The weighting of each Component Commodity is fixed and will not change during the term of the Securities. Similarly, the Component Commodities that comprise the Basket will not change, except as described below under ''Adjustments to the Basket and the Component Commodity Prices.''

The Series 1 Securities pay a fixed 2% interest rate semi-annually on May 3 and November 3, beginning on May 3, 2006. At maturity, for each Series 1 Security a holder owns, such holder will receive a cash payment equal to the sum of the principal amount of the Security and the Basket performance amount, plus any accrued but unpaid interest. The ''Basket performance amount'' per Series 1 Security will equal the greater of (i) $0, and (ii) the product of the principal amount of the Series 1 Security and the percentage change in the level of the Basket, as further described below. If the Basket ending level is less than or equal to the Basket starting level, the Basket performance amount will be $0, and the maturity payment amount will be $25, plus any accrued but unpaid interest.

The Series 2 Securities make no payment of interest, periodic or otherwise. At maturity, for each Series 2 Security a holder owns, such holder will receive a cash payment equal to the sum of the principal amount of the Series 2 Security and the Basket performance amount. The Basket performance amount per Series 2 Security will equal the greater of (i) $0, and (ii) the product of the principal amount of the Series 2 Security, the percentage change in the level of the Basket, as further described below, and a participation rate of 150%. If the Basket ending level is less than or equal to the Basket starting level, the Basket performance amount will be $0, and the maturity payment amount will be $25.

The Exchange states that the Securities will provide for participation in the positive performance of the Component Commodities during their term while reducing the risk exposure to investors through principal protection. The Securities are not callable by Wachovia.

The Basket performance amount per Security will be determined by the calculation agent.[4] The Basket performance amount per Series 1 Security will equal the greater of:

(i) $0, and

(ii) $25 × (Basket ending level − Basket starting level) / Basket Starting Level.

The Basket performance amount per Series 2 Security will equal the greater of:

(i) $0, and

(ii) $25 × ((Basket ending level − Basket starting level) / Basket starting level) × the Participation Rate.

The Participation Rate for the Series 2 Securities is 150%.

The ''Basket starting level'' for both Series 1 and Series 2 Securities is 1,000.

The ''Basket ending level'' will be determined by the calculation agent and will equal the closing level of the Basket on the valuation date. The closing level of the Basket will be calculated based on the weighted levels of the Component Commodities and will equal the sum of the products of (i) the component multiplier of each Component Commodity and (ii) the closing price (as described below) of the Component Commodity on the valuation date.

The ''component multiplier'' equals the quotient of (i) the initial weight of each Component Commodity (20%) multiplied by the Basket starting level divided by (ii) the closing price of each Component Commodity on the pricing date of the initial offering of the Securities (October 27, 2005 for the Series 1 Securities and January 30, 2006 for the Series 2 Securities).

The ''closing price'' of each Component Commodity will be determined by reference to its official closing price or cash settlement price on the relevant exchange or market on the valuation date, as reported by Bloomberg LP, as follows:

- In the case of WTI crude oil, the U.S. dollar closing settlement price per barrel of West Texas Intermediate light sweet crude oil on the New York Mercantile Exchange (the ''NYMEX'') of the first nearby futures contract;[5]
- In the case of natural gas, the official U.S. dollar settlement price per MMBtu of natural gas on the NYMEX of the Henry Hub Natural Gas futures contract in respect of the first nearby month; in the case of copper, the official U.S. dollar settlement price per ton of copper-Grade A on the London Metals

[4] Wachovia Bank, National Association, a subsidiary of Wachovia, will serve as the calculation agent. Wachovia may at any time change the calculation agent without notice to holders of Securities. Wachovia has represented to the Exchange that it has policies prohibiting insider trading that are applicable to all of its employees and that it implements and maintains procedures reasonably designed to prevent the use and dissemination by employees involved in the activities of Wachovia Bank, National Association in its capacity as calculation agent, in violation of applicable laws, rules and regulations, of material non-public information relating to the Securities.

[5] The trading day in WTI crude oil and Henry Hub Natural Gas on the NYMEX is between 10 a.m. and 2:30 p.m. New York Time.

Exchange (the ''LME'') for cash delivery;[6]

• In the case of aluminum, the official U.S. dollar settlement price per ton of high grade primary aluminum on the LME for cash delivery; or

• In the case of gold, the afternoon U.S. dollar fixing price per troy ounce of unallocated gold bullion for delivery in London through a member of the London Bullion Market Association (''LBMA'') authorized to effect such delivery.[7]

Wachovia has informed the Exchange that, in deciding whether to base the pricing of each individual Component Commodity on its cash price or on a related futures contract, it used the pricing source in each case that it believed was most widely used as an indicator of the market price of that commodity.

The ''valuation date'' means the fifth business day prior to the maturity date. However, if that date occurs on a day on which the calculation agent has determined that a market disruption event has occurred or is continuing, then the valuation date will be postponed until the next succeeding business day on which the calculation agent determines that a market disruption event does not occur or is not continuing. If the valuation date is postponed, then the maturity date of the Securities will be postponed by an equal number of business days.

The Securities are cash-settled in U.S. dollars and do not give the holder any right to receive a futures contract, dividend payments, or any other ownership right or interest in the Component Commodities that comprise the Basket. The Securities are designed for investors who desire to participate or gain exposure to the Component Commodities that comprise the Basket, who are willing to hold the investment to maturity, and who want to limit risk exposure by receiving principal protection of their investment amount.

The Basket is not a recognized market index and was created solely for the purpose of offering the Securities.

Adjustments to the Basket and the Component Commodities Prices

The composition of the Basket and/or the method of determining the closing price for each Component Commodity may be adjusted from time to time by the calculation agent, in its sole discretion, as follows:

• In the event that an official closing price is not available for a Component Commodity for whatever reason, including any discontinuance of trading in the relevant Component Commodity by the NYMEX, the LME, or the LBMA, then the calculation agent may, in its sole discretion, take such action, including adjustments to the Basket or to the method of determining such closing price as it deems appropriate. By way of example, and without limitation, if a contract which serves as the basis for determining the closing price of a particular Component Commodity is discontinued by the exchange or market on which it traded, the calculation agent may, in its sole discretion, determine such closing price for that Component Commodity by reference to another contract for the Component Commodity traded on another exchange or market or to its bid for the Component Commodity for delivery on the valuation date.

• In the event that the terms of any contract used for determining the closing price of any Component Commodity are changed in a material respect by the commodity exchange upon which the contracts trade, the calculation agent may take such action, including adjustments to the Basket or to the method of determining the closing price of that Component Commodity, as it deems appropriate.

No adjustments will be made unless the calculation agent determines, in its sole discretion, that such adjustment is appropriate to maintain the validity of the closing price as an economic benchmark for the affected Component Commodity. The calculation agent at any time, or from time to time, if any, may make such adjustments, on or prior to the maturity date.

If any adjustments are of a more than temporary nature, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act seeking Commission approval to continue to trade the Securities and, unless approved, the Exchange will commence delisting the Securities.

Available Information

The hypothetical maturity payment amount per Security (the ''Closing Values'') will be published once every NYSE trading day (as opposed to at least every 15 seconds during the trading day) at approximately 5 p.m., New York City time, calculated on each day as if such day were the valuation date. The Closing Value will be accessible by going to Bloomberg page ''WSSN'' and selecting the ''commodity-linked'' option.

The Exchange believes that this daily dissemination of the Closing Value is appropriate because the Securities are debt securities traded on the NYSE's equity floor, the value of which is linked to the Basket, and there will be no creation or redemption of shares as there would be with an exchange-traded fund (''ETF'').

As discussed in the prospectus supplement dated October 27, 2005 relating to the Series 1 Securities and the prospectus supplement dated May 13, 2005 relating to the Series 2 Securities, the trading price of the Securities will be affected by many factors that interrelate in complex ways. The negative effect of one factor may offset the positive effect on the trading price of the Securities of another factor and the negative effect of one factor may exacerbate the decrease in the trading price of the Securities caused by another factor. For example, increased price volatility with respect to one or more of Component Commodities may offset some or all of any increase in the trading price of the Securities attributable to another factor, such as an increase in the prices of one or more of the Component Commodities. In addition, a change in interest rates may offset other factors that would otherwise change the prices of the Component Commodities and, therefore, may significantly change the trading price of the Securities. The Exchange states that the following bullet points summarize the expected impact on the trading price of the Securities given a change in a

[6] The Exchange states that the LME is the principal non-ferrous metals exchange in the world on which contracts for copper and aluminum, among other metals, are traded. While there is a futures market for each of copper and aluminum, Wachovia has informed the Exchange that it is using the respective U.S. dollar settlement prices as those prices are the generally accepted standards for determining the market price of those commodities. The LME is not a cash-cleared market. Both inter-office and floor trading are cleared and guaranteed by a system run by the London Clearing House, whose role is to act as a central counterparty to trades executed between clearing members. The bulk of trading on the LME is transacted through inter-office dealing that allows the LME to operate as a 24-hour market. Liquidity for copper and aluminum primarily exists during the two daily trading sessions on the floor of the LME, from 11:40 a.m. to 1:15 p.m. and from 3:10 p.m. to 4:35 p.m., London time, and declines substantially outside of these trading sessions.

[7] The Exchange states that the LBMA is the principal gold clearing center for over-the-counter gold bullion transactions. Twice daily during London trading hours a ''fixing'' occurs that provides reference prices for that day's trading. Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm*. The three measures published by LBMA are: volume, the amount of metal transferred on average each day measured in million of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London. Additionally, the NYMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold.

specific factor, assuming all other conditions remain constant:

• The level of the Basket at any given point in time;

• Changes in Component Commodity prices;

• The volatility (frequency and magnitude of changes in prices) of the Component Commodities and in particular market expectations regarding the volatility of the Component Commodities;

• Interest rates generally, as well as changes in interest rates and the yield curve;

• Changes in correlation among the prices of the Component Commodities;

• The time remaining to maturity of the Securities;

• Wachovia's credit worthiness, as represented by its credit ratings or as otherwise perceived in the market; and

• Geopolitical, economic, financial, political, regulatory or judicial events, as well as other conditions that affect commodities' markets in general and that may affect the market prices of the Component Commodities.

Pricing information with respect to the Component Commodities is available as follows:

• The official U.S. dollar settlement price per ton of coppeR–Grade A on the LME for cash delivery is publicly available on the Web site of the LME at *http://www.lme.com/dataprices_daily_metal.asp.*

• The official U.S. dollar settlement price per ton of high-grade primary aluminum on the LME for cash delivery is publicly available on the Web site of the LME at *http://www.lme.com/dataprices_daily_metal.asp.*

• The U.S. dollar closing settlement price per barrel of West Texas Intermediate light sweet crude oil on the NYMEX of the first nearby futures contract is publicly available on the Web site of the NYMEX at *http://www.nymex.com/index.aspx.*

• The official U.S. dollar settlement price per MMBtu of natural gas on the NYMEX of the Henry Hub Natural Gas futures contract in respect of the first nearby month is publicly available on the Web site of the NYMEX at *http://www.nymex.com/index.aspx.*

• The afternoon U.S. dollar fixing price per troy ounce of unallocated gold bullion for delivery in London through a member of the LBMA authorized to effect such delivery is publicly available on the Web site of the LBMA at *http://www.lbma.org.uk/statistics_current.htm.* Complete real-time data for gold futures and options prices traded on the NYMEX is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site at *http://www.nymex.com/index.aspx.*

Real time intraday trading prices and daily closing prices for the Component Commodities are available by subscription from major market vendors.

Market Disruption Event

A market disruption event with respect to a Component Commodity, as determined by the calculation agent in its sole discretion, means the occurrence or existence of any of the following events:

• The failure of the relevant exchange, market or price source to announce or publish the closing price for a Component Commodity or the temporary or permanent discontinuance or unavailability of the relevant exchange, market, or price source;

• The failure of trading to commence, or the permanent discontinuation of trading, in the relevant futures contracts on the relevant exchange or market, or the disappearance of, or the disappearance of trading in, the relevant Component Commodity;

• A material change in the formula for or the method of calculating the closing price for a Component Commodity;

• A material change in the content, composition, or constitution of a Component Commodity or relevant futures contracts;

• A suspension, absence or material limitation imposed on trading in the futures contracts or the relevant Component Commodity on its respective exchange or in any additional futures contract, options contract, or Component Commodity on any exchange or principal trading market as specified in the relevant agreement or confirmation; for this purpose, an absence of trading in the primary exchange on which options or futures contracts related to any Component Commodities or the relevant Component Commodities are traded will not include any time when that exchange itself is closed for trading under ordinary circumstances; or

• Any other event, if the calculation agent determines in its sole discretion that the event materially interferes with Wachovia's ability or the ability of any of its affiliates to unwind all or a material portion of a hedge with respect to the Securities.

The following events will not constitute market disruption events:

• a decision to permanently discontinue trading (without implementation of such decision) in the option or futures contract relating to any Component Commodity or in any Component Commodity on the NYMEX, the LME, or the LBMA; or

• a limitation on the hours or numbers of days of trading that results from an announced change in the regular business hours of the relevant exchange.

Continued Listing Criteria

The Exchange prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[8]

The Exchange will delist the Securities if:

• The Securities do not meet the continued listing criteria of Section 703.19 of the Exchange's Listed Company Manual.

• The Closing Value ceases to be published every NYSE trading day.

• Such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Additionally, the Exchange will file a proposed rule change pursuant to Rule 19b–4 under the Act, seeking approval to continue trading the Securities and, unless approved, the Exchange will commence delisting the Securities if:

• Wachovia removes a Component Commodity from the Basket or adds a new Component Commodity to the Basket, changes the weighting of the Component Commodities in the Basket, or changes on a more than temporary basis the source of the closing price of any of the Component Commodities; or

• A Market Disruption Event occurs which is of a more than temporary nature.

Trading Halts

If the Closing Value for a series of the Securities is not being disseminated as required, the Exchange may halt trading during the day immediately following the day on which the interruption to the dissemination of the Closing Value first occurs. If the interruption to the dissemination of the Closing Value persists past the trading day following the day on which the interruption occurred, the Exchange will halt trading no later than the beginning of the second trading day following the interruption.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Securities and the Component

[8] 15 U.S.C. 78a.

Commodities. The Exchange's surveillance procedures will incorporate and rely upon existing Exchange surveillance procedures governing equities. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Securities and to detect violations of Exchange rules, thereby deterring manipulation. The Exchange is a party to information sharing agreements with each of the NYMEX and the LME, pursuant to which such exchanges are obligated to provide the Exchange with access to transaction information, including customer identity information with respect to all commodities traded on such exchanges.

In connection with its authorization for listing of the streetTRACKS® Gold Shares (the ''Shares''), the Exchange states that the Commission found that the unique liquidity and depth of the gold market, along with the existence of an information sharing agreement between the NYSE and the NYMEX and the application of NYSE Rules 1300B and 1301 to the Specialist trading those Securities, created the basis for the NYSE to monitor fraudulent and manipulative practices in the trading of the Shares.[9]

Similarly, the Exchange believes that the depth and liquidity of the gold market, along with the information sharing agreement between the NYSE and the NYMEX and the application of NYSE Rules 1300B and 1301 to the Specialist trading those Securities, will provide adequate surveillance of the trading of the gold Component Commodity.

Suitability

The Exchange's existing equity trading rules will apply to trading of the Securities. The Exchange states that it will also have in place certain other requirements to provide additional investor protection. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Securities.[10] Second, the Securities will be subject to the equity margin rules of the Exchange.[11] Third, the Exchange will, prior to trading the Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Securities and highlighting the special risks and characteristics of the Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Securities: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

Information Memorandum

The information memorandum will note to members prospectus delivery requirements for the Securities.[12] The information memorandum will discuss the special characteristics and risks of trading this type of security. Specifically, the information memorandum, among other things, will discuss the following: what the Securities are, applicable Exchange rules, dissemination of information regarding the Closing Value, trading information, and applicable suitability rules.

The information memorandum will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the Commission has no jurisdiction over the trading of physical commodities such as crude oil, natural gas, copper, aluminum and gold, or the futures contracts on which a portion of the value of the Securities is based.

Specialist Trading Obligations

Supplementary Material .10 to NYSE Rule 1301B applies the provisions of NYSE Rule 1300B(b) and NYSE Rule 1301B to certain securities listed on the Exchange pursuant to Section 703.19 (''Other Securities'') of the Manual. Specifically, NYSE Rules 1300B(b) and 1301B apply to securities listed under Section 703.19 of the Manual where the price of such securities is based, in whole or in part, on the price of: (a) A commodity or commodities; (b) any futures contracts or other derivatives based on a commodity or commodities; or (c) any index based on either (a) or (b) above.

As a result of application of NYSE Rule 1300B(b), the specialist in the Securities, the specialist's member organization and other specified persons will be prohibited under paragraph (m) of Exchange Rule 105 Guidelines from acting as market maker or functioning in any capacity involving market-making responsibilities in the Basket components, the commodities underlying the Basket components, or options, futures or options on futures on the Basket, or any other derivatives (collectively, ''derivative instruments'') based on the Basket or based on any Basket component or any physical commodity underlying a Basket component. If the member organization acting as specialist in the Securities is entitled to an exemption under NYSE Rule 98 from paragraph (m) of NYSE Rule 105 Guidelines, then that member organization could act in a market-making capacity in the Basket components, the commodities underlying the Basket components, or derivative instruments based on the Basket or based on any Basket component or commodity underlying a Basket component, other than as a specialist in the Securities themselves, in another market center.

Under NYSE Rule 1301B(a), the member organization acting as specialist in the Securities will be: (1) Obligated to conduct all trading in the Securities in its specialist account (subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange); (2) required to file with the Exchange and keep current a list identifying all accounts for trading in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components, which the member organization acting as specialist may have or over which it may exercise investment discretion; and (3) prohibited from trading in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components, in an account in which a member organization acting as specialist, controls trading activities which have not been reported to the Exchange as required by NYSE Rule 1301B.

Under NYSE Rule 1301B(b), the member organization acting as specialist in the Securities will be required to

[9] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22).

[10] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[11] *See* NYSE Rule 431.

[12] Telephone conversation between John Carey, Assistant General Counsel, NYSE, Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and Angela Muehr, Attorney, Division, Commission, on November 8, 2006.

make available to the Exchange such books, records, or other information pertaining to transactions by the member organization and other specified persons for its or their own accounts in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components, as may be requested by the Exchange. This requirement is in addition to existing obligations under Exchange rules regarding the production of books and records.

Under NYSE Rule 1301B(c), in connection with trading the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components, the specialist could not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in the Basket components or the physical commodities underlying the Basket components, or derivative instruments based on the Basket or based on the Basket components or the physical commodities underlying the Basket components.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act [13] in general and furthers the objectives of Section 6(b)(5),[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will 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.

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78s(b)(5).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the 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–2006–54 and should be submitted on or before December 7, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Surveillance

Information sharing agreements with primary markets are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. The Commission believes that the Exchange's comprehensive surveillance sharing agreements with the LME and the NYMEX for the purpose of providing information in connection with trading of the Securities and Component Commodities create the basis for NYSE to monitor for fraudulent and manipulative practices in the trading of the Securities.

Moreover, NYSE Rules, including Rule 1301B, give NYSE the authority to request the Exchange specialist in the Securities to provide NYSE Regulation with information to monitor for fraudulent and manipulative trading facilities. The Commission believes that these rules provide the NYSE with the tools necessary to adequately surveil trading in the Securities.

B. Dissemination of Information

The Commission believes that sufficient venues exist for obtaining reliable information so that investors in the Securities can monitor the Component Commodities relative to the indicative value of their Securities. There is a considerable amount of information about the Component Commodities available through public Web sites, and real time intraday prices and daily closing prices for the Component Commodities are available by subscription from major market vendors.

The Exchange will calculate and disseminate the Closing Value once each trading day. The Commission believes that this daily dissemination of an indicative basket amount is appropriate because there will be no creation or redemption of shares as

[15] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

there would be with an ETF. Additionally, the Securities are debt, whose value, while linked to the basket, is at least 100% of the principal investment amount, and whose value is affected by factors, such as interest rates, time remaining to maturity, and the issuer's creditworthiness, that make an intraday indicative value not as determinative. The Closing Value will be published at approximately 5 p.m., New York City time, calculated on each day as if such day were the valuation date. The Closing Value will be accessible by going to Bloomberg page ''WSSN'' and selecting the ''commodity-linked'' option. Wachovia will determine the value of the Securities at maturity, which will consist of at least 100% of the principal investment amount, plus the Basket Performance Amount.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Securities are consistent with the Act. The Securities will trade as equity securities under Section 703.19 of the Manual and will be subject to NYSE rules applicable to equity trading including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, account opening and customer suitability requirements. The Commission believes that the listing and delisting criteria for the Securities should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Securities. The Exchange represents that it would file a proposed rule change, pursuant to Rule 19b–4 under the Act,[17] if Wachovia removes a Component Commodity from the Basket, adds a new Component Commodity to the Basket, changes the weighting of the Component Commodities in the Basket, or changes on a more than temporary basis the source of the closing price of any of the Component Commodities; or a market disruption event occurs which is of a more than temporary nature. Finally, the Commission notes that the Information Memorandum the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Securities, including their prospectus delivery obligations.

D. Accelerated Approval

The Commission finds good cause for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that this product is similar to other products already approved by the Commission.[18] The Commission presently is not aware of any issue that would cause it to revisit such earlier findings or preclude the trading of these Securities on the Exchange. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, opportunities for investors to trade in such Securities.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, as amended (SR–NYSE–2006–54), is hereby approved on an accelerated basis.[19]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19364 Filed 11–15–06; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 240.19b–4.

[18] *See, e.g.*, Securities Exchange Act Release No. 54033 (June 22, 2006), 71 FR 37131 (June 29, 2006) (order approving the listing and trading of principal protected notes linked to the Metals-China Basket).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54727; File No. SR–NYSE–2006–79]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Fee on Orders in Equities and Exchange Traded Funds Routed From the Exchange and Executed in Another Market Pursuant to the Linkage Plan

November 8, 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 September 29, 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, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and subparagraph (f)(2) of Rule 19b–4 thereunder[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to charge a fee (''Linkage Order Fee'') to its member organizations in connection with orders in equities and Exchange Traded Funds (''ETFs'') routed from the Exchange and executed in another market pursuant to the ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage'' (''Linkage Plan'').

The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE'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 NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

The NYSE proposes to charge a Linkage Order Fee to its member organizations in connection with orders in equities and ETFs routed from the Exchange and executed in another market pursuant to the Linkage Plan.[5] The ''Linkage Order Fee'' would be paid on such orders in the amount of $0.00025 per share and, for ETFs, in the amount of $0.0030 per share. The Linkage Order Fee is proposed to take effect on October 1, 2006 and to extend until the scheduled termination of the Linkage Plan on June 30, 2007.

The Linkage Plan provides that orders be sent to a Participant market through the auspices of a member of that Participant (''Sponsoring Member'').[6] The Exchange has identified Archipelago Securities LLC (''Arca Securities'') as the Exchange's Sponsoring Member for orders executed in a destination market. Arca Securities would be billed by the destination markets for orders entered on the Exchange by Entering Firms but routed to other markets for execution. The Exchange would assume responsibility for fees paid by Arca Securities to Participant markets in its capacity as the Exchange's Sponsoring Member. The Exchange proposes to bill each Entering Firm the Linkage Order Fee in order to recover these expenses.

Each Entering Firm would be billed the Linkage Order Fee for equities each month with respect to the number of shares that such firm has executed pursuant to the Linkage Plan. Such fee would be subject to the monthly fee cap per Entering Firm of $750,000, but it would not be subject to the cap of $80 per transaction in the 2006 Exchange Price List.

The Exchange also would impose a Linkage Order Fee for ETFs of $0.0030 per share, to be billed monthly. While this is the same as the Broker/Dealer per share fee currently imposed, the Linkage Order Fee would apply both to ETFs listed on the Exchange and to those traded on the Exchange pursuant to unlisted trading privileges (''UTP''). (ETFs traded pursuant to UTP are currently subject to a transaction fee moratorium.) In addition, the Linkage Order Fee would apply to System Orders under 5,100 shares and would not be subject to the cap of $100 per trade for ETFs.

The Exchange is also proposing to make a minor change to the ETF transaction fee schedule to specify that the fee is $0.0030 per share rather than $0.30 per round lot, consistent with the form of the transaction fee schedule for equities.

The Exchange also proposes to amend the 2006 Price List to clarify that transactions by members acting as specialist for the specialist's own account are not subject to transaction fees on ETF transactions.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members and other persons using its facilities. The fee is intended to permit the Exchange to recover fees billed to Arca Securities, as a Sponsoring Member, by other markets for orders executed pursuant to the Linkage Plan. In addition, with the exception of the per trade or per month fee caps applicable to non-Linkage orders, the billing rate is the same for Linkage and non-Linkage orders.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed 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, because it involves a member due, fee or other charge. At any time within sixty (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–NYSE–2006–79 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–2006–79. 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

[5] The Linkage Plan was filed with the Commission pursuant to Rule 608 of Regulation NMS under the Act. The purpose of the Linkage Plan is to enable the Plan Participants to act jointly in planning, developing, operating and regulating the NMS Linkage System electronically linking the Plan Participant Markets to one another, as described in the Linkage Plan. Following approval by the Commission, the Plan became operative on October 1, 2006. The Plan would terminate on June 30, 2007; however, Participants that wished to extend the term could agree to do so, subject to Commission approval. *See* Securities Exchange Act Release No. 54551 (Sept. 29, 2006), 71 FR 59148 (Oct. 6, 2006) (approving the Linkage Plan).

[6] The Participants in the Linkage Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Nasdaq Stock Market LLC, the National Stock Exchange, the New York Stock Exchange LLC, the NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc.

[7] The Exchange's transaction fee schedule was most recently amended in Securities Exchange Act Release No. 54142 (July 13, 2006), 71 FR 41493 (July 21, 2006) (SR–NYSE–2006–46).

[8] 15 U.S.C. 78f.

[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).

Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–79 and should be submitted on or before December 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19380 Filed 11–15–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from GATX Rail (WB512–12—10/20/06), for permission to use certain data from the Board's Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. E6–19406 Filed 11–15–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation (VACOR), Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Rehabilitation will be held on December 7–8, 2006 in Room 442 at the Department of Veterans Affairs, 811 Vermont Avenue, Washington, DC. Sessions on both days will begin at 8 a.m. On December 7, the session will end at 4:30 p.m. and on December 8 at noon. The meeting is open to the public.

The purpose of the Committee is to provide recommendations to the Secretary of Veterans Affairs on the rehabilitation needs of veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, there will be briefings on various VA initiatives to meet the rehabilitation needs of veterans, particularly veterans of Operation Iraqi Freedom and Operating Enduring Freedom. The Committee will also focus on how VA's polytrauma centers are addressing the specific requirements of the most severely disabled veterans returning from current war zones.

No time will be allocated at this meeting for oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Ms. Jennifer Smith, Designated Federal Officer, at (202) 273–7308. The Committee will accept written comments. Comments can be addressed to Ms. Smith at the Department of Veterans Affairs, Veterans Benefits Administration (28), 810 Vermont Avenue, NW., Washington, DC 20420. In communication with the Committee, writers must identify themselves and state the organizations, associations, or person(s) they represent.

By direction of the Secretary.

Dated: November 8, 2006.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–9207 Filed 11–15–06; 8:45 am]

BILLING CODE 8320–01–M

[12] 17 CFR 200.30–3(a)(12).

Corrections

Federal Register

Vol. 71, No. 221

Thursday, November 16, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

Correction

In notice document E6–18983 appearing on page 65773 in the issue of November 9, 2006, make the following correction:

In the second column, in the first line, after ''Committee'', insert ''(Committee) will meet in Washington, DC. The purpose of this meeting is to review the''.

[FR Doc. Z6–18983 Filed 11–15–06; 8:45 am]

BILLING CODE 1505–01–D

Reader Aids

Federal Register

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Thursday, November 16, 2006

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Prunes (fresh) grown in Washington and Oregon; published 10-17-06

POSTAL RATE COMMISSION

Practice and procedure:

Rate and classification requests; published 11-16-06

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Levy; collection due process procedures relating to notice and hearing opportunity; published 10-17-06

Tax lien filing notice; collection due process procedures; notice and hearing opportunity; published 10-17-06

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Potatoes; grade standards:; comments due by 11-21-06; published 9-22-06 [FR 06-07819]

Table grapes (European or Vinifera type); grade standards; comments due by 11-21-06; published 9-22-06 [FR 06-07869]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Bovine spongiform encephalopathy; minimal-risk regions and importation of commodities; comments due by 11-24-06; published 11-9-06 [FR E6-19042]

Plant related quarantine, foreign; user fees:

Imported fruits and vegetables grown in Canada; inspection and user fees along U.S./Canada border; exemptions removed; comments due by 11-23-06; published 8-25-06 [FR E6-14128]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food distribution programs:

Processing of donated foods; comments due by 11-22-06; published 8-24-06 [FR 06-07073]

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Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

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Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

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Industry and Security Bureau

Export administration regulations:

Cuba; agricultural commodities exports; licensing procedures; comments due by 11-22-06; published 10-23-06 [FR E6-17707]

Foreign policy-based export controls; comments due by 11-22-06; published 10-23-06 [FR E6-17713]

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Air pollution control:

Indian country; new sources and modification review; comments due by 11-20-06; published 8-21-06 [FR 06-06926]

Air quality implementation plans; approval and promulgation; various States:

Tennessee; comments due by 11-24-06; published 10-25-06 [FR E6-17800]

Pesticides; emergency exemptions, etc.:

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Chlorpropham, etc.; comments due by 11-20-06; published 9-20-06 [FR E6-15471]

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Trifloxystrobin; comments due by 11-21-06; published 9-22-06 [FR 06-08060]

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HEALTH AND HUMAN SERVICES DEPARTMENT

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Watches, watch movements, and jewelry:

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INTERIOR DEPARTMENT

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Federal Aviation Administration

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TRANSPORTATION DEPARTMENT

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 6061/P.L. 109–367

Secure Fence Act of 2006 (Oct. 26, 2006; 120 Stat. 2638)

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