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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, December 12, 2006
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 8083 of November 14, 2006

America Recycles Day, 2006

By the President of the United States of America

A Proclamation

Good stewardship of the environment is a personal responsibility and an important public value, and on America Recycles Day, we highlight the many benefits of recycling. By taking steps to reduce waste and re-use materials, we can save precious natural resources, enhance the beauty of our communities, and add to the health and prosperity of our Nation.

Our citizens play an important role in protecting our environment, and throughout our country, we are recycling, composting, and helping turn materials that would otherwise become waste into valuable resources. Recycling helps conserve energy, prevent greenhouse gas emissions and water pollutants, and decrease the need for new landfills and incinerators.

Recognizing the importance of recycling, my Administration is promoting cooperative efforts to conserve and maintain our natural resources. The Environmental Protection Agency is encouraging businesses, industries, and communities to work together to promote recycling through the Resource Conservation Challenge (RCC). Partnerships between government agencies, businesses, industries, and private organizations help us to improve practices of recycling, re-use, and waste reduction. In addition, my Administration is working with businesses through the Plug-In To eCycling Campaign to collect and re-use computers, cell phones, and other electronics that would otherwise become solid or hazardous waste. To further reduce greenhouse gas emissions and save energy, the EPA is also partnering with manufacturers, utility companies, and construction companies through the Industrial Materials Recycling effort to increase the safe re-use of industrial byproducts.

Americans are united in the belief that we have an obligation to be good stewards of the environment, and America Recycles Day is an opportunity to recommit ourselves to wisely managing our natural resources. By promoting responsibility and good citizenship, we can build a brighter future for our children and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 15, 2006, as America Recycles Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

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

[FR Doc. 06–9282
Filed 11–16–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 892

RIN 3206–AJ88

Allotments From Federal Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations dealing with the use of OPM's allotment authority to allow for pretax salary reductions as part of OPM's flexible benefits plan. Using an allotment from an employee's pay to the employing agency allows certain payments (*e.g.*, employee health insurance premiums, contributions to a flexible spending arrangement, and contributions to a health savings account) to be paid with pretax dollars, as provided under section 125 of the Internal Revenue Code. In addition, these regulations include certain policy clarifications and changes to make the regulations more readable.

DATES: *Effective Date:* The interim regulations are effective on December 18, 2006.

Comment Date: Comments must be received on or before January 16, 2007.

ADDRESSES: Send or deliver written comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200, by FAX at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Gene Holson by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

In § 550.301, we are revising the definition of *employee* to clarify that it covers only those who meet the definition of employee in 5 U.S.C. 2105.

Allotments to Financial Organizations

We are removing § 550.361, which covers allotments for savings, because these provisions cite the Department of the Treasury's regulations in 31 CFR part 209. As we explained in the supplementary information accompanying a final rule published on September 26, 2001 (66 FR 49085), the Department of the Treasury removed 31 CFR part 209 effective on January 27, 1997. (See 61 FR 68155, December 27, 1996.) In that final rule, we removed the reference to part 209 in § 550.311(a)(5). However, we neglected to remove the related rules in § 550.361, which we are doing now. We are also removing the language in current § 550.311(a)(6), which deals with an allotment for savings for an employee assigned to a post of duty outside the continental United States and references obsolete § 550.361. Finally, we are revising § 550.311(a)(5) to remove an obsolete limitation restricting mandatory allotments to ''savings accounts.'' The revised language is broadly stated to encompass any allotments to ''an employee's personal account(s) at a financial organization'' (*e.g.*, a checking account or savings account).

Pretax Salary Reductions as Part of OPM's Flexible Benefits Plan

On September 26, 2001, the Office of Personnel Management (OPM) published final regulations (66 FR 49085) allowing an employee to pay his or her Federal Employees Health Benefits (FEHB) premiums through an allotment from the employee's pay to the employing agency. Use of this allotment mechanism allows FEHB premiums to be paid with a pretax salary reduction as part of a ''cafeteria plan'' (i.e., flexible benefits plan) established under section 125 of the Internal Revenue Code. Because pretax salary reductions lower an employee's taxable income, they reduce his or her tax burden.

Most employees in the executive branch of the Federal Government are covered by OPM's cafeteria plan, the Federal Flexible Benefits Plan (FedFlex). (Certain executive branch agencies with independent compensation authority have established their own flexible benefits plans.) Also, employees of Federal agencies outside the executive branch or whose pay is not issued by an executive branch agency, and who are otherwise qualified, can participate in FedFlex if their employer agrees to adopt FedFlex. The initial FedFlex benefit, FEHB premium conversion, was implemented in October 2000. In 2003, OPM expanded FedFlex by offering flexible spending arrangements (FSAs). In late 2006, enrollment will begin for FedFlex dental and vision benefits. In 2007, employees enrolled in high deductible health plans with health savings accounts will be able to make allotments for pretax contributions to their health savings accounts through FedFlex. To ensure that all current and future allotments necessary for participation in FedFlex programs are eligible for pretax treatment, OPM is amending its allotment regulations at 5 CFR part 550, subpart C. Interim § 550.311(a)(7) broadens the current language at § 550.311(a)(8) addressing FEHB premiums to include any allotment effecting a salary reduction as part of FedFlex. We are making conforming changes to § 550.312(f) and § 892.301.

Order of Precedence for Deductions

We are removing § 550.313, which deals with the order of precedence for deductions from pay when there is insufficient pay to cover all deductions. The introduction of new pretax benefits under FedFlex creates additional complexities for agencies in determining the proper order of precedence for allotments when there is insufficient pay to cover all deductions. As part of its leadership role for the e-Payroll initiative, OPM has begun issuing payroll policy guidance to agencies to ensure timely, accurate, and uniform payroll practices across Government. In the near future, OPM will issue payroll policy guidance regarding the order of precedence for deductions when there is insufficient pay to cover all deductions. We believe OPM's payroll policy guidance under the e-Payroll initiative, rather than regulations, provides the flexibility needed to respond to the introduction of new types of allotments such as those for FedFlex benefits.

Waiver of Notice of Proposed Rule Making

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rule making. An opportunity for public comment prior to issuing this rule is impracticable and contrary to the public interest. These regulations are needed to ensure that agencies treat employee premiums for dental and vision benefits offered beginning in December 2006 as pretax salary reductions under Federal tax law. OPM's allotment regulations are the vehicle for converting these premiums into salary reductions that qualify for pretax treatment as part of a flexible benefits plan under section 125 of title 26, United States Code. In enacting the Federal Employee Dental and Vision Benefits Enhancement Act of 2004 (Pub. L. 108–496, December 23, 2004), Congress anticipated that these dental and vision premiums would be paid on a pretax basis and described this pretax treatment as a major advantage of the new benefits. (See Senate Report 108–393.)

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

List of Subjects in 5 CFR Parts 550 and 892

Administrative practice and procedure, Claims, Government employees, Wages, Health insurance, and Taxes.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending 5 CFR parts 550 and 892 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart C—Allotments From Federal Employees

■ 1. The authority citation for subpart C of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

■ 2. In § 550.301, the definition of *employee* is revised to read as follows:

§ 550.301 Definitions.

* * * * *

Employee means an employee of an agency who satisfies the definition of that term in 5 U.S.C. 2105.

* * * * *

■ 3. In § 550.311, paragraph (a)(8) is removed, and the introductory text of paragraph (a), as well as paragraphs (a)(5)–(7) and (b) are revised to read as follows:

§ 550.311 Authority of agency.

(a) *Mandatory allotments.* An agency must permit an employee to make—

* * * * *

(5) Two or more allotments to an employee's personal account(s) at a financial organization;

(6) An allotment for child support and/or alimony payments under § 550.361; and

(7) Any allotment effecting a salary reduction as part of a flexible benefits plan established by the Office of Personnel Management in conformance with section 125 of title 26, United States Code.

(b) *Discretionary allotments.* In addition to those allotments provided for in paragraph (a) of this section, an agency may permit an employee to make an allotment for any legal purpose deemed appropriate by the head of the agency (or designee). This paragraph does not constitute an independent authority for an agency to permit pretax allotments in addition to those authorized by the Office of Personnel Management as described in paragraph (a)(7) of this section.

■ 4. In § 550.312, paragraph (f) is revised to read as follows:

§ 550.312 General limitations.

* * * * *

(f) Notwithstanding the requirements in paragraphs (a) and (c) of this section, an agency may make an allotment for an employee's share of Federal Employees Health Benefits premiums under § 550.311(a)(7) and part 892 of this chapter without specific authorization from the employee, unless the employee specifically waives such allotment. Agency procedures for processing employee waivers must be consistent with procedures established by the Office of Personnel Management. (See part 892 of this chapter.)

§ 550.313 [Removed]

■ 5. Section 550.313 is removed.

§ 550.361 [Removed]

■ 6. Section 550.361 is removed.

§§ 550.371 and 550.381 [Redesignated as §§ 550.361 and 550.371]

■ 7. Sections 550.371 and 550.381 are redesignated as 550.361 and 550.371, respectively.

PART 892—FEDERAL FLEXIBLE BENEFITS PLAN: PRE-TAX PAYMENT OF HEALTH BENEFITS PREMIUMS

Subpart C—Contributions and Withholdings

■ 8. The authority citation for part 892 continues to read as follows:

Authority: 5 U.S.C. 8913; 5 U.S.C. 1103(a)(7); 26 U.S.C. 125.

§ 892.301 [Amended]

■ 9. Section 892.301 is amended by removing the reference ''550.311(a)(8)'' and adding the reference ''550.311(a)(7)'' in its place.

[FR Doc. E6–19273 Filed 11–16–06; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206–AK90

Suspension of Enrollment in the Federal Employees Health Benefits (FEHB) Program for Peace Corps Volunteers

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final regulation to allow Peace Corps volunteers who are FEHB Program enrolled annuitants, survivors, and former spouses to suspend their FEHB enrollments and then return to the FEHB Program during the Open Season, or return to FEHB coverage immediately, if they involuntarily lose health benefits coverage under the Peace Corps. The intent of this final rule is to allow these beneficiaries to avoid the expense of continuing to pay FEHB Program premiums while they have other health coverage as Peace Corps volunteers, without endangering their ability to return to the FEHB Program in the future.

DATES: *Effective Date:* Effective December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Michael W. Kaszynski, Policy Analyst, Insurance Policy, OPM, Room 3425, 1900 E Street, NW., Washington, DC 20415–0001. Phone number: 202–606–0004. E-mail: *mwkaszy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) allows certain Medicare, Medicaid, CHAMPVA or TRICARE or TRICARE-for-Life eligible FEHB Program annuitants, survivors, and former spouses to suspend their FEHB enrollments and then return to the FEHB Program during the Open Season; or return to FEHB coverage immediately, if they involuntarily lose coverage. This has allowed these beneficiaries to avoid the expense of continuing to pay FEHB Program premiums while they are using certain Medicare, Medicaid, TRICARE or TRICARE-for-Life or CHAMPVA coverage without endangering their ability to return to the FEHB Program in the future. We have determined that individuals eligible for coverage under the Peace Corps should be allowed the same right to suspend FEHB coverage and reenroll in the FEHB Program as we afford these other groups. On November 30, 2005, OPM published an interim rule in the **Federal Register** at 70 FR 71749. We received no comments on the interim regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation affects only health insurance carriers under the Federal Employees Health Benefits Program.

Executive Order 12866, Regulatory Review

This regulation has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Iraq, Kuwait, Lebanon, Military Personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the interim rule amending 5 CFR part 890 which was published in the **Federal Register** at 70 FR 71749, November 30, 2005, is adopted as a final rule without change.

[FR Doc. E6–19269 Filed 11–16–06; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0171]

Gypsy Moth Generally Infested Areas; Addition of Areas in Virginia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding the Cities of Roanoke and Salem and the Counties of Craig, Giles, and Roanoke in Virginia to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

DATES: This interim rule is effective November 17, 2006. We will consider all comments that we receive on or before January 16, 2007.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0171 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0171, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0171.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the human-assisted spread of the gypsy moth.

In accordance with § 301.45–2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Designation of Areas as Generally Infested Areas

Section 301.45–3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45–3(a) by adding two cities and three counties in Virginia to the list of generally infested areas. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

We are taking this action because, in cooperation with the State of Virginia, the United States Department of

Agriculture conducted surveys that detected multiple life stages of the gypsy moth in the Cities of Roanoke and Salem and the Counties of Craig, Giles, and Roanoke, VA. Based on these surveys, we determined that reproducing populations exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized as generally infested and are, therefore, subject to reinfestation.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the gypsy moth regulations by adding the Cities of Roanoke and Salem and the Counties of Craig, Giles, and Roanoke in Virginia to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act. The interim rule will affect the interstate movement of regulated articles, including forest products (logs, pulpwood, wood chips) and Christmas trees, nursery stock, and mobile homes and outdoor household articles from and through the newly regulated areas. The value of sales of Christmas trees and nursery in the affected areas was $1.7 million, representing much less than 1 percent of the total value of such sales in Virginia.

Treatment costs for growing areas range between $10 and $20 per acre. Fumigation costs, if infestation is found in a shipment, will range between $100 and $150 per truck load. There are at least 27 establishments in the newly regulated cities and counties that produce and ship the regulated articles. Of those, 2 are Christmas tree growers, 10 are nurseries, 10 are loggers/sawmills, and 5 are movers of outdoor household articles. Nearly all of the establishments are considered to be small businesses.

The regulatory requirements resulting from this rule are expected to cause a slight increase in the costs of business for some of the affected entities, but those additional costs are small when compared to the potential for harm to related industry and the U.S. economy as a whole that would result from the spread of the pest. Since the total value of regulated articles moved from regulated areas to non-regulated areas is a small fraction of the State total, the regulatory effect on State and national prices is expected to be very small. Additionally, since the regulations restrict, but do not prohibit, the movement of regulated articles, articles that meet the requirements of the regulations would continue to enter the market. The overall impact upon price and competitiveness is expected to be minor.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.45–3, paragraph (a), the entry for Virginia is amended by adding new areas in alphabetical order to read as follows:

§ 301.45–3 Generally infested areas.

(a) * * *

* * * * *

Virginia

* * * * *

City of Roanoke. The entire city.

City of Salem. The entire city.

* * * * *

Craig County. The entire county.

* * * * *

Giles County. The entire county.

* * * * *

Roanoke County. The entire county.

* * * * *

Done in Washington, DC, this 14th day of November 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19450 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0151]

Oriental Fruit Fly; Add a Portion of San Bernardino County, CA, to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by adding a portion of San Bernardino County, CA, to the list of quarantined areas and restricting the interstate movement of regulated articles from that area. We are also amending the definitions of the terms *core area* and *day degrees* and adding jujube (*Ziziphus* spp.) to the list of articles regulated for Oriental fruit fly. These actions are necessary to prevent the artificial spread of Oriental fruit fly to noninfested areas of the United States and to update the regulations to reflect current science and practices.

DATES: This interim rule is effective November 17, 2006. We will consider all comments that we receive on or before January 16, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0151 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0151, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0151.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, National Coordinator, Fruit Fly Exclusion and Detection Programs, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1234; (301) 734–6553.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. Section 301.93–3(a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Oriental fruit fly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.93–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

Recent trapping surveys by inspectors of California State and county agencies reveal that a portion of San Bernardino County, CA, is infested with the Oriental fruit fly.

State agencies in California have begun an intensive Oriental fruit fly eradication program in the quarantined area in San Bernardino County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, to prevent the spread of the Oriental fruit fly into noninfested areas of the United States, we are amending the regulations in § 301.93–3 by designating a portion of San Bernardino County, CA, as a quarantined area for the Oriental fruit fly. The quarantined area is described in the regulatory text at the end of this document.

Section 301.93–1 of the regulations currently defines the term *core area* as the ''1 square mile area surrounding each property where Oriental fruit fly has been detected.'' We have determined that it is necessary to amend the definition of *core area* because the use of GPS technology allows us to more accurately measure the distance from a positive detection site of Oriental fruit fly. Therefore, we are revising the definition of the term *core area* to read ''the area within a circle surrounding each detection using a ½-mile radius with the detection as a center point.''

The regulations currently define the term *day degrees* as a mathematical construct combining average temperature over time that is used to calculate the length of an Oriental fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F.: [(Minimum Daily Temp + Maximum Daily Temp)/2] − 54°=Day Degrees. We have determined that it is necessary to amend the definition of *day degrees* because the use of weather service data entered into a computer model enables us to more accurately measure day degree accumulation based upon the latest biological information than was previously possible. Therefore, we are revising the definition of *day degrees* to read ''a unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.''

We are also adding jujube (*Ziziphus* spp.) to the regulated articles list in § 301.93–2 because jujube was recorded as a host of the Oriental fruit fly as documented in a peer reviewed international journal.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the Oriental fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the Oriental fruit fly regulations by adding a portion of San Bernardino County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from a quarantined area.

County records indicate there are approximately 18 nurseries, 96 yard maintenance companies, 2 growers (including 1 jujube grower), 1 mobile vendors, 5 food banks, and 34 fruit sellers within the quarantined area that may be affected by this rule.

We expect that any small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears to be minimal. The effect on any small entities that may move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The site-specific environmental assessment provides a basis for the conclusion that the implementation of integrated pest management to eradicate the Oriental fruit fly will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this interim rule.) In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.93–1 is amended by revising the definitions of *core area* and *day degrees* to read as follows:

§ 301.93–1 Definitions.

* * * * *

Core area. The area within a circle surrounding each detection using a 1/2-mile radius with the detection as a center point.

Day degrees. A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.

* * * * *

§ 301.93–2 [Amended]

■ 3. In § 301.93–2, paragraph (a) is amended by adding, in alphabetical order, an entry for ''Jujube (*Ziziphus* spp.)''.

■ 4. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

California

San Bernardino County. That portion of San Bernardino County in the Rialto area bounded by a line as follows: Beginning at the intersection of State Highway 201 and East Avenue; then north on East Avenue to Banyan Street; then east, northeast, north, and northeast on Banyan Street to Wardman Bullock Road; then north and northwest on Wardman Bullock Road to Colonbero Road; then north along an imaginary line from the intersection of Wardman Bullock Road and Colobero Road to its intersection with the southern boundary line of the San Bernardino National Forest; then east, northeast, northwest, southeast, east, southeast, northeast, north, northeast, and east along the

southern boundary line of the San Bernardino National Forest to its intersection with U.S. Interstate 15; then northeast on U.S. Interstate 15 to its next intersection with the San Bernardino National Forest boundary line; then northwest, north, northeast, southeast, east, northeast, southeast, and east along the San Bernardino National Forest boundary line to its intersection with Palm Avenue; then southwest on Palm Avenue to U.S. Interstate 215; then southeast on U.S. Interstate 215 to University Parkway; then southwest on University Parkway to N. State Street; then south on N. State Street to State Highway 210; then west on State Highway 210 to the Southern Pacific railroad track; then south, southwest, south, and southeast along the Southern Pacific railroad track to its intersection with W. Base Line Street; then west on W. Base Line Street to N. Pepper Avenue; then south on N. Pepper Avenue to State Highway 66; then west on State Highway 66 to N. Cactus Avenue; then south on N. Cactus Avenue to W. Rialto Avenue; then west on W. Rialto Avenue to W. Arrow Boulevard; then west on W. Arrow Boulevard to Arrow Boulevard; then west on Arrow Boulevard to Cherry Avenue; then north on Cherry Avenue to State Highway 66; then west on State Highway 66 to East Avenue; then north on East Avenue to the point of beginning.

Done in Washington, DC, this 14th day of November 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19451 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV06–930–2 FR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Cherry Industry Administrative Board (Board) for the 2006–2007 fiscal year and subsequent fiscal years from $0.0021 to $0.0066 per pound to fund the Board's administrative expenses and its new research and promotion program. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The Board locally administers the marketing order which regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. The fiscal year began July 1, 2006, and ends June 30, 2007. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* This final rule becomes effective November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Dawana J. Clark or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; telephone: (301) 734–5243, Fax: (301) 734–5275, or e-mail: *Dawana.Clark@usda.gov* or *Kenneth.Johnson@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 final rule is issued under Marketing Agreement and Order No. 930, as amended (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherries 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 tart cherries beginning July 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 final rule increases the assessment rate established for the Board for the 2006–2007 and subsequent fiscal years for tart cherries from $0.0021 to $0.0066 per pound of tart cherries to fund the Board's administrative expenses and its new research and promotion program.

The tart cherry marketing order provides authority for the Board, with 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 tart cherries. They are familiar with the Board'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.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 930.41 of the order. In addition, § 930.48 of the order provides that the Board, with the approval of USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cherries. The expense of such projects is paid from funds collected pursuant to § 930.41 (Assessments), or from such other funds as approved by the USDA.

For the 2003–2004 fiscal year, the Board recommended, and USDA approved, an assessment rate of $0.0021 per pound of tart cherries handled 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 Board or other information available to USDA.

The Board met on March 16, 2006, and recommended 2006–2007 expenditures of $1,523,000 and an assessment rate of $0.0066 per pound of tart cherries. Eighteen of the nineteen Board members voted in support of the assessment rate increase. One Board seat is vacant. In comparison, last year's budgeted expenses were $488,000. The assessment rate of $0.0066 is $0.0045 higher than the rate currently in effect. The Board recommended that the assessment rate be increased to cover its administrative expenses and fund a new research and promotion program which will commence in Fall 2006. The $0.0066 assessment rate will cover the costs of the research and promotion program which will be assessed at $0.005 per pound (or $10 per ton) of cherries for processing and $0.0016 per pound for administrative expenses. The $0.0016 per pound for administrative expenses will be a reduction from the 2005–2006 assessment rate of $0.0021 per pound. The Board believes that its new research and promotion program is the best way for the industry to develop both stronger demand for tart cherries and tart cherry products and increase sales opportunities.

According to a recent Board survey, both growers and handlers believe a research and promotion program will benefit the industry. This program will be directed primarily at consumers and retail nutrition advisors, and employ promotional strategies, such as print advertising. All tart cherry handlers regulated under the marketing order will pay the proposed assessment rate to fund the new research and promotion program. However, certain organic handlers may be exempt from paying assessments for market promotion activities pursuant to 7 CFR 900.700.

The major expenditures recommended by the Board for the 2006–2007 fiscal year include $1,150,000 for promotion, $169,000 for personnel, $82,000 for meetings, $77,000 for office expenses, $20,000 for compliance, and $5,000 for industry educational efforts. Budgeted expenses for major items in 2005–2006 were $159,000 for personnel, $150,000 for compliance, $81,000 for meetings, $93,000 for office expenses, and $5,000 for industry educational efforts. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Board determined assessable tart cherry production for the fiscal period at 230 million pounds. Therefore, total assessment income for 2006–2007 is estimated at $1,518,000 (230 million pounds × $0.0066). This amount plus adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $411,000) will be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

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

Although the assessment rate will be effective for an indefinite period, the Board will 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 Board meetings are available from the Board or the 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 2006–2007 budget and those for subsequent fiscal periods 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 action 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 rules 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 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The majority of producers and handlers of tart cherries under the order are considered small entities under SBA's standards.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 2001–2002 through 2005–2006, approximately 93.8 percent of the U.S. tart cherry crop, or 214.3 million pounds, was processed annually. Of the 214.3 million pounds of tart cherries processed, 62 percent was frozen, 26 percent was canned, and 12 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987–88 to 37,100 acres in 2005–2006. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 74 percent of the total and produces about 72 percent of the U.S. tart cherry crop each year.

This rule increases the assessment rate established for the Board and collected from handlers for the 2006–2007 and subsequent fiscal periods from $0.0021 to $0.0066 per pound of tart cherries.

The Board discussed continuing the existing assessment rate, but concluded that it needed the additional funds to devote to its research and promotion program which will be funded through assessments.

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 will be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, 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 rule will impose no additional reporting or recordkeeping requirements on either small or large tart cherry 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 proposed rule was published in the **Federal Register** on June 21, 2006 (71 FR 35562). Copies of the proposed rule were mailed or sent via facsimile to all Board members and cherry handlers. Finally, the proposed rule was made available through the Internet USDA and the Office of the Federal Register. A 20-day comment period ending July 11, 2006, was provided to allow interested persons to respond to the proposal. One comment was received.

The commenter opposed the proposal on the basis that the increased assessment rate is indefinite and that Congress should vote on it. The commenter also stated that the recommended assessment rate represents a large increase and that we are, in essence, raising taxes on people who have no representation that is directly accountable to those people. Finally, the commenter was of the view that federalism issues and Executive Order 13132 applies. In response to the commenter, and as previously stated in this action, the tart cherry marketing order, as issued in accordance with the Agriculture Marketing Act of 1937, provides the authority for the Board, with USDA approval, to formulate a budget and collect assessments from handlers to administer the program. The members of the Board are producers and handlers who are nominated and elected by their peers to represent their respective production areas/districts to address issues that come before the Board. The assessment rate is formulated and discussed in a public meeting. All directly affected persons have an opportunity to participate and provide input. Finally, this rule does not have sufficient Federalism implications to warrant an assessment under Executive Order 13132.

Accordingly, no changes will be made to this rule based on the comment 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 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 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 2006–2007 fiscal period began on July 1, 2006, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period. Further, handlers are aware of this action which was unanimously recommended by the Board at a public meeting. Also, a 20-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

■ For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.200 is revised to read as follows:

§ 930.200 Assessment rate.

On and after July 1, 2006, the assessment rate imposed on handlers shall be $0.0066 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products. Included in this rate is $0.005 per pound of cherries to cover the costs of the new research and promotion program and $0.0016 per pound of cherries to cover administrative expenses.

Dated: November 14, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–19460 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV06–948–1 FIR]

Irish Potatoes Grown in Colorado; Suspension of Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which suspended the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2006–2007 and subsequent fiscal periods. The Committee, which locally administers the marketing order regulating the handling of potatoes grown in Northern Colorado, made this recommendation for the purpose of lowering the monetary reserve to a level consistent with program requirements. The fiscal period begins July 1 and ends June 30. The assessment rate will remain suspended until an appropriate rate is reinstated.

DATES: *Effective Date:* December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (503) 326–2724; Fax: (503) 326–7440 or E-mail: *Teresa.Hutchinson@usda.gov* or *GaryD.Olson@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. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes

grown in Colorado, 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.''

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 order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. For the 2005–2006 fiscal period, an assessment rate of $0.02 per hundredweight of potatoes handled was approved by USDA to continue in effect indefinitely unless modified, suspended, or terminated. This action suspends the assessment rate for the 2006–2007 fiscal period, which began July 1, 2006, and will continue in effect until reinstated. 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 continues in effect the action that suspended § 948.215 of the order's rules and regulations. Section 948.215 established an assessment rate of $0.02 per hundredweight of Colorado potatoes handled for 2005–2006 and subsequent fiscal periods. Continuous assessment rates remain in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA. This rule continues in effect the action that suspended the $0.02 assessment rate for 2006–2007 and will remain in effect during subsequent fiscal periods until reinstated by USDA upon recommendation of the Committee.

The 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. In addition, the order authorizes the use of monetary reserve funds to cover program expenses (§ 948.78). The members of the Committee are producers and handlers of Colorado potatoes. 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.

The Committee met on May 11, 2006, and unanimously recommended 2006–2007 expenditures of $20,268 and suspension of the continuing assessment rate. In comparison, last year's budgeted expenditures were $20,368. The suspension of the assessment rate will allow the Committee to draw from the reserve to cover 2006–2007 expenditures. This action should effectively lower the reserve to within the program limit of approximately two fiscal periods' operational expenses (§ 948.78).

The major expenditures recommended by the Committee for the 2006–2007 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2005–2006 fiscal period.

As of July 1, 2005, the Committee had $49,237 in its reserve fund. With the 2006–2007 budget set at $20,268, the current maximum reserve permitted by the order is approximately $40,536 (approximately two fiscal periods' expenses (§ 948.78)). To meet 2006–2007 expenses the Committee plans on drawing approximately $15,814 from its reserve, and may additionally earn approximately $4,454 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2006–2007 fiscal period could be reduced to approximately $33,423. This amount would be consistent with the order's requirements.

The assessment rate suspension will continue in effect indefinitely until reinstated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this suspension of the continuing assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for reinstatement 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 such as the level of the budget and the monetary reserve to determine whether assessment rate reinstatement is needed and at what level. Further rulemaking will be undertaken as necessary. The Committee's 2006–2007 budget and those for subsequent fiscal periods 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.

Based on Committee data, there are 8 producers and 8 handlers in the production area subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Based on the total number of Colorado Area No. 3 potato producers (8), 2004 fresh potato production of 557,826 hundredweight (Committee records), and the average 2004 producer price of $6.30 per hundredweight as reported by National Agricultural Statistics Service (NASS), average annual revenue per producer from the sale of potatoes can be estimated at approximately $439,288. In addition, based on Committee records and an estimated average 2004 f.o.b. price of $8.40 per hundredweight ($6.30 per hundredweight NASS producer price plus Committee estimated packing

and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $6,500,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule continues in effect the action that suspended the continuing assessment rate established for the Committee and collected from handlers for the 2006–2007 and subsequent fiscal periods. Funds from the Committee's authorized reserve, along with interest and other income, will be adequate to cover budgeted expenses.

As of July 1, 2005, the Committee had $49,237 in its reserve fund. With the 2006–2007 budget set at $20,268, the current maximum reserve permitted by the order is approximately $40,536 (approximately two fiscal periods' expenses (§ 948.78)). To meet 2006–2007 expenses the Committee plans on drawing approximately $15,814 from its reserve, and may additionally earn approximately $4,454 from interest and other income. Thus, with a suspended assessment rate, the Committee's reserve at the end of the 2006–2007 fiscal period could be reduced to approximately $33,423. This amount would be consistent with the order's requirements.

The major expenditures recommended by the Committee for the 2006–2007 fiscal period include $8,610 for salary, $3,000 for office rent, $1,750 for office expenses, and $1,000 for utilities. These budgeted expenses are the same as those approved for the 2005–2006 fiscal period.

For the 2005–2006 fiscal period, the Committee recommended a decrease in the assessment rate. However, the decreased assessment rate did not reduce the Committee's reserve as anticipated. Therefore, the Committee recommended suspending the continuing assessment rate to enable an increased draw on the reserve, thus maintaining the level of the reserve within program limits of approximately two fiscal periods' operational expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were considered, but not recommended because they would not reduce the reserve as quickly as suspension of the continuing assessment rate.

This action continues in effect the action that suspended the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, suspending the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 11, 2006, meeting was a public meeting and all entities, both large and small, were able to express views on the issues.

This action imposes no additional reporting or recordkeeping requirements on either small or large Colorado potato 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.

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.

An interim final rule concerning this action was published in the **Federal Register** on July 18, 2006 (71 FR 40639). Copies of that rule were also mailed or sent via facsimile to all Area No. 3 Colorado potato handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on September 18, 2006, and 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.ama.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.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

■ Accordingly, the interim final rule amending 7 CFR part 948 which was published at 71 FR 40639 on July 18, 2006, is adopted as a final rule without change.

Dated: November 14, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–19464 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV06–993–1 FR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2006–07 and subsequent crop years from $0.65 to $0.40 per ton of salable dried prunes. The committee locally administers the marketing order which regulates the handling of dried prunes produced in California. Assessments upon dried prune handlers are used by the committee to fund reasonable and necessary expenses of the program. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, Terry Vawter, Marketing Specialist, or Kurt Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax (559) 487–5906, or E-mail: *Toni.Sasselli@usda.gov, 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 No. 110 and Marketing Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are 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 dried prune 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 dried prunes beginning 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 decreases the assessment rate established for the committee for the 2006–07 and subsequent crop years from $0.65 to $0.40 per ton of salable dried prunes handled.

The California dried prune 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 California dried prunes. 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 at least one public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop 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 June 29, 2006, and unanimously recommended a decreased assessment rate of $0.40 per ton of salable dried prunes and expenditures totaling $77,215 for the 2006–07 crop year. In comparison, last year's approved expenditures were $89,090. The $0.40 per ton assessment rate is $0.25 lower than the 2005–06 rate.

The committee recommended a lower assessment rate based on an estimated production of 145,000 tons of salable dried prunes. At the decreased assessment rate, the assessment income for the 2006–07 crop year should be $58,000. The committee has $19,215 of excess assessment income available and those funds plus assessment income should be adequate to cover its estimated expenses of $77,215.

The major expenditures recommended by the committee for the 2006–07 crop year include $48,405 for personnel salaries, $15,645 for operating expenses, and $13,165 for contingencies. For the 2005–06 crop year, the committee's budgeted expenses for these items were $45,945, $16,755, and $26,390, respectively.

The assessment rate recommended by the committee was derived by dividing the handler assessment revenue needed to meet expenses by the estimated salable tons of California dried prunes. Dried prune production for the year is estimated to be 145,000 salable tons, which should provide $58,000 in assessment income. Income derived from handler assessments plus excess funds from the 2005–06 crop year should be adequate to cover budgeted expenses.

The committee is authorized under § 993.81(c) of the order to use excess assessment funds from the 2005–06 crop year (estimated at $19,215) for up to 5 months beyond the end of the crop year to meet 2006–07 crop year expenses. At the end of the 5 months, the committee must either refund or credit excess funds to handlers.

The assessment rate 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 crop 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 crop 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 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts less than $750,000, and small agricultural service

firms as those whose annual receipts are less than $6,500,000.

An estimated 1,068 of the 1,100 producers (97.1 percent) have incomes of less than $750,000 and would be considered small producers. Fourteen of the 22 handlers (63.6 percent) have incomes from handling prunes of less than $6,500,000 and could be considered small handlers. Therefore, the majority of handlers and producers of California dried prunes 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 crop years from $0.65 to $0.40 per ton of salable dried prunes.

The committee met on June 29, 2006, and unanimously recommended a 2006–07 total budget of $77,215 and a decreased assessment rate of $0.40 per ton of salable dried prunes. The recommended budget of $77,215 for the 2006–07 crop year is smaller than the budgets in previous crop years. The $0.40 per ton assessment rate is $0.25 lower than the 2005–06 rate. The quantity of salable dried prunes for the 2006–07 crop year is estimated at 145,000 tons, compared to 94,402 tons for the 2005–06 crop year.

Prior to arriving at its budget of $77,215, the committee considered information from various sources, including the committee's Executive Subcommittee. Alternative assessment rates, including the rate currently in effect, and different expenditure levels were discussed by the subcommittee and the committee. An alternative to this action would be to continue with the $0.65 per ton assessment rate. However, an assessment rate of $0.40 per ton of salable dried prunes and excess funds from the 2005–06 crop year will provide enough income to fund the committee's operations.

Therefore, the committee agreed that $0.40 per ton of salable dried prunes is an acceptable assessment rate. Section 993.81(c) of the order provides the committee the authority to use excess assessment funds from the 2005–06 crop year (estimated at $19,215) for up to 5 months beyond the end of the crop year to meet 2005–06 crop year expenses. At the end of the 5 months, the committee must either refund or credit excess funds to handlers.

A review of historical information and preliminary data pertaining to the 2006–07 crop year indicates that the producer price for the 2006–07 crop year is expected to average between $1,500 and $1,600 per ton of salable dried prunes. Based on an estimated 145,000 salable tons of dried prunes, assessment revenue as a percentage of producer revenue during the 2006–07 crop year is expected to be between .025 and .027 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the June 29, 2006, meeting was public and all entities, both large and small, were encouraged to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune 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 proposed rule concerning this action was published in the **Federal Register** on September 22, 2006. Copies of the proposed rule were also mailed or sent via facsimile to all dried prune 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 October 23, 2006, was provided for interested persons to respond to the proposal. One comment was received. The commenter was of the view that the rule was confusing. We disagree. This action is similar to previous actions published in the **Federal Register** concerning assessments on handlers under marketing order programs. Accordingly, no changes will be made to the proposed rule based on the comment 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 crop year began on August 1, 2006, and handlers are already receiving 2006–07 crop dried prunes from growers. The decreased assessment rate applies to all dried prunes received during the 2006–07 year and subsequent seasons, and this action reduces the assessment rate. 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.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2006, an assessment rate of $0.40 per ton of salable dried prunes is established for California dried prunes.

Dated: November 14, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–19463 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. FAA–2006–25334; Amendment Nos. 91–292; 121–326; 125–51; and 135–106]

RIN 2120–AI76

Additional Types of Child Restraint Systems That May Be Furnished and Used on Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on final rule.

SUMMARY: On July 14, 2006, the Federal Aviation Administration (FAA) amended certain operating regulations to allow passengers or aircraft operators to furnish and use more types of Child Restraint Systems (CRS) on aircraft. The rule allowed the use of CRSs that the FAA approves under the aviation standards of Technical Standard Order C–100b, Child Restraint Systems. In addition, the rule allowed the use of CRSs approved by the FAA under its certification regulations regarding the approval of materials, parts, processes, and appliances. The intended effect of the rule was to increase the number of CRS options that are available for use on aircraft, while maintaining safe standards for certification and approval. This action is a summary and disposition of comments received on the July 14, 2006 final rule.

ADDRESSES: The complete docket for the final rule on Additional Types of Child Restraint Systems that May be Furnished and Used on Aircraft may be examined at the Dockets Office on the plaza level of the NASSIF Building at the U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may review the public docket containing comments to these regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Lauck Claussen, Federal Aviation Administration, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591; Telephone 202–267–8166, E-mail *nancy.l.claussen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

August 26, 2005 Final Rule

On August 26, 2005, the FAA published a final rule that amended its operating regulations to allow the use of CRSs that are approved by the FAA through Type Certificate (TC), Supplemental Type Certificate (STC), or Technical Standard Order (TSO) (70 FR 50902). The August 26, 2005 final rule allowed an operator to provide these CRSs. It did not allow passengers to furnish and use a CRS approved through TC, STC, or TSO. This is in contrast to CRSs that meet Federal Motor Vehicle Safety Standard (FMVSS) No. 213 or the standards of the United Nations, or are approved by a foreign government, which passengers may furnish and use on aircraft. The FAA received 16 comments on the August 26, 2005, final rule. The overwhelming majority of commenters requested that the FAA amend the August 26, 2005 Final Rule to allow passengers, in addition to aircraft operators, to furnish and use CRSs approved by the FAA.

July 14, 2006 Final Rule

After reviewing the comments to the August 26, 2005 final rule, the FAA decided to amend its operating rules to allow both passengers and aircraft operators to furnish and use CRSs that the FAA has approved under 14 CFR 21.305(d) and TSO C–100b. We published another final rule on July 14, 2006 (71 FR 40003). The July 14, 2006 final rule amendments were similar to provisions in the current rules that allow passengers and aircraft operators to furnish and use CRSs that meet FMVSS No. 213 or the standards of the United Nations, or are approved by a foreign government.

Discussion of Comments

The FAA received 16 comments on the July 14, 2006 final rule. Fifteen comments were from individuals and one was from the Air Transport Association (ATA)/United Airlines. All of the comments were positive. Many of the commenters noted and appreciated the FAA's attempt to be responsive to comments previously submitted on the August 26, 2005 final rule. Many of the commenters also noted positively that the final rule would allow passengers to furnish and use the AMSAFE CAReS CRS, which the FAA referenced in the July 14, 2006 final rule as an example of one CRS that the FAA may approve through the § 21.305(d) approval process. Some commenters also noted that the final rule would serve to encourage innovative technology in the area of child restraint and was in the best interests of safety, economy, children, parents, the traveling public, and air carriers. In addition, ATA noted it would ''be beneficial for the carriers and the passengers to be able to see the list and images of the TSO C–100b approved CRS.'' The FAA maintains a list of all authorized TSO Holders on its public Web site (*http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgTSO.nsf/MainFrame?OpenFrameSet*). Information regarding any TSO holders will be posted on our Web site.

Conclusion

After consideration of the comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Amendment Nos. 91–292, 121–326, 125–51, and 135–106 remain in effect as adopted.

Issued in Washington, DC, on November 7, 2006.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. E6–19412 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0101]

RIN 0960–AE93

Exemption of Work Activity as a Basis for a Continuing Disability Review

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are publishing these final rules to amend our regulations to carry out section 221(m) of the Social Security Act (the Act). Section 221(m) affects our rules for when we will conduct a continuing disability review if you work and receive benefits under title II of the Act based on disability. (We interpret this section to include you if you receive both title II disability benefits and title XVI (Supplemental Security Income (SSI)) payments based on disability.) It also affects our rules on how we evaluate work activity when we decide if you have engaged in substantial gainful activity for purposes of determining whether your disability has ended. In addition, section 221(m) of the Act affects certain other standards we use when we determine whether your disability continues or ends. We are also amending our regulations concerning how we determine whether your disability continues or ends. These

revisions will codify our existing operating instructions for how we consider certain work at the last two steps of our continuing disability review process. We are also revising our disability regulations to incorporate some rules which are contained in another part of our regulations and which apply if you are using a ticket under the Ticket to Work and Self-Sufficiency program (the Ticket to Work program). In addition, we are amending our regulations to eliminate the secondary substantial gainful activity amount that we currently use to evaluate work you did as an employee before January 2001.

DATES: These rules are effective December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Kristine Erwin-Tribbitt, Policy Analyst, Office of Program Development and Research, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. Call (410) 965–3353 or TTY (410) 966–5609 for information about these final rules. For information on eligibility or filing for benefits, call our national toll-free number 1–(800) 772–1213 or TTY 1–(800) 325–0778. You may also contact Social Security Online at *http://www.socialsecurity.gov/*.

SUPPLEMENTARY INFORMATION:

Electronic Version Access

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

What is the purpose of these final rules?

We are revising our disability regulations to carry out section 221(m) of the Act. The changes will apply to you if you are a working beneficiary who is entitled to Social Security disability benefits under title II of the Act and you have received such benefits for at least 24 months. If you are a person who meets these requirements, we are revising our rules on when we will start a continuing disability review (specifically, a medical continuing disability review or a ''medical review'') to decide whether you are still disabled. In addition, we are amending our rules to provide that, under the medical improvement review standard sequential evaluation process, we will not consider the activities you perform in your work if they support a finding that you are no longer disabled. We are revising our regulations to provide that we will not use the activities you perform in work to support a finding that you are no longer disabled when deciding if the work you do shows that you are able to perform substantial gainful activity. Specifically we will not compare your work activity to that of unimpaired persons in your community who are doing the same or similar work as their means of livelihood. Also, if your earnings are less than the substantial gainful activity limit, we will not make a determination that your work is worth more than the substantial gainful activity amount.

We are also making certain changes to our regulations that may apply to you even if you are not affected by section 221(m) of the Act. We are clarifying how we consider work activity at the last two steps of the medical improvement review standard sequential evaluation process when we determine if you are still disabled. The rules will codify the interpretations of our standards for determining whether disability continues under title II and title XVI that we have been using in operating instructions for some time. These rules also provide that these interpretations apply when we determine whether you are entitled to expedited reinstatement of benefits under section 223(i) of the Act or eligible for expedited reinstatement of benefits under section 1631(p) of the Act. The changes affect you if you are entitled to Social Security benefits based on disability under title II or you are an adult who is eligible for SSI payments based on disability under title XVI and you work during your current period of entitlement or eligibility based on disability. Also, the rules affect you if you request reinstatement of benefits.

We are also incorporating into our disability regulations some rules which are contained in another part of our regulations and which apply to you if you are using a ticket under the Ticket to Work program. In addition, we are revising our rules for evaluating work activity you performed as an employee prior to January 2001 to eliminate the use of the secondary substantial gainful activity amount. We are also making some minor clarifications and corrections of other rules.

Ticket to Work and Work Incentives Advisory Panel

During the preparation of these rules, we consulted with the Ticket to Work and Work Incentives Advisory Panel.

What do we mean by ''final rules'' and ''existing rules''?

For clarity, we use the term ''final rules'' in this preamble to refer to the changes we are making to our regulations in this publication. We also use the term ''new'' or ''amended'' rules to refer to these changes. We use the term ''existing rules'' to refer to the rules that will be changed by these final rules.

When will we start to use these final rules?

We will start to use these final rules on their effective date. We will continue to use our existing rules until the effective date of these final rules.

As is our usual practice when we make changes to our regulations, we will apply these final rules in determinations or decisions that we make on or after the effective date of these final rules. When these final rules become effective, we will apply them to cases that are pending in our administrative review process, including cases on remand from a Federal court.

What are continuing disability reviews and when do we start them under existing rules?

After we find that you are disabled, we are required by the Act and our regulations to periodically reevaluate whether you continue to meet the disability requirements of the Act. (See sections 221(i), 1631(d)(1) and 1633 of the Act, and §§ 404.1589 and 416.989 of our regulations.) We call this evaluation a continuing disability review. There are two main types of continuing disability review: (1) Work continuing disability reviews (sometimes referred to as a ''work reviews'') in which we mainly examine your earnings, and (2) medical continuing disability reviews (sometimes referred to as ''medical reviews'') in which we examine your medical improvement and ability to function. In §§ 404.1590 and 416.990 of our regulations, we explain that, if you are entitled to or eligible for disability benefits, you must undergo regularly scheduled continuing disability reviews. We also explain that in some circumstances, we may start a continuing disability review before the time of your regularly scheduled continuing disability review.

In §§ 404.1590(b) and 416.990(b) of our regulations, we list circumstances in which we will start a continuing disability review. In most cases, we start a continuing disability review because, under the Act and our regulations, we must evaluate your impairment(s) from time to time to determine if you are still entitled to Social Security disability benefits or eligible for SSI payments based on disability or blindness. If you are entitled to or eligible for such benefits, you are subject to regularly scheduled continuing disability reviews at intervals ranging from 6 months to 7 years depending on whether, and the

degree to which, we expect your impairment(s) to improve.

We may also start a continuing disability review because you returned to work, and at other times when we receive information that raises questions about whether you are still under a disability, such as when you complete vocational rehabilitation services. For more information about how we decide the frequency of continuing disability reviews and when we may start a continuing disability review at other than scheduled times, see §§ 404.1590 and 416.990 of our existing regulations.

Under existing rules, how do we determine whether your disability continues or ends?

When we do a continuing disability review to determine whether your disability continues or ends, we use the rules in § 404.1594 if you are a Social Security disability beneficiary and the rules in § 416.994 if you are an adult who is eligible for SSI payments based on disability. In general, these rules provide that we must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. The rules in these sections also provide some exceptions to this medical improvement review standard.

In § 404.1594(f), we provide an eight-step sequential evaluation process that we use when we determine whether you are still disabled under title II of the Act. We generally follow the steps in order. However, we may also find that your disability has ended because of one of several exceptions to the medical improvement review standard described in §§ 404.1594(d) and (e). (Since the exceptions are in the statute and are not affected by section 221(m) or the provisions of these final rules, we do not summarize them below.) The eight steps are as follows:

1. Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find that your disability ended.

2. If you are not, do you have an impairment or combination of impairments that meets or equals the severity of an impairment in our Listing of Impairments? If you do, we will generally find that your disability continues.

3. If you do not, has there been medical improvement? If there has been medical improvement as shown by a decrease in the medical severity of your impairment(s), we go on to step 4. If there is no medical improvement in your impairment(s), we skip to step 5.

4. If there has been medical improvement, we must determine whether it is related to your ability to do work. If medical improvement is not related to your ability to do work, we go on to step 5. If medical improvement is related to your ability to do work, we skip to step 6.

5. If we found at step 3 that there has been no medical improvement, or if we found at step 4 that the medical improvement is not related to your ability to work, we consider whether one of the exceptions to medical improvement applies in your case. If none of the exceptions to medical improvement applies, we find that your disability continues. However, if one of the exceptions applies, we will find either that your disability has ended or that we need to go on to step 6, depending on the exception that applies in your case.

6. If medical improvement is related to your ability to do work, or if any one of certain exceptions to medical improvement applies, we will determine whether all of your current impairments in combination are ''severe'' (see § 404.1521 of our regulations). If you do not have a ''severe'' impairment(s), we will find that your disability has ended.

7. If your impairment(s) is ''severe,'' we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, we will find that your disability has ended.

8. If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

We also use this medical improvement review standard to review your continuing eligibility if you are an adult who receives SSI payments based on disability. The sequential evaluation process is in § 416.994(b)(5) of our regulations, but it has only seven steps instead of eight. The seven steps are the same as the second through eighth steps of § 404.1594(f). We do not have a step for you if you are engaging in substantial gainful activity because of an SSI work incentive provision in section 1619 of the Act.

What is substantial gainful activity?

The term ''substantial gainful activity'' means work activity that involves significant physical or mental activities and that is done for pay or profit. Work activity is gainful if it is the kind of work usually performed for pay or profit, whether or not a profit is realized.

Under existing rules, how do we evaluate your work as an employee to determine if you are engaging in substantial gainful activity?

If you work as an employee, we generally use earnings guidelines to evaluate your work activity to decide whether the work you do is substantial gainful activity. If your average monthly earnings are more than the primary substantial gainful activity amount (*i.e.*, $860 per month for non-blind individuals in 2006), we ordinarily consider that you have engaged in substantial gainful activity. If your average monthly earnings from your work activity are equal to or less than the primary substantial gainful activity amount for the year(s) in which you work, the way we evaluate your work activity under our existing rules generally depends on whether the work occurred in or after January 2001 or before January 2001.

For work occurring between January 1, 1990 and January 1, 2001, if your average monthly earnings from your work activity were less than $300, we generally consider that your earnings show that you have not engaged in substantial gainful activity. With certain exceptions, we generally do not consider other information beyond your earnings. We refer to this $300 earnings guideline as the secondary substantial gainful activity amount to distinguish it from the primary substantial gainful activity amount. If your earnings were between the primary ($700 per month for work occurring between July 1, 1999 and January 1, 2001) and secondary substantial gainful activity levels, our rules provide that such earnings are neither high nor low enough to show whether you have engaged in substantial gainful activity. In these circumstances, we use separate criteria to evaluate your work as an employee to determine if you engaged in substantial gainful activity. If you worked in a sheltered workshop or comparable facility before January 1, 2001, earnings not greater than the primary substantial gainful activity amount ordinarily establish that the work was not substantial gainful activity.

Beginning with January 2001, if your average monthly earnings are equal to or less than the primary substantial gainful activity amount, we generally consider that your earnings show that you have not engaged in substantial gainful activity. Except in certain circumstances, we generally do not

consider other information in addition to your earnings.

Example: You worked from July 2000 through June 2001, with earnings of $600 per month. We use different criteria for evaluating your work activity from January 2001 through June 2001 and from July 2000 through December 2000 to determine if you engaged in substantial gainful activity. For work activity from January 2001 through June 2001, your average monthly earnings are less than the primary substantial gainful activity amount ($740 per month for work occurring between January 1, 2001 and January 1, 2002). We will generally consider that your earnings show that you have not engaged in substantial gainful activity. For work activity from July 2000 through December 2000, your earnings are between the primary ($700 per month for work occurring between July 1, 1999 and January 1, 2001) and secondary ($300 per month for work occurring between January 1, 1990 and January 1, 2001) substantial gainful activity levels. We consider that your earnings are neither high nor low enough to show whether you have engaged in substantial gainful activity. We will use separate criteria, such as the work you did, the hours you worked, and the amount of assistance you received, to evaluate your work to determine if you engaged in substantial gainful activity.

Under existing rules, are earnings guidelines the only factor used to determine if your work as an employee is substantial gainful activity?

As we have indicated above, in some instances, earnings guidelines are not the only factor we used to determine if the work you are performing is substantial gainful activity. In some cases we will consider other information if there is evidence which shows that you may have engaged in substantial gainful activity. In these instances, we evaluate your work activity under the criteria described below to determine if you have engaged in substantial gainful activity. We may determine that you have engaged in substantial gainful activity if your work activity satisfies either of the following set of criteria:

- Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; or
- Your work, although significantly less than that done by unimpaired people, is clearly worth more than the substantial gainful activity amount, according to pay scales in your community.

Under existing rules, what factors are used to determine if your work as a self-employed person is substantial gainful activity?

We consider your activities and their value to your business to decide whether you have engaged in substantial gainful activity. To determine whether you have engaged in substantial gainful activity, we apply three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(1) *Test One:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. (See § 404.1575(b) and (c) for an explanation of what we mean by significant services and substantial income for purposes of this test.)

(2) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(3) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth more than the substantial gainful activity amount when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

Under existing rules, when will your performance of substantial gainful activity affect whether you continue to be disabled?

If you are entitled to Social Security benefits based on disability and you are working, the work you do may show that you are able to do substantial gainful activity and are, therefore, no longer disabled. If you are engaging in substantial gainful activity, before we determine whether you are no longer disabled because of your work activity, we will consider whether you are entitled to a trial work period under § 404.1592. We will find that your disability has ceased in the month in which you demonstrated your ability to engage in substantial gainful activity following completion of any applicable trial work period. See § 404.1594(d)(5) and (f)(1) of our regulations. Our determination that your disability has ceased because you demonstrated the ability to engage in substantial gainful activity is not a determination of whether you continue to have a disabling impairment (see § 404.1511) for purposes of eligibility for a reentitlement period (see § 404.1592a) following completion of a trial work period. If you work during your reentitlement period and we determine that your disability has ceased because your work is substantial gainful activity, we will stop your benefits. If you later stop engaging in substantial gainful activity and you are still within your reentitlement period, we will start paying your benefits again. In determining whether you do substantial gainful activity in a month for purposes of stopping or starting benefits during the reentitlement period, we will consider your work in, or earnings for, that month (see § 404.1592a(a)(2)(i)).

If you are receiving SSI benefits based on disability, your performance of substantial gainful activity does not affect your disability status for purposes of eligibility for SSI benefits. This is because of an SSI work incentive provision in section 1619 of the Act.

What does section 221(m) of the Act provide?

Above, we described what typically happens during a continuing disability review. However, section 221(m) of the Act provides for special exceptions for specified individuals under specific circumstances.

Section 221(m) contains two paragraphs. Paragraph (1) provides that, if you are entitled to disability insurance benefits under section 223 of the Act or to other monthly insurance benefits based on disability under section 202 of the Act,[1] and you have received such benefits for at least 24 months:

- We may not schedule a continuing disability review for you solely as a result of your work activity (section 221(m)(1)(A));
- We may not use your work activity as evidence that you are no longer disabled (section 221(m)(1)(B)); and
- If you stop working, we may not presume that you are unable to work just because you stopped working (section 221(m)(1)(C)).

[1] The other monthly insurance benefits based on disability under section 202 of the Act are:

- Child's insurance benefits based on disability under section 202(d);
- Widow's insurance benefits based on disblity under section 202(c); and
- Widower's insurance benefits based on disability under section 202(f).

Paragraph (2) explains that, if you are an individual described in paragraph (1):

- You are still subject to regularly scheduled continuing disability reviews that are not triggered by work (section 221(m)(2)(A)); and
- We may still terminate your benefits if you have earnings that exceed the level of earnings that represent substantial gainful activity (section 221(m)(2)(B)).

What revisions are we making, and why?

As a result of section 221(m) of the Act, we are revising several of our rules in subparts J and P of part 404 and subparts I and N of part 416 of our regulations:

- To explain that we will not start a continuing disability review based solely on your work activity if you are covered by section 221(m) of the Act;
- To explain how we consider activities from work in continuing disability reviews if you are covered by section 221(m); and
- To explain how we evaluate your work when we decide whether you have engaged in substantial gainful activity for purposes of determining whether your disability has ceased, if you are covered by section 221(m).

In addition, we are also revising several of our rules in subparts J and P of part 404 and subparts I and N of part 416 of our regulations:

- To incorporate rules about not starting a continuing disability review that are contained in another part of our regulations and apply to you if you are using a ticket under the Ticket to Work program;
- To clarify how we determine continuing disability at the last two steps of the medical improvement review standard sequential evaluation process;
- To explain that our action to start or to discontinue a continuing disability review is not an initial determination; and
- To eliminate the use of the secondary substantial gainful activity amount for evaluating work done by an employee before January 2001.

Although section 221(m) applies only if you receive disability benefits under title II of the Act, we are making changes to our title XVI regulations that will apply to you if:

- You are entitled to Social Security disability benefits under title II of the Act;
- You are subject to the provisions of section 221(m) because you have received the Social Security disability benefits for at least 24 months; and
- You are also eligible for SSI benefits based on disability or blindness under title XVI of the Act.

If you meet these criteria, we will use the same rules for starting continuing disability reviews under title XVI as we will use under title II. Also, when we do conduct a continuing disability review, we will use the same rules on how we consider the activities from your work in a continuing disability review under title XVI as we will use in a continuing disability review under title II. If we did not make these changes to the title XVI regulations, we would have rules under which we could start a continuing disability review based solely on your work activity to determine whether your disability continues or ends under title XVI even though we could not start a continuing disability review on that basis to determine whether your disability continues or ends under title II. Also, when we do conduct continuing disability reviews for both title II and title XVI purposes, we would have different rules on how we consider the activities from your work for title II and title XVI purposes. As a result, we could determine that your disability continues under title II but that your disability has ended under title XVI. For these reasons, we are making the aforementioned changes to the title XVI regulations that will apply to you if you are a recipient of SSI benefits based on disability or blindness and also are a Social Security disability beneficiary who is covered by section 221(m) of the Act. We concluded that this is a reasonable interpretation of the statute and the most logical, equitable, and administratively efficient way to implement section 221(m) if you receive both types of benefits.

We do not interpret section 221(m) of the Act to apply to you if you are a recipient of SSI benefits only. Section 221(m) provides that, for you to be covered by that section, you must be entitled to and have received Social Security disability benefits under title II. Therefore, these final rules do not extend the provisions of section 221(m) to you if you receive only SSI disability or blindness payments.

We are also revising our disability regulations to include rules that are already in subpart C of part 411 of our regulations and that apply to you if you are in the Ticket to Work program and using your ticket. These rules provide that we will not start a continuing disability review for you during the period in which you are using a ticket. However, they also explain that we can still do a review to determine if your disability has ended under title II because you have demonstrated your ability to engage in substantial gainful activity, as defined in §§ 404.1571–404.1576 of our regulations.

We are also clarifying in these final rules that if you are entitled to Social Security disability benefits under title II or eligible for SSI disability payments under title XVI, we will not consider the work that you are doing or have done during your current period of entitlement or eligibility based on disability to be past relevant work or past work experience at the last two steps of the applicable medical improvement review standard sequential evaluation process. We are also amending our rules to provide a comparable rule if you are requesting expedited reinstatement of benefits under section 223(i) or 1631(p) of the Act. The rule will apply at the last two steps to work you do during or after your previous period of entitlement or eligibility which terminated and which is the basis for your request for expedited reinstatement.

The following is an explanation of the specific changes we are making and our reasons for making these changes.

Sections 404.903 and 416.1403 Administrative Actions That Are Not Initial Determinations

We are adding a new paragraph (x) to § 404.903 and a new paragraph (a)(22) to § 416.1403 to explain that the action of starting or discontinuing a continuing disability review is not an initial determination. As explained in existing §§ 404.903 and 416.1403(a), administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of part 404 or subpart N of part 416 of our regulations, and they are not subject to judicial review. If we start a continuing disability review based solely on your work activity, we will provide an opportunity for you to request that we review that action if you believe that you are protected by the section 221(m)(1)(A) provision and that the medical review should not have been started. We will inform you of this opportunity when we send you a letter telling you that we are starting a medical continuing disability review. If we review the action and conclude that the initiation of the continuing disability review was in error because section 221(m)(1)(A) of the Act applies, we will discontinue processing the continuing disability review. In addition, as we explain later in this preamble, if we process the continuing disability review to completion and make a medical cessation determination, we are amending our

rules in §§ 404.1590 and 416.990 to provide a procedure under which we will vacate the medical cessation determination if, within a prescribed time period, we receive evidence from you that establishes that the start of your continuing disability review was in error because of section 221(m)(1)(A) of the Act.

Sections 404.1574 and 416.974 Evaluation Guides if You Are an Employee

We are revising §§ 404.1574(b) and 416.974(b) to remove the rules relating to the use of the secondary substantial gainful activity amount for evaluating work activity you performed as an employee prior to January 2001. This change will eliminate the difference that exists between the way we evaluate work you performed as an employee before January 2001 and the way we evaluate work you performed as an employee in months beginning with January 2001 in cases in which your average monthly earnings from your work are equal to or less than the applicable primary substantial gainful activity amount.

On December 29, 2000, we published final rules in the **Federal Register** (65 FR 82905) to discontinue the use of a secondary substantial gainful activity amount effective for work activity in months beginning with January 2001. We made this change because, as we explained in the preamble to those final rules, ''our experience suggests that the secondary substantial gainful activity amount has not been as useful a tool as we would have liked'' (65 FR 82906). We indicated that our experience suggests that few applicants and beneficiaries would be affected by the change because few employees have been found to have performed substantial gainful activity on the basis of the secondary rules except in those circumstances that would otherwise warrant development of other information beyond earnings. We also explained that ''[d]iscontinuing these complex secondary guidelines will help simplify our rules and facilitate public understanding of the Social Security disability program as well as improve our work efficiency'' (65 FR 82906). For these same reasons, and to provide consistent rules for considering earnings from your work as an employee, without regard to whether the work was performed before January 2001 or in or after January 2001, we are discontinuing the use of the secondary guidelines altogether.

Under this change, if your average monthly earnings from work you performed as an employee before January 2001 are equal to or less than the applicable primary substantial gainful activity amount, we will consider your earnings in the same way we consider earnings from work performed by an employee in or after January 2001 that do not average more than the applicable primary substantial gainful activity amount. That is, we will generally consider that your earnings from your work will show that you have not engaged in substantial gainful activity without considering other information beyond your earnings. We will perform additional development beyond looking at earnings only when circumstances indicate that you may have been engaging in substantial gainful activity or might have been in a position to control when earnings are paid to you or the amount of wages paid to you (for example, if you work for a small corporation run by a relative).

Using the facts from the ''Example'' set out earlier, the following illustrates how we will evaluate your work activity under these final rules, which eliminate the use of the secondary substantial gainful activity guidelines altogether. As in the ''Example'' above, you worked from July 2000 through June 2001, with earnings of $600 per month. For the entire period you worked, your average monthly earnings are less than the applicable primary substantial gainful activity amounts ($740 per month for work occurring between January 1, 2001 and January 1, 2002 and $700 per month for work occurring between July 1, 1999 and January 1, 2001). Therefore, we will generally consider that your earnings show that you have not engaged in substantial gainful activity.

To make this change, we are eliminating the rules in existing §§ 404.1574(b) and 416.974(b) relating to the use of the secondary substantial gainful activity amount and the distinction between work performed before January 2001 and work performed in or after January 2001. We are replacing existing paragraphs (b)(3) through (b)(6) of §§ 404.1574 and 416.974 with a new paragraph (b)(3), Earnings that will ordinarily show that you have not engaged in substantial gainful activity. In new paragraph (b)(3), we are consolidating our existing rules that apply in cases in which average monthly earnings from work performed by an employee (including work performed in a sheltered workshop or comparable facility) in or after January 2001 are equal to or less than the applicable primary substantial gainful activity amount, and are extending the scope of these rules to cover work performed before January 2001 as well as work performed in or after January 2001.

In a new paragraph (b)(3)(i), General, we state the general rule. We explain that if your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of § 404.1574 or § 416.974 for the year(s) in which you work, we will generally consider that the earnings from your work activity as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We explain that we will generally not consider other information in addition to your earnings except in the circumstances described in new paragraph (b)(3)(ii) of §§ 404.1574 and 416.974.

In new paragraph (b)(3)(ii), When we will consider other information in addition to your earnings, we describe those circumstances in which we will ordinarily consider other information beyond your earnings. We explain that we will generally consider other information in addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to control when earnings are paid to you or the amount of wages paid to you (for example, if you are working for a small corporation owned by a relative).

We also include provisions in new paragraph (b)(3)(ii) that provide examples of other information we may consider. These latter provisions incorporate the provisions of existing paragraph (b)(6)(iii) of §§ 404.1574 and 416.974. In new paragraphs (b)(3)(ii)(A) and (B), we explain that other information we may consider includes, for example, whether (A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; and (B) your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of § 404.1574 or § 416.974, according to pay scales in your community.

The provisions of new §§ 404.1574(b)(3)(i) and (ii) and 416.974(b)(3)(i) and (ii) are based on the rules that are stated in the first sentence of existing paragraph (b)(3), the last sentence of existing paragraph (b)(4), existing paragraph (b)(5), and existing paragraphs (b)(6)(ii) and (iii) of §§ 404.1574 and 416.974.

In new § 404.1574(b)(3)(iii), we explain that, even if the circumstances described in new § 404.1574(b)(3)(ii) are

present, we will not consider other information in addition to your earnings in evaluating the work you are doing or have done if: (A) At the time you do the work, you are entitled to Social Security disability benefits and you have received such benefits for at least 24 months; and (B) we are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity. We include cross-references to the sections of our regulations that concern making substantial gainful activity determinations for purposes of determining whether your disability has ceased.

Since new paragraphs (b)(3)(ii)(A) and (B) require us to consider your work activities, we decided that we could no longer use (b)(3)(ii)(A) and (B)—based on section 221(m)(1)(B) of the Act—to decide that the work you do after you have received Social Security disability benefits for at least 24 months shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled. Therefore, in § 404.1574(b)(3), we have included a paragraph (b)(3)(iii), Special rule for considering earnings alone when evaluating the work you do after you have received social security disability benefits for at least 24 months, which provides an exception to the rule in § 404.1574(b)(3)(ii), discussed above. The exception will apply when we are evaluating the work that you perform while you are entitled to Social Security disability benefits and after you have received such benefits for at least 24 months and will apply to you only if you are covered by section 221(m) of the Act. The exception would apply only if we are evaluating that work to decide whether the work shows that you are able to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity. In this case, even if the circumstances described in new § 404.1574(b)(3)(ii) are present, we will not consider other information in addition to your earnings. Instead, we will apply the general rule described in new § 404.1574(b)(3)(i). That is, in the case described above, if your average monthly earnings from that work are equal to or less than the amount(s) determined under § 404.1574(b)(2) for the year(s) in which that work occurs, we will find that your earnings from that work will show that you have not engaged in substantial gainful activity.

If you are entitled to Social Security disability benefits and you perform work as an employee after you have received such benefits for at least 24 months, section 221(m)(1)(B) of the Act provides that we may not consider information about the activities you perform in that work (such as the information described in new § 404.1574(b)(3)(ii)(A) and (B)) to determine that the work shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled, *i.e.*, that your disability has ceased. We may still consider your earnings from that work under the earnings guidelines to decide whether your earnings show that you have engaged in substantial gainful activity for the purpose of determining whether your disability has ceased. Also, we may still consider other information in addition to your earnings in the circumstances described in new § 404.1574(b)(3)(ii) to decide whether that work is substantial gainful activity for purposes other than the purpose of determining whether your disability has ceased. Therefore, after we have determined that your disability has ceased during the reentitlement period because you performed substantial gainful activity, we will continue to make substantial gainful activity determinations to decide whether benefits should be started or stopped for a subsequent month(s) during the reentitlement period and to decide when your entitlement to benefits terminates (see § 404.1592a(a)(2) and (3)). We may use the tests in § 404.1574(b)(3)(ii) that involve looking at your work activities in making these substantial gainful activity determinations because these determinations do not involve deciding that you are no longer disabled.

Also, in new § 404.1574(b)(3), we include a paragraph (b)(3)(iv), When we consider you to have received social security disability benefits for at least 24 months. The provisions of paragraph (b)(3)(iv) apply for purposes of new paragraph (b)(3)(iii) of § 404.1574. In new § 404.1574(b)(3)(iv), we provide a definition of Social Security disability benefits and explain when we will consider you to have received such benefits for at least 24 months.

In response to public comments we received on the proposed rules, we have modified the criteria relating to the 24-month requirement in these final rules. We have modified the criteria in § 404.1574(b)(3)(iv) of the final rules to provide that, if you are otherwise due a social security disability benefit for a month, but we withhold your benefit for that month to recover an overpayment, we will count that month toward the 24-month requirement. We provide that, in this situation, we will consider you to have constructively received a social security disability benefit for the month for purposes of the 24-month requirement. We are making similar changes in final §§ 404.1575(e)(2), 404.1590(i)(2)(i), and 416.990(i)(2)(i), which are described later in this preamble.

In final § 404.1574(b)(3)(iv), we explain that we consider you to have received social security disability benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you actually received Social Security disability benefits that you were due or constructively received such benefits. We state that the 24 months do not have to be consecutive. We explain that we do not count months for which you were entitled to benefits but for which you did not actually or constructively receive benefit payments. In addition, we explain that if you also receive SSI payments, months for which you received only SSI payments will not count for the 24-month requirement.

We are including new paragraphs (b)(3)(iii) and (iv) only in our revision of § 404.1574(b). We are not including similar provisions in our revision of § 416.974(b) because the performance of substantial gainful activity is not a basis for determining that disability has ceased under the SSI program.

As we explain above, new paragraph (b)(3) of §§ 404.1574 and 416.974 will replace existing paragraphs (b)(3) through (b)(6) of these sections. As a consequence, we have made certain conforming changes to existing paragraphs (b)(1) and (2) of §§ 404.1574 and 416.974. We are amending existing paragraph (b)(1) of §§ 404.1574 and 416.974 to remove references to paragraphs (b)(4), (5), and (6). We are revising the parenthetical phrase in the introductory text of existing paragraph (b)(2) of §§ 404.1574 and 416.974 to read, ''(including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons),'' to incorporate the description of sheltered work contained in existing paragraph (b)(4) of these sections.

Section 404.1575 Evaluation Guides if You Are Self-Employed

If you are covered by section 221(m) of the Act and you are self-employed, we are revising our rules in existing § 404.1575 to explain how we will evaluate your work activity when

deciding whether you have engaged in substantial gainful activity following the completion of a trial work period for purposes of determining if your disability has ceased. (We are not amending our rules in § 416.975 because your performance of substantial gainful activity does not affect your disability status for purposes of your continuing eligibility for SSI payments.) As we explained earlier, if you are self-employed, we consider three tests to determine if you have engaged in substantial gainful activity. Since the three tests require us to consider your activities at work and their value to your business, we decided that we could not use these tests to decide that the work you do after you have received Social Security disability benefits for at least 24 months shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled. Based on section 221(m)(1)(B) of the Act, we concluded that we needed to provide a different test for considering whether that work is substantial gainful activity for purposes of determining whether your disability has ceased. Therefore, we will use a new evaluation test for that purpose. We refer to this new test as the countable income test.

To explain this new evaluation test and when we will apply it, we are revising existing paragraphs (a) and (c) of § 404.1575 and adding a new paragraph (e). We are retaining all of the provisions of existing paragraph (a). However, we are restructuring the paragraph. We made the first two sentences of existing paragraph (a) the introductory text of paragraph (a) of final § 404.1575. (We revised the first sentence of the paragraph to include a reference to new paragraph (e).) We included the remaining provisions of existing paragraph (a) in a new paragraph (a)(2), General rules for evaluating your work activity if you are self-employed. Because of this change, we redesignated existing paragraphs (a)(1), (2), and (3) of § 404.1575 as paragraphs (a)(2)(i), (ii), and (iii), respectively, of final § 404.1575.

Following the first two sentences (the introductory text) of paragraph (a) of final § 404.1575, we added a new paragraph (a)(1), How we evaluate the work you do after you have become entitled to disability benefits. In new § 404.1575(a)(1), we explain which rules we will use to evaluate your work activity if you are self-employed and you perform the work activity while you are entitled to Social Security disability benefits. (We explain that Social Security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability.) We explain that the way we will evaluate your work activity will depend on whether the work occurs before or after you have received Social Security disability benefits for at least 24 months and on the purpose of the evaluation. We explain in new § 404.1575(a)(1) that we will use the guides in new paragraph (e), which provide for the use of the countable income test, to evaluate the work activity you do after you have received such benefits for at least 24 months to determine whether you have engaged in substantial gainful activity for the purpose of determining whether your disability has ceased. In all other cases in which we evaluate your work activity as a self-employed person to make a substantial gainful activity determination, we will apply the guides in § 404.1575(a)(2) of these final rules. Section 404.1575(a)(2) of the final rules sets out the three tests we currently use to evaluate the work of a self-employed person.

We explain in new § 404.1575(a)(1) that we will use the three tests described in § 404.1575(a)(2) to evaluate the work activity you do before you have received Social Security disability benefits for 24 months to determine if you have engaged in substantial gainful activity, regardless of the purpose of the evaluation. We also explain that, after we have determined that your disability has ceased during the reentitlement period because you performed substantial gainful activity, we will use the three tests to determine whether you are doing substantial gainful activity in subsequent months in or after your reentitlement period, whether your work activity occurs before or after you have received Social Security disability benefits for at least 24 months. After we have determined that your disability has ceased due to the performance of substantial gainful activity during the reentitlement period, we make substantial gainful activity determinations to decide whether benefits should be started or stopped for a subsequent month(s) during the reentitlement period and to decide when your entitlement to benefits terminates (see § 404.1592a(a)(2) and (3)). We may use the three tests that involve looking at work activity in making these substantial gainful activity determinations because these determinations do not involve deciding that you are no longer disabled.

We are revising existing § 404.1575(c). In amended § 404.1575(c)(1), Determining countable income, we explain what deductions are applied to your net income to decide the amount of your income we use to determine if you have done substantial gainful activity. We explain that we refer to this amount as your countable income. In amended § 404.1575(c)(2), we explain when we consider your countable income to be substantial.

In new § 404.1575(e), Special rules for evaluating the work you do after you have received social security disability benefits for at least 24 months, we explain the countable income test and when it applies. We explain that we will apply this test to evaluate the work you are doing or have done if, at the time you perform the work, you are entitled to Social Security disability benefits and you have received such benefits for at least 24 months. We explain that we will apply the test only when we are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity. We explain that, under the countable income test, we will not consider the services you perform in that work to determine that the work you are doing shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled. However, we may consider the services you perform to determine that you are not doing substantial gainful activity.

In new paragraph (e)(2), The 24-month requirement, we explain that we consider you to have received Social Security disability benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you actually received Social Security disability benefits that you were due or constructively received such benefits. We explain that we will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment.

We explain the new evaluation test in new paragraph (e)(3), The countable income test. Under the countable income test, we will compare your countable income to the substantial gainful activity earnings guidelines in § 404.1574(b)(2) to determine if you have engaged in substantial gainful activity. We will consider that you have engaged in substantial gainful activity if your monthly countable income averages more than the amounts in § 404.1574(b)(2) unless the evidence shows that you did not render

significant services in the month(s). If your average monthly countable income is equal to or less than the amounts in § 404.1574(b)(2), or if the evidence shows that you did not render significant services, we will consider that your work as a self-employed person shows that you have not engaged in substantial gainful activity.

Sections 404.1590 and 416.990 When and How Often We Will Conduct a Continuing Disability Review

We added two new paragraphs to existing §§ 404.1590 and 416.990 to explain when we will and will not start continuing disability reviews if you are in the Ticket to Work program and your ticket is in use (new paragraph (h)), and if you are covered by the provisions of section 221(m) of the Act (new paragraph (i)).

In new §§ 404.1590(h) and 416.990(h), If you are participating in the Ticket to Work program, we restate our rules already set out in §§ 411.160 and 411.165 that we will not start a continuing disability review for you during the period in which you are using a ticket under the Ticket to Work program. This amendment to existing §§ 404.1590 and 416.990 is not a change in policy, but incorporates rules already set out in §§ 411.160 and 411.165. In addition, we provide in new § 404.1590(h) that this provision does not apply to the reviews we do under title II using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity (see § 411.160(b)). (As we have already noted, your performance of substantial gainful activity does not affect your SSI eligibility because of the work incentive provisions of section 1619 of the Act.)

In new §§ 404.1590(i) and 416.990(i), If you are working and have received social security disability benefits for at least 24 months, we provide rules for you if you are covered by section 221(m) of the Act. In new paragraph (i)(1), General, we explain that we will not start a continuing disability review based solely on your work activity if you are currently entitled to benefits based on disability under title II of the Act and you have received such benefits for at least 24 months. We also list the types of title II disability benefits that qualify.

Although section 221(m)(1)(A) says that a continuing disability review may not be ''scheduled'' based solely on your work activity, we use the word ''start'' in this provision and the remainder of new paragraph (i) of §§ 404.1590 and 416.990 to avoid any confusion about what we will do, and to use consistent language throughout these sections of our rules. Existing provisions in §§ 404.1590 and 416.990 use both words. We use the word ''start'' in the opening sentence of existing §§ 404.1590(b) and 416.990(b) to explain when we will do a continuing disability review. We then use the word ''scheduled'' in existing paragraphs (b)(1), (b)(2) and (b)(10) to explain when we will start a continuing disability review that we have scheduled in advance; that is, based on a diary for ''medical improvement expected,'' ''medical improvement possible,'' or ''medical improvement not expected,'' or on a ''vocational reexamination diary.'' In existing paragraph (b)(11) of § 416.990, we specify a timeframe within which we must review the cases of certain children (i.e., by the first birthday of the child) unless certain conditions are met. In existing paragraph (b)(11)(ii) of § 416.990, which discusses one of the conditions, we use the word ''schedule'' to describe a situation in which we set a time in advance for conducting a continuing disability review. The remaining provisions in existing paragraphs (b)(3)–(b)(9) of §§ 404.1590 and 416.990 describe situations in which we do not schedule continuing disability reviews in advance but may start them sooner than the regularly scheduled reviews.

In new §§ 404.1590(i)(2) and 416.990(i)(2), The 24-month requirement, we provide rules for determining whether the 24-month requirement in new §§ 404.1590(i)(1) and 416.990(i)(1) is met. In new paragraph (i)(2)(i), we explain that months for which you have actually received Social Security disability benefits under title II that you were due, or for which you have constructively received such benefits, will be counted for the 24-month requirement. The 24 months do not have to be consecutive. We explain that we will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment. We also explain that we do not count months for which you were technically ''entitled'' but did not actually or constructively receive benefit payments. In addition, we clarify that months for which you received only SSI payments and months for which you received continued benefits pending the appeal of a medical cessation determination, do not count toward the 24-month requirement.

In new §§ 404.1590(i)(2)(ii) and 416.990(i)(2)(ii), we explain that you will not meet the 24-month requirement for purposes of new § 404.1590(i)(1) or § 416.990(i)(1) if you have not received Social Security disability benefits for at least 24 months as of the date on which we start a continuing disability review. We explain that the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning the review.

In new §§ 404.1590(i)(3) and 416.990(i)(3), When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months, we include a reminder that, even if you meet the requirements of new paragraph (i)(1) of § 404.1590 or § 416.990, we may still start a continuing disability review if we have another reason to do so; that is, when the fact that you are working is not the sole reason for the continuing disability review. We include two examples, including a reminder that we must still schedule you for regularly scheduled continuing disability reviews, as provided under section 221(m)(2)(A) of the Act.

In § 404.1590, we include a new paragraph (i)(4), Reviews to determine whether the work you have done shows that you are able to do substantial gainful activity, to clarify that the exemption from continuing disability reviews in new paragraph (i)(1) of that section does not apply to certain reviews we conduct under title II of the Act. We explain that paragraph (i)(1) does not apply to the reviews we conduct using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled. In other words, if section 221(m) of the Act applies to you, we may not be able to start a medical continuing disability review, but we can still start a work continuing disability review to determine if you are doing substantial gainful activity. We do not conduct similar reviews under title XVI because of the work incentive provisions in section 1619 of the Act. Therefore, we do not include a similar provision in the amendments to § 416.990.

As we explain earlier in this preamble, if we start a continuing disability review based on your work activity, we will provide an opportunity for you to request that we review that action if you believe that you are protected by section 221(m)(1)(A) of the Act and that the action of starting the continuing disability review was in error. If we review the action and conclude that the initiation of the medical continuing disability review

was in error, we will discontinue the processing of the continuing disability review. If the continuing disability review proceeds to completion and we make a medical cessation determination, we provide a procedure in new §§ 404.1590(i)(5) and 416.990(i)(4) under which we will vacate the medical cessation determination if the action of starting the continuing disability review is shown to have been in error because you were protected by section 221(m)(1)(A). You must provide evidence to us that establishes that you met the requirements of new § 404.1590(i)(1) or § 416.990(i)(1) as of the date of the start of your continuing disability review and that the start of the review was erroneous. In addition, we must receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.

We also amended existing paragraph (a) of §§ 404.1590 and 416.990 to include references to new paragraphs (h) and (i) of these sections.

Section 404.1592a The Reentitlement Period

We amended existing paragraph (a) of § 404.1592a to explain when the special rules in amended §§ 404.1574(b)(3)(iii) and 404.1575(e) may apply, and when they will not apply, in making substantial gainful activity determinations. We also revised existing paragraph (a)(3) of § 404.1592a to separate the provisions into two lower level paragraphs. We designated the second, third, and fourth sentences of existing paragraph (a)(3) as new paragraph (a)(3)(i). We designated the fifth, sixth, and seventh sentences of existing paragraph (a)(3) as new paragraph (a)(3)(ii).

We amended existing paragraph (a)(1) of § 404.1592a to include a reference to the special rules for evaluating the work you do after you have received Social Security disability benefits for at least 24 months. We are including this reference in the list of examples of the relevant rules we will apply when deciding whether the work you do following completion of a trial work period is substantial gainful activity for purposes of determining whether your disability has ceased. We are also making a similar change in newly designated paragraph (a)(3)(ii).

We revised the last sentence of existing paragraph (a)(2)(i), and added in newly designated paragraph (a)(3)(i), of this section to clarify that, if we have decided that your disability ceased because you performed substantial gainful activity, we will not apply the special rules in amended §§ 404.1574(b)(3)(iii) and 404.1575(e) in making substantial gainful activity determinations for purposes of determining whether benefits should be paid for any subsequent months of the reentitlement period or whether your entitlement to benefits has terminated. The special rules in amended §§ 404.1574(b)(3)(iii) and 404.1575(e) do not apply in making these substantial gainful activity determinations because these determinations do not involve deciding whether your disability has ceased.

Section 404.1594 How We Will Determine Whether Your Disability Continues or Ends

Section 416.994 How We Will Determine Whether Your Disability Continues or Ends, Disabled Adults

We are adding new § 404.1594(i), If you work during your current period of entitlement based on disability or during certain other periods, and new § 416.994(b)(8), If you work during your current period of eligibility based on disability or during certain other periods, to:

- Incorporate a longstanding instruction that interprets our regulations on how we consider your work at the last two steps of the medical improvement review standard sequential evaluation process when determining whether your disability continues or ends;
- Provide a comparable rule on how we consider your work at the last two steps of the process when determining whether you are entitled to expedited reinstatement of benefits under section 221(i) or eligible for expedited reinstatement of benefits under section 1631(p) of the Act;
- Explain how we will consider the activities you do in your work when determining whether your disability continues or ends if you are covered by section 221(m) of the Act; and
- Explain how we will consider the activities you do in your work when determining whether your disability continues or ends if you are not covered by section 221(m) of the Act.

In new §§ 404.1594(i)(1) and 416.994(b)(8)(i), we clarify our rules about the last two steps of the medical improvement review standard sequential evaluation process for determining whether disability continues or ends to reflect an interpretation contained in an operating instruction we have been using for a number of years. The provisions clarify that we will not consider work you are doing now, or work that you did, during your current period of entitlement based on disability under title II (new § 404.1594(i)(1)), or during your current period of eligibility based on disability under title XVI (new § 416.994(b)(8)(i)), to be past relevant work for purposes of the second to last step of the sequential evaluation processes described in §§ 404.1594(f) and 416.994(b)(5). The provisions also explain that we will not consider such work to be ''past work experience'' when we decide whether you can do other work at the last step of those processes. In these provisions of the final rules, we also provide that we will not consider certain work to be past relevant work or past work experience for purposes of the last two steps of the medical improvement review standard sequential evaluation process when we decide whether you qualify for expedited reinstatement of benefits under section 223(i) or 1631(p) of the Act. For purposes of deciding whether you qualify for expedited reinstatement of benefits, the rules would apply to work you are doing or have done during or after your previous period of entitlement or eligibility which terminated and which is the basis for your request for expedited reinstatement.

In new §§ 404.1594(i)(2) and 416.994(b)(8)(ii), we provide rules for you if you are covered by section 221(m) of the Act. Section 221(m)(1)(B) of the Act explains that if you are covered by this section, ''no work activity engaged in by the individual may be used as evidence that the individual is no longer disabled.'' Based on this statutory language, we provide in these final rules that we will not consider the activities you do in your work if they support a finding that you are no longer disabled. We may still find that you are no longer disabled, but only if that finding is based on other evidence.

We also provide that we may consider the activities you do in your work if they provide evidence that you are still disabled or if they do not conflict with a finding that you are still disabled. Your functioning on the job may help us to establish that you are still disabled. We concluded that we are required to include this provision because the language of section 221(m)(1)(B) speaks only about the use of work activity as evidence that an individual is ''no longer disabled.''

We also include in new §§ 404.1594(i)(2) and 416.994(b)(8)(ii) a statement that we will not presume that you are still disabled if you stop working. This would incorporate the statutory requirement of section 221(m)(1)(C) into our regulations.

In new §§ 404.1594(i)(3) and 416.994(b)(8)(iii), we explain how we consider activities from work in all other continuing disability reviews, that is, if you receive disability benefits under title II but are not covered by section 221(m) or if you are eligible only for SSI benefits. The rules would only incorporate into our regulations an interpretation we already use. Even though we may not consider the work that you do during your current period of entitlement or eligibility based on disability to be past relevant work or past work experience, we do consider the physical and mental activities you do in your work when we need to assess your functioning (for example, when we assess your residual functional capacity) in deciding whether your disability continues or ends. We consider the activities regardless of whether they support a finding that your disability continues or support a finding that your disability has ended. (It is only when you are covered by section 221(m) that we would not consider the activities if they support a finding that your disability has ended, as explained in §§ 404.1594(i)(2) and 416.994(b)(8)(ii), discussed above.) In new §§ 404.1594(i)(3) and 416.994(b)(8)(iii), therefore, we are only codifying in our regulations our current practice when you are not covered by section 221(m).

We concluded that we are required to do this in these cases, because of the general requirements of the Act and our regulations that we consider all of the relevant evidence in your case record whenever we make a determination about your disability. Section 221(m) provides an explicit exception to this rule, but only for people who are covered by that section.

We are aware that the provisions in final §§ 404.1594(i)(2) and 416.994(b)(8)(ii) may create a more complex process because we may, in some cases, be required to disregard information about your work that would otherwise be evidence about your physical and mental abilities. We may also be required to undertake additional development to obtain alternative evidence about your abilities, or to clarify evidence (such as medical opinion evidence) that may have been based on information about your activities at work. However, we concluded that there is no other permissible interpretation of the language of section 221(m)(1)(B).

We are also adding cross-references in several places in existing §§ 404.1594 and 416.994 as a reminder to consider the provisions in new §§ 404.1594(i) and 416.994(b)(8) whenever appropriate.

Other Changes

We are making a few minor editorial corrections and revisions to existing provisions. These changes are not substantive and we do not intend to change the meaning of existing rules in any way by them. For example, we provide paragraph designations for some of the clauses within §§ 404.1590(b) and 416.990(b) to make them easier to refer to. We are also deleting the reference to completion of a trial work period from existing § 416.990(b)(4). There are no trial work periods under title XVI because of other work incentive provisions in the Act. When we last revised our regulations to remove references to the trial work period from the SSI regulations, we inadvertently overlooked this provision. See 65 FR 42772, 42775 (July 11, 2000). In addition, we are replacing the word ''decide'' with the word ''determine'' in the heading of § 416.994 to conform to the language used in the headings of §§ 404.1594 and 416.994a.

Public Comments on the Notice of Proposed Rulemaking (NPRM)

When we published the NPRM in the **Federal Register** on October 11, 2005 (70 FR 58999), we provided interested parties 60 days to submit comments. We received comments from 13 commenters, including national, State and community based agencies and private organizations serving people with disabilities, beneficiaries, and other individuals. We carefully considered the comments we received on the proposed rules in publishing these final regulations. The comments we received and our responses to the comments are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe that we have expressed the views accurately and have responded to all of the significant issues raised.

In addition, a few of the comments were about subjects that were outside the scope of this rulemaking. We have not summarized and responded to these comments below.

Comments and Responses

Comment: One commenter wanted us to clarify how the evaluation of subsidies and special conditions will be performed if work activity cannot be evaluated when making a substantial gainful activity determination for the purpose of determining whether disability has ceased.

Response: Generally, in evaluating the work activity of an employee for purposes of determining whether the work is substantial gainful activity, our primary consideration will be the earnings the individual derives from the work activity. When we evaluate earnings under the earnings guidelines for determining substantial gainful activity, we use the actual amount of earnings paid to the individual (subject to the deduction of impairment-related work expenses) unless we have information indicating that not all of the earnings are directly related to the individual's productivity (*i.e.*, the earnings are subsidized or the work is performed under special conditions). When the amount of earnings paid to an individual exceed the reasonable value of the work he or she performs, we consider only that part of the individual's pay which he or she actually earns. See § 404.1574(a)(2) of our regulations.

When we have evidence indicating that an individual with a serious medical impairment may not be earning all that he or she is paid, we will continue to evaluate the work activity performed by the individual to determine whether, and to what extent, the individual's earnings exceed the reasonable value of the services performed by the individual. We will evaluate the work activity to determine the reasonable value of the actual services the individual performs in order to determine the amount of earnings we will use when applying the earnings guidelines. If we did not do this before applying the earnings guidelines, we could find that an individual with a serious medical impairment has demonstrated the ability to engage in substantial gainful activity and, therefore, is no longer disabled, on the basis of earnings that are in excess of the reasonable value of the actual services he or she performs. Therefore, we will continue to evaluate the work activity of an individual in these instances for the purpose of determining the amount of earnings we will use when applying the earnings guidelines, even if the individual is covered by section 221(m) of the Act. We believe this is a reasonable interpretation of sections 221(m)(1)(B) and (2)(B) of the Act.

The changes which we proposed to make to § 404.1574(b), and which we are adopting in these final rules, do not affect this aspect of our existing rules in § 404.1574(a)(2) for evaluating whether the work performed by an employee is substantial gainful activity. Therefore, we do not believe that there is a need to make changes to clarify this aspect of our existing rules.

Comment: One commenter was concerned that individuals who are participating in the Ticket to Work

program do not understand that the continuing disability review protection for individuals who are using a ticket does not apply to the reviews we conduct using the rules in §§ 404.1571 through 404.1576.

Response: When we refer to the reviews we conduct using the rules in §§ 404.1571 through 404.1576, we are discussing the substantial gainful activity determinations we make under §§ 404.1592a(a)(1) and 404.1594(d)(5) and (f)(1) (see also § 404.1592a(a)(3)(ii) of these final rules). The latter sections require us to evaluate the work activity of a title II disability beneficiary to determine whether the work shows that the individual is able to engage in substantial gainful activity and, therefore, is no longer disabled. Our public information materials have clearly explained that even though a title II disability beneficiary is using a ticket under the Ticket to Work program, we will still evaluate his or her work activity to determine whether the work is substantial gainful activity. We explain in these materials that if the work shows that the individual is able to do substantial gainful activity, we will determine that the individual is no longer disabled (after applying any applicable trial work period). Also, § 411.160(b) of our regulations for the Ticket to Work program clearly explains that even though an individual who is using a ticket is protected from a medical continuing disability review, the individual will still be subject to a review to determine whether his or her disability has ended under § 404.1594(d)(5) because he or she has demonstrated the ability to engage in substantial gainful activity.

Comment: A number of commenters recommended that we allow the start of a continuing disability review to be an initial determination with appeal rights and/or eliminate the prescribed 12-month period within which an individual must submit evidence to show that the start of a continuing disability review was in error because it was precluded under section 221(m)(1)(A) of the Act.

Response: We did not adopt the recommendations. Because the action of starting or discontinuing a continuing disability review is not an adjudication of whether the individual's disability continues or ends, we do not consider that action to be an initial determination that is subject to the administrative review process under subpart J of part 404 or subpart N of part 416 of our regulations or to judicial review. We recognize that beneficiaries may not always know whether they qualify for the protection against the start of a continuing disability review based solely on work activity as provided under section 221(m)(1)(A) of the Act. Therefore, we have developed a screening tool to identify beneficiaries covered by section 221(m) to help prevent the starting of a continuing disability review based solely on their work activity. We recognize that the screening tool may not capture every case and that it is possible that we may start a continuing disability review solely as a result of a beneficiary's work activity even though the beneficiary may be protected by the section 221(m)(1)(A) provision. Should this happen, we will provide an opportunity for the beneficiary to request that we review the action of starting the continuing disability review. As we explain earlier in this preamble, we will inform the individual of this opportunity in the notice we send the individual which tells him or her that we are starting a medical continuing disability review. If we review the action and conclude that the initiation of the continuing disability review was in error because section 221(m)(1)(A) applies, we will discontinue processing the continuing disability review. In the event the continuing disability review is processed to completion and results in a medical cessation determination, we explain in §§ 404.1590(i)(5) and 416.990(i)(4) of these final rules that we will provide the beneficiary 12 months within which to submit evidence to show that the action of starting the medical continuing disability review was in error because the beneficiary was protected by section 221(m)(1)(A) of the Act. If we receive evidence within the prescribed time period that establishes that the start of the continuing disability review was in error because of section 221(m)(1)(A), we will vacate the medical cessation determination and reinstate the individual. This procedure will be available in addition to any appeal requests on the medical cessation determination. We believe that the 12-month period is adequate time to submit evidence that the medical continuing disability review should not have been started, considering the beneficiary will only have 60 days to appeal the medical cessation determination. Also, we believe that the situation in which a beneficiary may need to use this procedure will be rare with the use of the screening tool and the availability of the aforementioned protest procedure that will be explained in the notice that we send to the beneficiary telling the beneficiary that we are starting a continuing disability review.

Comment: Several of the commenters suggested that we make changes to the criteria relating to the requirement that a title II disability beneficiary must have received social security disability benefits for at least 24 months to receive the protections under section 221(m) of the Act. Specifically, the commenters requested that we allow months for which a beneficiary does not receive payment of social security disability benefits due to overpayment recovery or because of worker's compensation offset, as well as months for which a beneficiary receives only SSI payments, to be counted for the 24-month requirement.

Response: We agree with the commenters that our rules should allow months for which a beneficiary is otherwise due a social security disability benefit to count for the 24-month requirement if the monthly benefit is withheld to satisfy the beneficiary's obligation to reimburse us for an overpayment. Because the monthly benefit which is otherwise due the beneficiary is applied to reduce the beneficiary's overpayment debt, we believe that a beneficiary in this situation may be treated as having received a social security disability benefit for purposes of applying the 24-month requirement. This will allow a social security disability beneficiary whose monthly benefit is withheld to recover an overpayment to receive the same consideration for purposes of the 24-month requirement as a beneficiary who repays an overpayment by refunding the overpayment amount to us or whose monthly benefit is subject to partial withholding to recover an overpayment. We have modified §§ 404.1574(b)(3)(iv), 404.1575(e)(2), 404.1590(i)(2)(i), and 416.990(i)(2)(i) of the final rules to provide that, if a beneficiary is otherwise due a social security disability benefit for a month and the monthly benefit is withheld to recover an overpayment, we will consider the beneficiary to have constructively received a benefit for that month for purposes of the 24-month requirement. We also have made changes to these sections of the final rules to provide that months for which a beneficiary has actually received social security disability benefits that he or she was due, or for which the beneficiary has constructively received such benefits (as described above), will be counted for the 24-month requirement.

We cannot adopt the suggestion to allow months for which a beneficiary does not receive a benefit payment because of worker's compensation offset to count for the 24-month requirement.

Because the Act requires a reduction in title II benefits on account of receipt of worker's compensation or similar payments, we cannot regard a beneficiary as having received a benefit for purposes of the 24-month requirement if the application of the worker's compensation offset results in no monthly benefit being due the beneficiary. This is not like the situation where the monthly benefit which is otherwise due a beneficiary is withheld to reduce the beneficiary's overpayment debt and where the beneficiary would have actually received a benefit payment had he or she refunded the overpayment amount to us. In addition, we cannot adopt the suggestion that months for which the individual receives only SSI payments be counted for the 24-month requirement. The statute specifically requires receipt of title II disability benefits for at least 24 months. Therefore, if an individual is both entitled to title II disability benefits and eligible for SSI payments based on disability or blindness, we cannot count the months for which the individual received only SSI payments for the purpose of determining whether the 24-month requirement is met.

Comment: A few commenters requested that we reconsider our stance on the interpretation of section 221(m)(1)(c). The commenters were concerned that our interpretation creates a barrier or disincentive for a beneficiary to attempt working.

Response: We did not make any changes in the final rules as a result of the commenters' recommendation. We believe that the language of section 221(m)(1)(C) of the Act is clear and not susceptible of another interpretation. Moreover, we do not believe that this interpretation will create a disincentive for beneficiaries to return to work.

Section 221(m)(1)(c) of the Act states that ''no cessation of work activity by the individual may give rise to a presumption that the individual is unable to engage in work.'' In other words, we will not presume that a beneficiary is still disabled simply because he or she stops working. When an individual has a medical continuing disability review, we apply the medical improvement review standard to determine whether the individual's disability continues or ends. Section 221(m)(1)(c) clarifies that, when determining whether disability continues or ends under the medical improvement review standard, we may not presume that the individual continues to be disabled just because he or she stopped working. The facts associated with why the individual stopped work will still be evaluated under the medical improvement review standard if they support a determination that the individual is still disabled.

Comment: Several commenters believe the rules associated with the medical improvement review standard are complex and need to be simplified for beneficiaries to understand, especially with the addition of the new rules associated with section 221(m)(1)(B).

Response: We wrote the new rules in §§ 404.1594(i) and 416.994(b)(8) relating to the medical improvement review standard in plain language to make the rules as easy to read and understand as possible. With the addition of these new rules, we will revise our public information materials to make sure beneficiaries understand that activities they perform in work cannot be used to show they are no longer disabled if they meet the requirements of section 221(m)(1). Additionally, when we make a determination that an individual is no longer disabled, we are required to explain the determination in writing and in plain language. The notice of determination will also have to explain what evidence was used and, in an appropriate case, clarify that work activity was not used because the beneficiary was protected by section 221(m)(1)(B) of the Act.

Comment: A few commenters suggested that we clarify that if a medical cessation is overturned on appeal, the months for which social security disability benefits were continued pending the appeal will count, thereafter, toward the 24-month requirement.

Response: If we conduct a continuing disability review and determine that the disability of a social security disability beneficiary has medically ceased, the individual may request benefit continuation while the medical cessation is being appealed. Because the individual is being paid under a special provision, we clarify in §§ 404.1590(i)(2)(i) and 416.990(i)(2)(i) of these final rules that the months for which an individual is receiving benefit continuation pending reconsideration and/or a hearing before an administrative law judge on a medical cessation determination will not count toward the 24-month requirement for section 221(m)(1) purposes. If the medical cessation is overturned on appeal and our final decision is that the individual's disability continues, we reinstate the individual's entitlement to social security disability benefits for the months in the period during which the medical cessation was being appealed. Thereafter, these months would be months for which the individual was entitled to social security disability benefits for purposes of any future continuing disability reviews. We provide in final §§ 404.1590(i) and 416.990(i) that months for which the individual was entitled to social security disability benefits and received such benefits that he or she was due will count for the 24-month requirement. We believe these provisions of the final rules adequately address the situation that was of concern to the commenters. Because the final rules cover the situation, we do not believe further clarification is necessary.

Changes From the Proposed Rules

In these final rules, we are making certain changes from the proposed rules. We are making these changes to provide consistency in wording in parallel provisions of the part 404 and part 416 rules, to clarify certain provisions contained in the proposed rules, and to correct certain inappropriate cross-references contained in the proposed rules.

In § 404.1574(b)(3)(ii) of the final rules, we are revising the first sentence of this section of the NPRM to parallel the language used in § 416.974(b)(3)(ii). In § 404.1574(b)(3)(ii) of the NPRM, we had stated, in part, that we would generally consider other information in addition to earnings if there was evidence indicating that the individual is in a position to defer or suppress earnings. However, our intent was to include in this section the same language we used in proposed § 416.974(b)(3)(ii). The latter section explained that we will generally consider other information in addition to earnings if there is evidence indicating that the individual may be engaging in substantial gainful activity or that the individual is in a position to control when earnings are paid or the amount of wages paid. In the final rules, we include this language in both §§ 404.1574(b)(3)(ii) and 416.974(b)(3)(ii).

In §§ 404.1590(i)(2)(i) and 416.990(i)(2)(i) of the final rules, we are switching the order of the last two sentences contained in these sections of the proposed rules. We are also revising what was the last sentence of these sections of the proposed rules (and is now the next-to-last sentence of these sections of the final rules) to clarify that months for which an individual has social security disability benefits continued under § 404.1597a pending reconsideration and/or a hearing before an administrative law judge on a medical cessation determination will not count toward the 24-month requirement. In making this revision in

final § 416.990(i)(2)(i), we changed the cross-reference to § 416.996 (relating to SSI benefit continuation pending appeal of a medical cessation) that was contained in proposed § 416.990(i)(2)(i). In final § 416.990(i)(2)(i), we substituted a reference to § 404.1597a, which is the appropriate section of our regulations that concerns an individual's election of continuation of social security disability benefits pending an appeal of a medical cessation determination.

In §§ 404.1594(i) and 416.994(b)(8) of these final rules, we have revised certain cross-references that were contained in these sections of the proposed rules. For example, in final § 416.994(b)(8)(iii), we have substituted a reference to ''paragraph (b)(5) of this section'' for the reference to ''paragraph (f) of this section'' that was contained in proposed § 416.994(b)(8)(iii). The evaluation steps for the medical improvement review standard for SSI adult disability cases are contained in paragraph (b)(5) of § 416.994.

Also, in these final rules, we have made a few, minor, nonsubstantive changes in punctuation and wording from the proposed rules to improve the clarity of these final regulations.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations impose no reporting or recordkeeping requirements that require OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security, Vocational rehabilitation.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Vocational rehabilitation.

Dated: August 3, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts J and P of part 404 and subparts I and N of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions [Amended]

■ 1. The authority citation for subpart J continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 2. Section 404.903 is amended by removing the word ''and'' at the end of paragraph (x), replacing the period at the end of paragraph (y) with ''; '', and adding a new paragraph (z) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(z) Starting or discontinuing a continuing disability review; and

Subpart P—Determining Disability and Blindness [Amended]

■ 3. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a), (i), and (m), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a), (i), and (m), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 4. Section 404.1574 is amended by revising paragraph (b) to read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 404.1576, and then the guides in paragraphs (b)(2) and (3) of this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 404.1576). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2) and (3) of this section. See § 404.1574a for our rules on averaging earnings.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons) show that you engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1,* 2001, and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300

TABLE 1—Continued

For months:	Your monthly earnings averaged more than:
January 1990–June 1999	500
July 1999–December 2000 ..	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.*

(i) *General.* If your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We will generally not consider other information in addition to your earnings except in the circumstances described in paragraph (b)(3)(ii) of this section.

(ii) *When we will consider other information in addition to your earnings.* We will generally consider other information in addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to control when earnings are paid to you or the amount of wages paid to you (for example, if you are working for a small corporation owned by a relative). (See paragraph (b)(3)(iii) of this section for when we do not apply this rule.) Examples of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

(iii) *Special rule for considering earnings alone when evaluating the work you do after you have received social security disability benefits for at least 24 months.* Notwithstanding paragraph (b)(3)(ii) of this section, we will not consider other information in addition to your earnings to evaluate the work you are doing or have done if—

(A) At the time you do the work, you are entitled to social security disability benefits and you have received such benefits for at least 24 months (see paragraph (b)(3)(iv) of this section); and

(B) We are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity (see §§ 404.1592a(a)(1) and (3)(ii) and 404.1594(d)(5) and (f)(1)).

(iv) *When we consider you to have received social security disability benefits for at least 24 months.* For purposes of paragraph (b)(3)(iii) of this section, social security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability. We consider you to have received such benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you actually received social security disability benefits that you were due or constructively received such benefits. The 24 months do not have to be consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment. Any months for which you were entitled to benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

* * * * *

■ 5. Section 404.1575 is amended by revising paragraphs (a) and (c) and adding new paragraph (e) to read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* If you are working or have worked as a self-employed person, we will use the provisions in paragraphs (a) through (e) of this section that are relevant to your work activity. We will use these provisions whenever they are appropriate, whether in connection with your application for disability benefits (when we make an initial determination on your application and throughout any appeals you may request), after you have become entitled to a period of disability or to disability benefits, or both.

(1) *How we evaluate the work you do after you have become entitled to disability benefits.* If you are entitled to social security disability benefits and you work as a self-employed person, the way we will evaluate your work activity will depend on whether the work activity occurs before or after you have received such benefits for at least 24 months and on the purpose of the evaluation. For purposes of paragraphs (a) and (e) of this section, social security disability benefits means disability insurance benefits for a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability. We will use the rules in paragraph (e)(2) of this section to determine if you have received such benefits for at least 24 months.

(i) We will use the guides in paragraph (a)(2) of this section to evaluate any work activity you do before you have received social security disability benefits for at least 24 months to determine whether you have engaged in substantial gainful activity, regardless of the purpose of the evaluation.

(ii) We will use the guides in paragraph (e) of this section to evaluate any work activity you do after you have received social security disability benefits for at least 24 months to determine whether you have engaged in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity.

(iii) If we have determined under § 404.1592a(a)(1) that your disability ceased in a month during the reentitlement period because you performed substantial gainful activity, and we need to decide under § 404.1592a(a)(2)(i) or (a)(3)(i) whether you are doing substantial gainful activity in a subsequent month in or after your reentitlement period, we will use the guides in paragraph (a)(2) of this section (subject to the limitations described in § 404.1592a(a)(2)(i) and (a)(3)(i)) to determine whether your work activity in that month is substantial gainful activity. We will use the guides in paragraph (a)(2) of this section for these purposes, regardless of whether your work activity in that month occurs before or after you have received social security disability benefits for at least 24 months.

(2) *General rules for evaluating your work activity if you are self-employed.* We will consider your activities and their value to your business to decide whether you have engaged in

substantial gainful activity if you are self-employed. We will not consider your income alone because the amount of income you actually receive may depend on a number of different factors, such as capital investment and profit-sharing agreements. We will generally consider work that you were forced to stop or reduce to below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section. We will evaluate your work activity based on the value of your services to the business regardless of whether you receive an immediate income for your services. We determine whether you have engaged in substantial gainful activity by applying three tests. If you have not engaged in substantial gainful activity under test one, then we will consider tests two and three. The tests are as follows:

(i) *Test one:* You have engaged in substantial gainful activity if you render services that are significant to the operation of the business and receive a substantial income from the business. Paragraphs (b) and (c) of this section explain what we mean by significant services and substantial income for purposes of this test.

(ii) *Test Two:* You have engaged in substantial gainful activity if your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood.

(iii) *Test Three:* You have engaged in substantial gainful activity if your work activity, although not comparable to that of unimpaired individuals, is clearly worth the amount shown in § 404.1574(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing.

* * * * *

(c) *What we mean by substantial income.* (1) *Determining countable income.* We deduct your normal business expenses from your gross income to determine net income. Once we determine your net income, we deduct the reasonable value of any significant amount of unpaid help furnished by your spouse, children, or others. Miscellaneous duties that ordinarily would not have commercial value would not be considered significant. We deduct impairment-related work expenses that have not already been deducted in determining your net income. Impairment-related work expenses are explained in § 404.1576. We deduct unincurred business expenses paid for you by another individual or agency. An unincurred business expense occurs when a sponsoring agency or another person incurs responsibility for the payment of certain business expenses, e.g., rent, utilities, or purchases and repair of equipment, or provides you with equipment, stock, or other material for the operation of your business. We deduct soil bank payments if they were included as farm income. That part of your income remaining after we have made all applicable deductions represents the actual value of work performed. The resulting amount is the amount we use to determine if you have done substantial gainful activity. For purposes of this section, we refer to this amount as your countable income. We will generally average your countable income for comparison with the earnings guidelines in § 404.1574(b)(2). See § 404.1574a for our rules on averaging of earnings.

(2) *When countable income is considered substantial.* We will consider your countable income to be substantial if—

(i) It averages more than the amounts described in § 404.1574(b)(2); or

(ii) It averages less than the amounts described in § 404.1574(b)(2) but it is either comparable to what it was before you became seriously impaired if we had not considered your earnings or is comparable to that of unimpaired self-employed persons in your community who are in the same or a similar business as their means of livelihood.

* * * * *

(e) *Special rules for evaluating the work you do after you have received social security disability benefits for at least 24 months.* (1) *General.* We will apply the provisions of this paragraph to evaluate the work you are doing or have done if, at the time you do the work, you are entitled to social security disability benefits and you have received such benefits for at least 24 months. We will apply the provisions of this paragraph only when we are evaluating that work to consider whether you have engaged in substantial gainful activity or demonstrated the ability to engage in substantial gainful activity for the purpose of determining whether your disability has ceased because of your work activity (see §§ 404.1592a(a)(1) and (3)(ii) and 404.1594(d)(5) and (f)(1)). We will use the countable income test described in paragraph (e)(3) of this section to determine whether the work you do after you have received such benefits for at least 24 months is substantial gainful activity or demonstrates the ability to do substantial gainful activity. We will not consider the services you perform in that work to determine that the work you are doing shows that you are able to engage in substantial gainful activity and are, therefore, no longer disabled. However, we may consider the services you perform to determine that you are not doing substantial gainful activity. We will generally consider work that you were forced to stop or reduce below substantial gainful activity after 6 months or less because of your impairment as an unsuccessful work attempt. See paragraph (d) of this section.

(2) *The 24-month requirement.* For purposes of paragraphs (a)(1) and (e) of this section, we consider you to have received social security disability benefits for at least 24 months beginning with the first day of the first month following the 24th month for which you actually received social security disability benefits that you were due or constructively received such benefits. The 24 months do not have to be consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment. Any months for which you were entitled to benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

(3) *Countable income test.* We will compare your countable income to the earnings guidelines in § 404.1574(b)(2) to determine if you have engaged in substantial gainful activity. See paragraph (c)(1) of this section for an explanation of countable income. We will consider that you have engaged in substantial gainful activity if your monthly countable income averages more than the amounts described in § 404.1574(b)(2) for the month(s) in which you work, unless the evidence shows that you did not render significant services in the month(s). See paragraph (b) of this section for what we mean by significant services. If your average monthly countable income is equal to or less than the amounts in

§ 404.1574(b)(2) for the month(s) in which you work, or if the evidence shows that you did not render significant services in the month(s), we will consider that your work as a self-employed person shows that you have not engaged in substantial gainful activity.

■ 6. Section 404.1590 is amended by adding three new sentences to the end of paragraph (a), revising paragraph (b) introductory text and paragraphs (b)(6), (b)(7)(i), and (b)(8), and adding new paragraphs (h) and (i) to read as follows:

§ 404.1590 When and how often we will conduct a continuing disability review.

(a) *General.* * * * In paragraphs (b) through (g) of this section, we explain when and how often we conduct continuing disability reviews for most individuals. In paragraph (h) of this section, we explain special rules for some individuals who are participating in the Ticket to Work program. In paragraph (i) of this section, we explain special rules for some individuals who work.

(b) *When we will conduct a continuing disability review.* Except as provided in paragraphs (h) and (i) of this section, we will start a continuing disability review if—

* * * * *

(6) You tell us that—

(i) You have recovered from your disability; or

(ii) You have returned to work;

(7) * * *

(i) The services have been completed; or

* * * * *

(8) Someone in a position to know of your physical or mental condition tells us any of the following, and it appears that the report could be substantially correct:

(i) You are not disabled; or

(ii) You are not following prescribed treatment; or

(iii) You have returned to work; or

(iv) You are failing to follow the provisions of the Social Security Act or these regulations;

* * * * *

(h) *If you are participating in the Ticket to Work program.* If you are participating in the Ticket to Work program, we will not start a continuing disability review during the period in which you are using a ticket. However, this provision does not apply to reviews we conduct using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled. See subpart C of part 411 of this chapter.

(i) *If you are working and have received social security disability benefits for at least 24 months.*

(1) *General.* Notwithstanding the provisions in paragraphs (b)(4), (b)(5), (b)(6)(ii), (b)(7)(ii), and (b)(8)(iii) of this section, we will not start a continuing disability review based solely on your work activity if—

(i) You are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability; and

(ii) You have received such benefits for at least 24 months (see paragraph (i)(2) of this section).

(2) *The 24-month requirement.*

(i) The months for which you have actually received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due, or for which you have constructively received such benefits, will count for the 24-month requirement under paragraph (i)(1)(ii) of this section, regardless of whether the months were consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for that month and your monthly benefit was withheld to recover an overpayment. Any month for which you were entitled to benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. Months for which your social security disability benefits are continued under § 404.1597a pending reconsideration and/or a hearing before an administrative law judge on a medical cessation determination will not be counted for the 24-month requirement. If you also receive supplemental security income payments based on disability or blindness under title XVI of the Social Security Act, months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

(ii) In determining whether paragraph (i)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability for at least 24 months as of the date on which we start a continuing disability review. For purposes of this provision, the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

(3) *When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months.* Even if you meet the requirements of paragraph (i)(1) of this section, we may still start a continuing disability review for a reason(s) other than your work activity. We may start a continuing disability review if we have scheduled you for a periodic review of your continuing disability, we need a current medical or other report to see if your disability continues, we receive evidence which raises a question as to whether your disability continues, or you fail to follow the provisions of the Social Security Act or these regulations. For example, we will start a continuing disability review when you have been scheduled for a medical improvement expected diary review, and we may start a continuing disability review if you failed to report your work to us.

(4) *Reviews to determine whether the work you have done shows that you are able to do substantial gainful activity.* Paragraph (i)(1) of this section does not apply to reviews we conduct using the rules in §§ 404.1571–404.1576 to determine whether the work you have done shows that you are able to do substantial gainful activity and are, therefore, no longer disabled.

(5) *Erroneous start of the continuing disability review.* If we start a continuing disability review based solely on your work activity that results in a medical cessation determination, we will vacate the medical cessation determination if—

(i) You provide us evidence that establishes that you met the requirements of paragraph (i)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and

(ii) We receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.

■ 7. Section 404.1592a is amended by revising the second sentence of paragraph (a)(1), the sixth sentence of paragraph (a)(2)(i), and paragraph (a)(3) to read as follows:

§ 404.1592a The reentitlement period.

(a) * * *

(1) * * * When we decide whether this work is substantial gainful activity, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings,

unsuccessful work attempts, and deducting impairment-related work expenses, as well as the special rules for evaluating the work you do after you have received disability benefits for at least 24 months. * * *

(2)(i) * * * Once we have determined that your disability has ceased during the reentitlement period because of the performance of substantial gainful activity as explained in paragraph (a)(1) of this section, we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, the provisions of § 404.1574a regarding averaging of earnings, or the special rules in §§ 404.1574(b)(3)(iii) and 404.1575(e) for evaluating the work you do after you have received disability benefits for at least 24 months, to determine whether benefits should be paid for any particular month in the reentitlement period that occurs after the month your disability ceased.

* * * * *

(3) The way we will consider your work activity after your reentitlement period ends (see paragraph (b)(2) of this section) will depend on whether you worked during the reentitlement period and if you did substantial gainful activity.

(i) If you worked during the reentitlement period and we decided that your disability ceased during the reentitlement period because of your work under paragraph (a)(1) of this section, we will find that your entitlement to disability benefits terminates in the first month in which you engaged in substantial gainful activity after the end of the reentitlement period (see § 404.325). (See § 404.321 for when entitlement to a period of disability ends.) When we make this determination, we will consider only your work in, or earnings for, that month; we will not apply the provisions of §§ 404.1574(c) and 404.1575(d) regarding unsuccessful work attempts, the provisions of § 404.1574a regarding averaging of earnings, or the special rules in §§ 404.1574(b)(3)(iii) and 404.1575(e) for evaluating the work you do after you have received disability benefits for at least 24 months.

(ii) If we did not find that your disability ceased because of work activity during the reentitlement period, we will apply all of the relevant provisions of §§ 404.1571–404.1576 including, but not limited to, the provisions for averaging earnings, unsuccessful work attempts, and deducting impairment-related work expenses, as well as the special rules for evaluating the work you do after you have received disability benefits for at least 24 months, to determine whether your disability ceased because you performed substantial gainful activity after the reentitlement period. If we find that your disability ceased because you performed substantial gainful activity in a month after your reentitlement period ended, you will be paid benefits for the month in which your disability ceased and the two succeeding months. After those three months, your entitlement to a period of disability or to disability benefits terminates (see §§ 404.321 and 404.325).

* * * * *

■ 8. Section 404.1594 is amended by adding a new sentence to the end of paragraph (b) introductory text, adding a sentence to paragraph (c) introductory text immediately following the first sentence, revising the third sentence of paragraph (f) introductory text and adding a new fourth sentence, and adding a new paragraph (i) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(b) *Terms and definitions.* * * * In addition, see paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.

* * * * *

(c) *Determining medical improvement and its relationship to your abilities to do work.* * * * (In addition, see paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.) * * *

* * * * *

(f) *Evaluation steps.* * * * The steps are as follows. (See paragraph (i) of this section if you work during your current period of entitlement based on disability or during certain other periods.)

* * * * *

(i) *If you work during your current period of entitlement based on disability or during certain other periods.* (1) We will not consider the work you are doing or have done during your current period of entitlement based on disability (or, when determining whether you are entitled to expedited reinstatement of benefits under section 223(i) of the Act, the work you are doing or have done during or after the previously terminated period of entitlement referred to in section 223(i)(1)(B) of the Act) to be past relevant work under paragraph (f)(7) of this section or past work experience under paragraph (f)(8) of this section. In addition, if you are currently entitled to disability benefits under title II of the Social Security Act, we may or may not consider the physical and mental activities that you perform in the work you are doing or have done during your current period of entitlement based on disability, as explained in paragraphs (i)(2) and (3) of this section.

(2) If you are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act, and at the time we are making a determination on your case you have received such benefits for at least 24 months, we will not consider the activities you perform in the work you are doing or have done during your current period of entitlement based on disability if they support a finding that your disability has ended. (We will use the rules in § 404.1590(i)(2) to determine whether the 24-month requirement is met.) However, we will consider the activities you do in that work if they support a finding that your disability continues or they do not conflict with a finding that your disability continues. We will not presume that you are still disabled if you stop working.

(3) If you are not a person described in paragraph (i)(2) of this section, we will consider the activities you perform in your work at any of the evaluation steps in paragraph (f) of this section at which we need to assess your ability to function.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness [Amended]

■ 9. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

■ 10. Section 416.974 is amended by revising paragraph (b) to read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(b) *Earnings guidelines.* (1) *General.* If you are an employee, we first consider the criteria in paragraph (a) of this section and § 416.976, and then the guides in paragraphs (b)(2) and (3) of

this section. When we review your earnings to determine if you have been performing substantial gainful activity, we will subtract the value of any subsidized earnings (see paragraph (a)(2) of this section) and the reasonable cost of any impairment-related work expenses from your gross earnings (see § 416.976). The resulting amount is the amount we use to determine if you have done substantial gainful activity. We will generally average your earnings for comparison with the earnings guidelines in paragraphs (b)(2) and (3) of this section. See § 416.974a for our rules on averaging earnings.

(2) *Earnings that will ordinarily show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activity as an employee (including earnings from work in a sheltered workshop or a comparable facility especially set up for severely impaired persons) show that you have engaged in substantial gainful activity if:

(i) *Before January 1, 2001,* they averaged more than the amount(s) in Table 1 of this section for the time(s) in which you worked.

(ii) *Beginning January 1, 2001,* and each year thereafter, they average more than the larger of:

(A) The amount for the previous year, or

(B) An amount adjusted for national wage growth, calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calendar years before the year for which the amount is being calculated to the national average wage index for the year 1998. We will then round the resulting amount to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

TABLE 1

For months:	Your monthly earnings averaged more than:
In calendar years before 1976	$200
In calendar year 1976	230
In calendar year 1977	240
In calendar year 1978	260
In calendar year 1979	280
In calendar years 1980–1989	300
January 1990–June 1999	500
July 1999–December 2000	700

(3) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.*

(i) *General.* If your average monthly earnings are equal to or less than the amount(s) determined under paragraph (b)(2) of this section for the year(s) in which you work, we will generally consider that the earnings from your work as an employee (including earnings from work in a sheltered workshop or comparable facility) will show that you have not engaged in substantial gainful activity. We will generally not consider other information in addition to your earnings except in the circumstances described in paragraph (b)(3)(ii) of this section.

(ii) *When we will consider other information in addition to your earnings.* Unless you meet the criteria set forth in section 416.990 (h) and (i), we will generally consider other information in addition to your earnings if there is evidence indicating that you may be engaging in substantial gainful activity or that you are in a position to control when earnings are paid to you or the amount of wages paid to you (for example, if you are working for a small corporation owned by a relative). Examples of other information we may consider include, whether—

(A) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; and

(B) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in your community.

* * * * *

■ 11. Section 416.990 is amended by adding three new sentences to the end of paragraph (a), revising paragraph (b) introductory text and paragraphs (b)(4), (b)(6), and (b)(8), and adding new paragraphs (h) and (i) to read as follows:

§ 416.990 When and how often we will conduct a continuing disability review.

(a) *General.* * * * In paragraphs (b) through (g) of this section, we explain when and how often we conduct continuing disability reviews for most individuals. In paragraph (h) of this section, we explain special rules for some individuals who are participating in the Ticket to Work program. In paragraph (i) of this section, we explain special rules for some individuals who work and have received social security benefits as well as supplemental security income payments.

(b) *When we will conduct a continuing disability review.* Except as provided in paragraphs (h) and (i) of this section, we will start a continuing disability review if—

* * * * *

(4) You return to work;

* * * * *

(6) You tell us that—

(i) You have recovered from your disability; or

(ii) You have returned to work;

* * * * *

(8) Someone in a position to know of your physical or mental condition tells us any of the following, and it appears that the report could be substantially correct:

(i) You are not disabled or blind; or

(ii) You are not following prescribed treatment; or

(iii) You have returned to work; or

(iv) You are failing to follow the provisions of the Social Security Act or these regulations;

* * * * *

(h) *If you are participating in the Ticket to Work program.* If you are participating in the Ticket to Work program, we will not start a continuing disability review during the period in which you are using a ticket. See subpart C of part 411 of this chapter.

(i) *If you are working and have received social security disability benefits for at least 24 months.*

(1) *General.* Notwithstanding the provisions in paragraphs (b)(4), (b)(5), (b)(6)(ii), (b)(7)(ii), and (b)(8)(iii) of this section, we will not start a continuing disability review based solely on your work activity if—

(i) You are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act (see subpart D of part 404 of this chapter); and

(ii) You have received such benefits for at least 24 months (see paragraph (i)(2) of this section).

(2) *The 24-month requirement.* (i) The months for which you have actually received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability that you were due under title II of the Social Security Act, or for which you have constructively received such benefits, will count for the 24-month requirement under paragraph (i)(1)(ii) of this section, regardless of whether the months were consecutive. We will consider you to have constructively received a benefit for a month for purposes of the 24-month requirement if you were otherwise due a social security disability benefit for

that month and your monthly benefit was withheld to recover an overpayment. Any month for which you were entitled to social security disability benefits but for which you did not actually or constructively receive a benefit payment will not be counted for the 24-month requirement. Months for which your social security disability benefits are continued under § 404.1597a pending reconsideration and/or a hearing before an administrative law judge on a medical cessation determination will not be counted for the 24-month requirement. Months for which you received only supplemental security income payments will not be counted for the 24-month requirement.

(ii) In determining whether paragraph (i)(1) of this section applies, we consider whether you have received disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act for at least 24 months as of the date on which we start a continuing disability review. For purposes of this provision, the date on which we start a continuing disability review is the date on the notice we send you that tells you that we are beginning to review your disability case.

(3) *When we may start a continuing disability review even if you have received social security disability benefits for at least 24 months.* Even if you meet the requirements of paragraph (i)(1) of this section, we may still start a continuing disability review for a reason(s) other than your work activity. We may start a continuing disability review if we have scheduled you for a periodic review of your continuing disability, we need a current medical or other report to see if your disability continues, we receive evidence which raises a question as to whether your disability or blindness continues, or you fail to follow the provisions of the Social Security Act or these regulations. For example, we will start a continuing disability review when you have been scheduled for a medical improvement expected diary review, and we may start a continuing disability review if you failed to report your work to us.

(4) *Erroneous start of the continuing disability review.* If we start a continuing disability review based solely on your work activity that results in a medical cessation determination, we will vacate the medical cessation determination if—

(i) You provide us evidence that establishes that you met the requirements of paragraph (i)(1) of this section as of the date of the start of your continuing disability review and that the start of the review was erroneous; and

(ii) We receive the evidence within 12 months of the date of the notice of the initial determination of medical cessation.

■ 12. Section 416.994 is amended by revising the section heading, adding a new sentence to the end of paragraph (b)(1) introductory text, adding a sentence to paragraph (b)(2) introductory text immediately following the first sentence, revising the third sentence of paragraph (b)(5) introductory text and adding a new sentence to the end of the paragraph, and adding a new paragraph (b)(8) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) *Disabled persons age 18 or over (adults).* * * *

(1) *Terms and definitions.* * * * In addition, see paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.

* * * * *

(2) *Determining medical improvement and its relationship to your abilities to do work.*

* * * (In addition, see paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.) * * *

* * * * *

(5) *Evaluation steps.* * * * The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)

* * * * *

(8) *If you work during your current period of eligibility based on disability or during certain other periods.*

(i) We will not consider the work you are doing or have done during your current period of eligibility based on disability (or, when determining whether you are eligible for expedited reinstatement of benefits under section 1631(p) of the Act, the work you are doing or have done during or after the previously terminated period of eligibility referred to in section 1631(p)(1)(B) of the Act) to be past relevant work under paragraph (b)(5)(vi) of this section or past work experience under paragraph (b)(5)(vii) of this section. In addition, if you are currently entitled to disability benefits under title II of the Social Security Act, we may or may not consider the physical and mental activities that you perform in the work you are doing or have done during your current period of entitlement based on disability, as explained in paragraphs (b)(8)(ii) and (iii) of this section.

(ii) If you are currently entitled to disability insurance benefits as a disabled worker, child's insurance benefits based on disability, or widow's or widower's insurance benefits based on disability under title II of the Social Security Act, and at the time we are making a determination on your case you have received such benefits for at least 24 months, we will not consider the activities you perform in the work you are doing or have done during your current period of entitlement based on disability if they support a finding that your disability has ended. (We will use the rules in § 416.990(i)(2) to determine whether the 24-month requirement is met.) However, we will consider the activities you do in that work if they support a finding that your disability continues or they do not conflict with a finding that your disability continues. We will not presume that you are still disabled if you stop working.

(iii) If you are not a person described in paragraph (b)(8)(ii) of this section, we will consider the activities you perform in your work at any of the evaluation steps in paragraph (b)(5) of this section at which we need to assess your ability to function. However, we will not consider the work you are doing or have done during your current period of eligibility based on disability (or, when determining whether you are eligible for expedited reinstatement of benefits under section 1631(p) of the Act, the work you are doing or have done during or after the previously terminated period of eligibility referred to in section 1631(p)(1)(B) of the Act) to be past relevant work under paragraph (b)(5)(vi) of this section or past work experience under paragraph (b)(5)(vii) of this section.

* * * * *

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions [Amended]

■ 13. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

■ 14. Section 416.1403 is amended by removing the word ''and'' at the end of paragraph (a)(22), replacing the period at the end of paragraph (a)(23) with '';

and'', and adding new paragraph (a)(24) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(24) Starting or discontinuing a continuing disability review; and

* * * * *

[FR Doc. E6–19255 Filed 11–16–06; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0099]

RIN 0960–AG10

Rules for the Issuance of Work Report Receipts, Payment of Benefits for Trial Work Period Service Months After a Fraud Conviction, Changes to the Student Earned Income Exclusion, and Expansion of the Reentitlement Period for Childhood Disability Benefits

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising our rules to reflect and implement sections 202, 208, 420A, and 432 of the Social Security Protection Act of 2004 (the SSPA). Section 202 of the SSPA requires us to issue a receipt each time you or your representative report a change in your work activity or give us documentation of a change in your earnings if you receive benefits based on disability under title II or title XVI of the Social Security Act (the Act). Section 208 changes the way we pay benefits during the trial work period if you are convicted by a Federal court of fraudulently concealing your work activity. Section 420A changed the law to allow you to become reentitled to childhood disability benefits under title II at any time if your previous entitlement to childhood disability benefits was terminated because of the performance of substantial gainful activity. Section 432 changes the way we decide if you are eligible for the student earned income exclusion. We will also apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent. We are also changing the SSI student policy to include home schooling as a form of regular school attendance.

DATES: These final rules are effective December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Cindy Duzan, Policy Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–4203, or TTY (410) 966–5609 for information about these final rules. For information on eligibility or filing for benefits, call our national toll-free number 1 (800) 772–1213 or TTY 1 (800) 325–0778. You may also contact Social Security Online, at *http://www.socialsecurity.gov/.*

SUPPLEMENTARY INFORMATION: Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

We are amending our rules to reflect and implement sections 202, 208, 420A, and 432 of the SSPA. These changes apply to you if you engage in work activity while entitled to or eligible for benefits based on disability under title II or title XVI of the Act.

We are also changing the SSI student policy to include home schooling as a form of regular school attendance. This may allow more individuals to benefit from the student earned income exclusion. This change, which is separate from the changes being made to reflect and implement the SSPA, will make the title II and title XVI programs uniform with respect to home schooling. The title II program recognizes home schooling as a form of school attendance. We will also apply the student earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent.

When Will We Start To Use These Rules?

The effective date of the provisions of the SSPA that are the subject of these final rules are set forth below and take effect on the dates mandated by statute. The changes regarding home schooling and the extension of the student earned income exclusion to ineligible individuals will take effect 30 days after publication of these rules in the **Federal Register**.

What Is the Purpose of Section 202?

Section 202 of the SSPA requires us to issue a receipt to you or your representative each time you or your representative report a change in your work activity or give us evidence of a change in your earnings, such as your pay stubs, if you receive benefits based on disability under title II or title XVI of the Act. The law provides that we are to issue a receipt each time you or your representative report to us until we establish a centralized computer file that will electronically record the information about the change in your work activity and the date that you make your report. After the centralized computer file is implemented, we will continue to issue receipts to you or your representative automatically for a trial period of at least 6 months during which we will assess the effectiveness of our centralized computer file.

Once we determine that the automatic issuance of work receipts is no longer necessary, we will continue to issue receipts to you or your representative upon request. Adequate notice will be provided when this procedural change is put in place.

In the past, the reports you gave to us about your work activity may not have been processed timely, resulting in processing delays. This might have caused us to pay benefits to you incorrectly, without considering the effect your work and earnings may have had on your benefits, causing you to become overpaid. We are implementing a new centralized computer system which will create an electronic record of the work information that you report to us. This will help us ensure that we fulfill our responsibility to process your earnings reports and pay benefits to you correctly. We currently expect this centralized computer system to be operational in the summer of 2006. Issuing a receipt to you when you report your work or earnings will provide you with proof that you properly fulfilled your responsibility to report your earnings to us.

Why Must You Report Your Work Activity?

If you receive benefits based on disability under title II of the Act or are eligible for benefits under title XVI, you are required to report changes in your work activity and earnings to us. (See §§ 404.1588 and 416.708.)

Your earnings can affect your eligibility for benefits or the amount of your benefits.

You can report your work to us:

- By phone to our toll free number;
- In person or by phone to your local office; or
- By mailing your pay stubs to your local office.

We are also making efforts to expand the ways you can report information to us.

What Is the Effective Date of Section 202?

The statutory change that requires us to issue receipts every time you or your representative report a change in your work activity or give us documentation of a change in your earnings is effective as soon as possible, but no later than March 2, 2005. We are currently issuing receipts to you or your representative and will continue to do so at least until

we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

What Is the Purpose of Section 208?

Section 208 of the SSPA provides that if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period, no benefits are payable for any trial work period service month (generally a month of work activity, see § 404.1592) that occurred in or after March 2004 and before the date of your conviction. Section 208 of the SSPA will help to deter fraud within the Social Security program by prohibiting payment for trial work period service months to disabled individuals who are convicted of fraudulently concealing work activity.

What Is the Trial Work Period?

The trial work period allows a title II beneficiary to test his or her ability to work for at least 9 months and still be considered disabled. During your trial work period, you continue to be entitled to receive your Social Security disability insurance benefits regardless of how high your earnings might be so long as you continue to have a disabling impairment. The trial work period continues until you accumulate 9 months (not necessarily consecutive) in which you performed ''services'' (i.e., work activity) within a rolling 60-consecutive-month period. We use this ''services'' rule to count trial work period months. Under section 222(c)(2) of the Act and § 404.1592(b) of the regulations, services means any activity (whether legal or illegal), which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally use earnings guidelines to evaluate whether the work activity you are performing as an employee or self-employed person is services for the trial work period. We consider your work in a particular month to be services if you earn more than $620 in that month for the year 2006, or work more than 80 self-employed hours in that month. The dollar amount is adjusted each year based on the national average wage.

What Is the Effective Date of Section 208?

The statutory change provides that an individual is not entitled to receive title II disability benefits for trial work period service months that occur in or after March 2004 and before the date of conviction by a Federal court of fraudulently concealing work activity during that trial work period.

What Is the Purpose of Section 420A?

Section 420A of the SSPA applies to you if you are a disabled adult, your disability began before the age of 22, and you became eligible for ''childhood disability benefits'' (i.e., benefits for disabled adult children) under title II of the Act once you reached your 18th birthday. Section 420A of the SSPA provides that if your previous entitlement to childhood disability benefits under title II of the Act ended due to the performance of substantial gainful activity, you may become reentitled to childhood disability benefits at any time if you become disabled again and you meet other requirements for reentitlement as described in § 404.351. Prior to the effective date of section 420A, if childhood disability benefits were terminated because disability ceased, you could become reentitled to benefits only if you became disabled again within 7 years of the most recent termination.

Section 420A removed a significant disincentive to work for childhood disability beneficiaries by removing the 7-year restriction on reentitlement for individuals whose entitlement to childhood disability benefits was terminated due to the performance of substantial gainful activity. The 7-year restriction continues to apply to beneficiaries whose previous entitlement to childhood disability benefits terminated because of medical improvement.

What Is the Effective Date of Section 420A?

The statutory change that removed the 7-year restriction on reentitlement to childhood disability benefits under title II of the Act, if the previous entitlement terminated due to the performance of substantial gainful activity, became effective with respect to benefits payable for months beginning October 2004.

What Is the Purpose of Section 432?

Section 432 of the SSPA changes who is eligible for the student earned income exclusion under title XVI of the Act. The law increases the number of persons eligible for the exclusion by eliminating the requirement that you must meet the definition of a child under our SSI rules to be eligible for this exclusion. Specifically, section 432 of the SSPA removes the restriction that you must be unmarried and not head of your own household to qualify. You no longer need to be considered a ''child'' to get the student earned income exclusion, you only must be under the age of 22, and, as before, regularly attending a school, college, or university, or a course of vocational or technical training to prepare for gainful employment.

What Is the Student Earned Income Exclusion?

The student earned income exclusion is a provision that allows us to exclude a greater amount of your earned income if you are a student than we do under our usual income counting rules. If you meet the definition of child for SSI and you are regularly attending school, we exclude a greater amount of your earned income when determining your eligibility for, and the amount of, benefits. For the year 2006, we do not count up to $1,460 of earned income per month, up to a maximum yearly exclusion of $5,910. These dollar amounts are adjusted each year by the cost-of-living adjustment (COLA) that is used to adjust the SSI Federal Benefit Rate. Section 432 eliminated the requirement that you meet the definition of a child to be eligible for the student earned income exclusion.

Who Can Use the Student Earned Income Exclusion for the Period Before April 1, 2005?

Before April 1, 2005, (that is, before the changes made by section 432 of the SSPA), you could qualify for the student earned income exclusion if you were:

- Under age 22;
- Unmarried;
- Not the head of your own household; and
- Regularly attending school, college or university, or a course of vocational or technical training designed to prepare you for gainful employment.

Section 416.1861 provides that you are a student if you are regularly attending school or college, or training that is designed to prepare you for a paying job, if you are enrolled for one or more courses of study and attend class (1) in a college or university for at least 8 hours a week under a semester or quarter system, (2) in grades 7–12 for at least 12 hours a week, or (3) in a course of training to prepare for a paying job, and attending that training for at least 15 hours a week if the training involves shop practice or 12 hours a week if it does not involve shop practice. Prior to this final rulemaking, § 416.1861 did not specifically address home schooling as a form of regular school attendance. However, § 404.367 recognizes, as full-time school attendance students, those who are instructed at home in accordance with

a home school law of the State or other jurisdiction in which they reside.

How Do Section 432 and the Revision Regarding Home Schooling Change the Student Earned Income Exclusion?

Section 432 of the SSPA eliminates the requirement that you must be a child to qualify for the student earned income exclusion. Specifically, it removes the requirement that you must be unmarried and not the head of your own household.

These final rules regarding home schooling allow you to be considered a student regularly attending school if you are instructed at home in grades 7–12 in accordance with a home school law of the State or other jurisdiction in which you live and for at least 12 hours a week. Allowing home schooling as a form of regular school attendance will make the title II and title XVI programs uniform with respect to home schooling. We hope that our rule change to consider home schooling, and the statute's removal of the child requirement, will increase the number of persons who can benefit from the student earned income exclusion.

Will the Student Earned Income Exclusion Apply to Deemors?

Yes. Section 1614(f) of the Act requires that when we determine an individual's eligibility for SSI benefits, we must consider the income and resources of an ineligible spouse living in the same household, or, in the case of a child under the age of 18, the income and resources of an ineligible parent living in the same household. We use the term ''deeming'' to describe this process of considering part of an ineligible spouse's or parent's income and resources to be the individual's own income and resources. Deeming an ineligible parent's income and resources to a child eligible for SSI benefits is only done if the child is under age 18 and is subject to parental control. Section 1614(f) also grants the Commissioner the discretion to not deem the income and resources of an ineligible spouse or parent to an eligible individual when the Commissioner determines that deeming would be inequitable under the circumstances.

In addition to adding to our regulations the change in how we determine an eligible individual's income required by section 432 of the SSPA, we will apply this earned income exclusion when determining the countable income of an ineligible spouse or ineligible parent who is a student, that is, someone who is under age 22 and who regularly attends school or college or training designed to prepare them for a paying job. When more than one individual in a household qualifies for the student earned income exclusion—for example, in instances where a deemor and a deemor's disabled child are both eligible for the student earned income exclusion—our operating procedures contain instructions to apply the entire student earned income exclusion amount to the single household.

Extending this student earned income exclusion to the deeming process, as authorized by section 1614(f) of the Act, is consistent with the SSI program's longstanding treatment of income and resources of spouses and parents comparably to the way that income and resources of an eligible individual would be treated. It also provides incentives to encourage work and education to ineligible individuals living with beneficiaries.

What Is the Effective Date of Section 432 and the Revision Regarding Home Schooling?

The statutory changes that allow those who are married and the head of a household to also qualify for the student earned income exclusion are effective with benefits payable April 1, 2005. The changes to allow home schooling as a form of regular school attendance and the extension of the student earned income exclusion to ineligible individuals will be effective 30 days after publication of these final rules.

Explanation of Changes

We are revising several of our rules in subparts D, E, J, and P of part 404 and subparts G, K, N, and R of part 416 to:

- Reflect the statutory change that requires us to issue receipts to you or your representative when you or your representative report changes in your work activity or earnings or give us documentation of those changes until we establish a centralized computer file to record the information you report to us and the date you report it;
- Explain that disability benefits are not payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during that trial work period;
- Reflect the statutory change that expands the number of persons who can use the student earned income exclusion by removing the requirement that you must be a child, unmarried, and not the head of your own household;
- Expand the number of persons who can use the student earned income exclusion by allowing home schooling as a form of regular school attendance;
- Extend application of the student earned income exclusion to the income of an ineligible spouse and ineligible parent for deeming purposes; and
- Reflect the statutory change that eliminates the 7-year time limit on reentitlement to childhood disability benefits when the prior entitlement terminated due to the performance of substantial gainful activity.

The following is an explanation of the specific changes we are making and the reasons for these changes.

Section 404.351 Who May Be Reentitled to Child's Benefits

We are adding a new paragraph (d) to explain that, effective with respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at any time if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity. The regulatory language in this final rule has been changed from the language that appeared in the notice of proposed rulemaking. This was done in response to a public comment that the regulatory language in the proposed rules was difficult to decipher and should be rewritten for clarity.

Section 404.401a When We Do Not Pay Benefits Because of a Disability Beneficiary's Work Activity

We are revising the last sentence in § 404.401a to clarify that earnings from work activity during a trial work period will not stop benefits except as provided in § 404.471.

Section 404.471 Nonpayment of Disability Benefits for Trial Work Period Service Months Upon a Conviction of Fraudulently Concealing Work Activity

We are adding a new § 404.471 to explain that disability benefits will not be payable for trial work period service months if you are convicted by a Federal court of fraudulently concealing your work activity during the trial work period. As explained in § 404.1592, the trial work period is a period during which you may test your ability to work and still continue to receive disability benefits if you still have a disabling impairment, no matter how much you are earning. Under this change, which reflects section 208 of the SSPA of 2004, if you are convicted in Federal court of fraudulently concealing your work activity during your trial work period, disability benefits are not payable for any trial work period service months beginning March 2004 that occur prior to that conviction. Benefits already received that are determined not

payable because of the Federal court decision are considered an overpayment on the record. Consistent with section 208, we explain in § 404.471(b) what is meant by fraudulently concealing work activity. You can be found to be fraudulently concealing work activity if you provide false information concerning the amount of your earnings, engage in work activity under another identity while receiving disability benefits, or take actions to conceal your work activity with the intent of obtaining benefits in excess of amounts due.

Section 404.903 Administrative Actions That Are Not Initial Determinations

We are adding a new paragraph (x) to § 404.903 to explain that the receipt we give you or your representative as a result of a report of a change in your work activity or earnings is not an initial determination. As explained in existing § 404.903, administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart J of part 404, and they are not subject to judicial review. The receipt will summarize the information that you give us, and we will ask you to review the information contained in the receipt for accuracy and to tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we determine that you are not now disabled based on what you told us about your work activity, as explained in § 404.1595.

Section 404.1588 Your Responsibility to Tell Us of Events That May Change Your Disability Status

We are designating the undesignated current paragraph as paragraph (a) and adding a title: *Your responsibility to report changes to us*, and redesignating paragraphs (a), (b), (c), and (d) as (1), (2), (3), and (4). We are also adding a new paragraph (b), Our *responsibility when you report your work to us*, that clarifies how we will respond when you or your representative report a change in your work activity to us. Section 404.1588(a) explains that if you receive benefits based on disability, you must report to us when there is a change in your work activity; for example, you return to work, or there is an increase in your earnings or the amount of work you are doing. New paragraph (b) explains that we will issue a receipt to you or your representative when you or your representative report a change in your work activity or earnings, at least until a centralized computer file that records the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

Section 404.1592 The Trial Work Period

In § 404.1592 we are adding a new paragraph (f), *Nonpayment of benefits for trial work period service months*, to clarify that benefits will not be payable for trial work period service months if you have been convicted by a Federal court of fraudulently concealing your work activity. We are also adding a cross-reference to the new § 404.471.

Section 416.708 What You Must Report

We are amending the last paragraph of paragraph (c) by adding two new sentences to explain how we will respond when you report a change in your earned income. Section 416.708(c) explains that if you receive SSI benefits, you must report to us when there is a change in your income. The new sentences added to paragraph (c) explain that if you receive SSI benefits based on disability, we will issue a receipt to you or your representative when you or your representative report a change in your work activity or your earned income until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

Section 416.1112 Earned Income We Do Not Count

We are amending paragraph (c)(3) to reflect the statutory change eliminating the requirement that you must be a child to qualify for the student earned income exclusion.

Section 416.1161 Income of an Ineligible Spouse, Ineligible Parent, and Essential Person for Deeming Purposes

We are amending § 416.1161 by adding a new paragraph (a)(27) to exclude certain earned income of a student as provided by section 432 from the income of an ineligible spouse and ineligible parent for deeming purposes.

Section 416.1403 Administrative Actions That Are Not Initial Determinations

We are adding a new paragraph (a)(22) to § 416.1403 to explain that the receipt we give you or your representative as a result of your report of work activity or earnings is not an initial determination. As explained in § 416.1403(a), administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative review process provided by subpart N, and they are not subject to judicial review. The receipt will summarize the information that you or your representative give us and we will ask you to review the information contained in the receipt for accuracy and tell us if the information is wrong. If our information is wrong, we will correct our records based on the new information that you give us.

In addition, we will give you advance notice if we suspend or reduce your benefit amount based on what you told us about your earnings as explained in § 416.1336.

Section 416.1861 Deciding Whether You Are a Child: Are You a Student?

We are adding a new paragraph (b) to § 416.1861 to add home schooling conducted in accordance with a home school law of the State or other jurisdiction in which you live as a form of regular school attendance for purposes of title XVI. We are redesignating paragraphs (b), (c), (d), (e), and (f) as paragraphs (c), (d), (e), (f), and (g). We are also amending current paragraph (e) to remove references to earnings because we discuss student earnings in a new section.

We are adding a new undesignated centered heading after § 416.1866 to read, Who is Considered a Student for Purposes of the Student Earned Income Exclusion.

Section 416.1870 Effect of Being Considered a Student

We are adding a new § 416.1870 to explain that if we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount.

Section 416.1872 Who Is Considered a Student

We are adding a new § 416.1872 to explain that we consider you to be a student if you are under 22 years old and you are regularly attending school or college or training that is designed to prepare you for a paying job.

Section 416.1874 When We Need Evidence That You Are a Student

We are adding a new § 416.1874 to explain what evidence we need if you are a student and you expect to earn over $65 in any month.

Public Comments

On October 18, 2005, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** at 70 FR 60463 and provided a 60-day comment period. We received comments from two organizations and one individual. We carefully considered the comments received on the proposed rules in publishing these final rules. The comments we received and our responses to the comments are set forth below. Although we condensed, summarized, or paraphrased the comments, we believe we have expressed the views accurately and have responded to all the relevant issues raised.

Comment: One commenter suggested that the requirement to issue receipts should stay intact even after the establishment of a centralized computer file which records the date of submission of the work information. The receipt provides proof to the beneficiary that he or she has met their reporting requirements.

Response: We considered this comment but decided not to include this requirement in the final rules. The regulatory language as written accurately reflects the requirements of the legislation. The statute provides that we must issue a receipt to you until we implement a centralized computer file which records the date you (or your representative) reported to us regarding a change in your work activity, and we are in the process of implementing such a centralized computer file. The final regulations provide that we will give you a paper receipt if you ask us to, but the statute does not require us to issue such receipts after the centralized computer file is in place.

Comment: One commenter suggested that the language in section 404.1588(b) is unclear about whether beneficiaries must request a receipt each time a report of a change in work activity is made, or if one blanket request will be logged into the centralized computer file to generate a receipt each time a report is made. The commenter recommends SSA should adopt the latter policy.

Response: We considered this comment but decided not to include language within the rules detailing how a request for a receipt is to be made after the centralized computer file is implemented. Instructions for how to request receipts will be provided prior to the implementation of a centralized computer file and will be made readily available to those beneficiaries and their representatives who are interested in receiving receipts when they report work activity changes.

Comment: One commenter urged SSA to include language from the preamble in the text of the regulations regarding the content of the receipt. The preamble states that the receipt will include details about the work activity or earnings information reported by the beneficiary, that we will ask the beneficiary to review the information and tell us if we are wrong, and correct our records based on the new information. The commenter further recommended that we specifically state in the regulations that SSA will tell beneficiaries that they may request a receipt, as the inclusion of this information will help beneficiaries know exactly what to expect and what is expected of them.

Response: We considered this comment but decided not to include language within the rules which prescribes in detail what will be contained within the receipt. Such information will be available to beneficiaries and their representatives elsewhere. The receipts currently contain a summary of the work activity or earnings information reported as well as contact information for the local Social Security office. Also, we do not believe it is necessary to include language within the regulation requiring SSA to tell beneficiaries of the option to request a receipt. We are currently issuing a receipt each time work activity is reported whether or not one is requested. After the centralized computer file is in place, we will inform beneficiaries and their representatives through our disability publications that they may, upon request, receive a receipt whenever they report work activity to us.

Comment: One commenter stated that overpayments resulting from SSA's failure to take timely action on work reports remain a major barrier to beneficiaries' ability to utilize work incentive programs. The commenter urged SSA to establish a reliable, efficient method of collecting and recording, in a timely manner, information about earnings, and take timely action to adjust benefits when necessary. The commenter also recommended that Congress require SSA to forgive overpayments if the beneficiary is not notified of the overpayment within a reasonable period of time.

Response: We completed the implementation of an electronic system which issues receipts in response to work reports if you receive benefits based on disability under title II or title XVI. In addition, this system records work report information and automates the control of title II work issue continuing disability reviews. A similar system for automation of title XVI earned income inputs is currently in development. We expect that these systems will help us to better control work reports and help us to ensure that we take timely action on those work reports. The recommendation that SSA forgive overpayments is beyond the scope of these rules.

Comment: One commenter suggested that the provisions of section 208 of the SSPA are flawed because beneficiaries do not know they are in a trial work period. Reporting requirements are not clear and more needs to be done to train SSA personnel on ensuring beneficiaries know about their responsibility to report work activity.

Response: We considered this comment but decided that changes to the language of section 404.471 are not necessary or appropriate. The nonpayment for trial work period service months is applicable only if a beneficiary is convicted by a Federal court of fraudulently concealing work activity. Section 404.471 further specifies that a beneficiary may be found to be fraudulently concealing work activity if he or she provides false information to SSA, works under another identity, or takes action to conceal work activity with the intent of fraudulently receiving benefits. The provisions for nonpayment of trial work period service months do not apply simply because a beneficiary fails to understand his or her reporting responsibilities. The language in section 404.471 makes that sufficiently clear without further addition.

Comment: One commenter suggested that the language of section 404.351(d) is unclear and should be rewritten for clarity to include the explanatory language of the preamble. The commenter further suggested that it would be helpful if all of section 404.351 was rewritten in clear language, as section 404.351(c) is also difficult to decipher. Such a rewrite would give beneficiaries concrete information as to what will happen to their childhood disability benefits under different circumstances.

Response: We agree that the language of Section 404.351(d) is unclear and we have rewritten the paragraph to include the explanatory language contained in the preamble. However, we have not

rewritten the entire section. We believe that the new paragraph (d) provides a clear explanation of the effect of the Social Security Protection Act legislation.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final rule contains information collection requirements that require Office of Management and Budget clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, SSA has submitted a clearance request to OMB for approval. SSA will publish the OMB number and expiration date upon approval.

SSA published a notice of proposed rulemaking on October 18 at 70 FR 60463 and solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We did not receive comments on the issues described above.

Note: Please note that a new section containing public reporting requirements, § 416.1874, has been added since the publication of the Notice of Proposed Rulemaking (burden information for this section follows). Therefore, we are soliciting public comments about this section only on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology.

Burden information for section 1874:

Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
15,000	1	10	2,500

Comments: on this section should be submitted/and or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20530, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex building, 6401 Security Blvd., Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts D, E, J, and P of part 404 and subparts G, K, N, and R of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

■ 1. The authority citation for subpart D continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

■ 2. Section 404.351 is amended by removing ''; or'' at the end of paragraph (b) and replacing it with a period; removing the period at the end of paragraph (c) and replacing it with ''; or'', and adding a new paragraph (d) to read as follows:

§ 404.351 Who may be reentitled to child's benefits.

* * * * *

(d) With respect to benefits payable for months beginning October 2004, you can be reentitled to childhood disability benefits at anytime if your prior entitlement terminated because you ceased to be under a disability due to the performance of substantial gainful activity and you meet the other requirements for reentitlement. The 84-month time limit in paragraph (c) in this section continues to apply if your previous entitlement to childhood disability benefits terminated because of medical improvement.

Subpart E—[Amended]

■ 3. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 222(c), 223(e), 224, 225, 702(a)(5), and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 422(c), 423(e), 424a, 425, 902(a)(5), and 1320a–8a and 48 U.S.C. 1801.

■ 4. Section 404.401a is amended by revising the last sentence to read as follows:

§ 404.401a When we do not pay benefits because of a disability beneficiary's work activity.

* * * Except as provided in § 404.471, earnings from work activity during a trial work period will not stop your benefits.

■ 5. Add a new § 404.471 to read as follows:

§ 404.471 Nonpayment of disability benefits for trial work period service months upon a conviction of fraudulently concealing work activity.

(a) *Nonpayment of benefits during the trial work period.* Beginning with work activity performed in March 2004 and thereafter, if you are convicted by a Federal court of fraudulently concealing your work activity and the concealment of the work activity occurred while you were in a trial work period, monthly disability benefits under title II of the Social Security Act are not payable for months in which you performed services during that trial work period prior to the conviction (see § 404.1592 for a definition of a trial work period and services). Benefits already received for months of work activity in the trial work period prior to the conviction and in the same period of disability during which the fraudulently concealed work activity occurred, will be considered an overpayment on the record.

(b) *Concealment of work activity.* You can be found to be fraudulently concealing work activity if—

(1) You provide false information to us concerning the amount of earnings you received or are receiving for a particular period;

(2) You received or are receiving disability benefits while engaging in work activity under another identity (this would include working under another social security number or a forged social security number); or

(3) You take other actions to conceal work activity with the intent of fraudulently obtaining benefits in excess of amounts that are due.

Subpart J—[Amended]

■ 6. The authority citation for subpart J is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 7. Section 404.903 is amended by adding a new paragraph (aa) to read as follows:

§ 404.903 Administrative actions that are not initial determinations.

* * * * *

(aa) Issuing a receipt in response to your report of a change in your work activity.

Subpart P—[Amended]

■ 8. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 9. Section 404.1588 is revised to read as follows:

§ 404.1588 Your responsibility to tell us of events that may change your disability status.

(a) *Your responsibility to report changes to us.* If you are entitled to cash benefits or to a period of disability because you are disabled, you should promptly tell us if—

(1) Your condition improves;

(2) You return to work;

(3) You increase the amount of your work; or

(4) Your earnings increase.

(b) *Our responsibility when you report your work to us.* When you or your representative report changes in your work activity to us under paragraphs (a)(2), (a)(3), and (a)(4) of this section, we will issue a receipt to you or your representative at least until a centralized computer file that records the information that you give us and the date that you make your report is in place. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

■ 10. Section 404.1592 is amended by adding a new paragraph (f) to read as follows:

§ 404.1592 The trial work period.

* * * * *

(f) *Nonpayment of benefits for trial work period service months.* See § 404.471 for an explanation of when benefits for trial work period service months are not payable if you are convicted by a Federal court of fraudulently concealing your work activity.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart G—[Amended]

■ 11. The authority citation for subpart G is revised to read as follows:

Authority: Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 12. Section 416.708 is amended by revising the undesignated paragraph following paragraph (c)(4)to read as follows:

§ 416.708 What you must report.

* * * * *

(c) * * *

(4) * * *

However, you need not report an increase in your Social Security benefits if the increase is only a cost-of-living adjustment. (For a complete discussion of what we consider income, see subpart K. See subpart M, § 416.1323 regarding suspension because of excess income.) If you receive benefits based on disability, when you or your representative report changes in your earned income, we will issue a receipt to you or your representative until we establish a centralized computer file to record the information that you give us and the date that you make your report. Once the centralized computer file is in place, we will continue to issue receipts to you or your representative if you request us to do so.

* * * * *

Subpart K—[Amended]

■ 13. The authority citation for subpart K continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 14. Section 416.1112 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) * * *

(3) If you are under age 22 and a student who is regularly attending school as described in § 416.1861:

* * * * *

■ 15. Section 416.1161 is amended by adding a new paragraph (a)(27) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) * * *

(27) Earned income of a student as described in § 416.1112(c)(3).

* * * * *

Subpart N—[Amended]

■ 16. The authority citation for subpart N is revised to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 17. Section 416.1403 is amended by adding new paragraph (a)(25) to read as follows:

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * *

(25) Issuing a receipt in response to your report of a change in your earned income.

Subpart R—[Amended]

■ 18. The authority citation for subpart R is revised to read as follows:

Authority: Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d) and 1383(d)(1) and (e)).

■ 19. Section 416.1861 is amended by redesignating paragraphs (b), (c), (d), (e) and (f) as (c), (d), (e), (f) and (g), adding new paragraph (b), and revising newly redesignated paragraph (f) to read as follows:

§ 416.1861 Deciding whether you are a child: Are you a student?

* * * * *

(b) *If you are instructed at home.* You may be a student regularly attending school if you are instructed at home in grades 7–12 in accordance with a home school law of the State or other jurisdiction in which you reside and for at least 12 hours a week.

* * * * *

(f) *When we need evidence that you are a student.* We need evidence that you are a student if you are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student.

* * * * *

■ 20–21. Add a new § 416.1870 and undesignated center heading to read as follows:

Who Is Considered a Student for Purposes of the Student Earned Income Exclusion

§ 416.1870 Effect of being considered a student.

If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. If you are an ineligible spouse or ineligible parent for deeming purposes and we consider you to be a student, we will not count all of your income when we determine how much of your income to deem. Section 416.1110 explains what we mean by earned income. Section 416.1112(c)(3) explains how much of your earned income we will not count. Section 416.1161(a)(27) explains how the student earned income exclusion applies to deemors.

■ 22. Add a new § 416.1872 to read as follows:

§ 416.1872 Who is considered a student.

We consider you to be a student if you are under 22 years old and you regularly attend school or college or training that is designed to prepare you for a paying job as described in § 416.1861(a) through (e).

■ 23. Add a new § 416.1874 to read as follows:

§ 416.1874 When we need evidence that you are a student.

We need evidence that you are a student if you are under age 22 and you expect to earn over $65 in any month. Section 416.1861(g) explains what evidence we need.

[FR Doc. E6–19232 Filed 11–16–06; 8:45 am]

BILLING CODE 4191–02–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212–AA95

Payment of Premiums; Assessment of and Relief From Penalties

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule adopts policy guidance on premium penalty waivers, including guidance on the meaning of ''reasonable cause'' for premium penalty waivers. For the convenience of the public, this guidance is being codified as an appendix to PBGC's premium payment regulation.

DATES: *Effective date:* December 18, 2006. The amendments made by this rule apply to PBGC actions taken on or after December 18, 2006.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative & Regulatory Department, or Deborah C. Murphy, Attorney, Legislative & Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). When a single-employer plan terminates without sufficient assets to provide all benefits, PBGC steps in to ensure that participants and beneficiaries receive their plan benefits, subject to certain legal limits. PBGC also provides financial assistance to multiemployer plans that become unable to pay benefits.

ERISA and PBGC's regulations require that premiums be paid to PBGC. To promote the effective operation of the insurance program under Title IV, ERISA section 4007 authorizes PBGC to assess penalties for not paying premiums in full and on time (''premium penalties''). See PBGC's regulation on Payment of Premiums (29 CFR Part 4007).

A premium penalty is owed by any person that was liable for the premium—generally the plan administrator and, in the case of a single-employer plan, the contributing sponsor(s) and any controlled group members. (Under ERISA section 4006(a)(7)(D)(i)(II), as added by section 8101 of the Deficit Reduction Act of 2005, Pub. L. 109–171, February 8, 2006, the plan administrator is not liable for the $1,250 per-participant premium that applies to certain distress and involuntary plan terminations under that section.) Thus, a premium penalty (other than a penalty for failure to timely pay the $1,250 per-participant premium under ERISA section 4006(a)(7)), may generally be paid out of plan assets; see PBGC Opinion Letter 94–6 and the legislative history cited in that letter.

PBGC's premium payment regulation includes provisions for determining the amount of premium penalties and provides for the waiver of those penalties upon demonstration of reasonable cause and in other specified circumstances. Reconsideration of premium penalty assessments is covered by PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR Part 4003). However, neither the premium payment regulation nor the administrative review regulation currently provides a thorough and detailed treatment of reasonable cause and other bases for premium penalty waivers.

On January 12, 2001, PBGC published in the **Federal Register**, at 66 FR 2856, a proposed rule to expand and codify its previously published penalty policies. The 2001 proposed rule dealt both with premium penalties under ERISA section 4007 and with penalties for failures to provide certain information in a timely manner under ERISA section 4071. In particular, the proposed rule set forth detailed guidance on determining whether there is ''reasonable cause'' that would justify a waiver of premium penalties. The PBGC received no comments on the 2001 proposed rule.

Provisions of This Rule

This final rule provides policy guidance on premium penalty waivers, including guidance on the meaning of ''reasonable cause'' for premium penalty waivers. As discussed below, guidance is not being issued at this time on the determination of the amount of premium penalties nor on procedures for the assessment and review of premium penalties. Otherwise, the provisions in this final rule are generally the same as the premium penalty provisions in the 2001 proposed rule with only minor changes. As in the 2001 proposed rule, the premium penalty policy guidance in this final rule takes the form of an appendix to PBGC's regulation on Payment of Premiums (29 CFR part 4007).

This rule does not affect the use of any other remedies available to PBGC and does not address the settlement of legal disputes involving penalties, either alone or in the context of other legal issues. This rule does not address penalties under ERISA section 4302, which applies to certain failures to provide multiemployer plan notices required under subtitle E of title IV of ERISA and implementing regulations, or under ERISA section 4071, which applies to failures to provide information on time.

Premium Penalty Assessment

The 2001 proposed rule summarized the rules on determining the amount of premium penalties in the premium payment regulation. That summary provided no new guidance and is not being included in the premium penalty policy appendix at this time.

Premium Penalty Waivers

As described in the premium penalty policy appendix, a premium penalty may be waived, in whole or in part, for a number of reasons, based on the facts and circumstances. The most common reason for waiving a penalty is ''reasonable cause.'' Reasonable cause is generally found if—

- *Circumstances beyond control.* The violation arises from circumstances beyond the control of the person whose action or inaction may be the basis for a penalty assessment, and
- *Ordinary business care and prudence.* The failure could not be avoided by exercising ordinary business care and prudence. The size of the organization and of the premium involved may affect the ordinary business care and prudence that is expected in order to find reasonable cause.

The premium penalty policy appendix includes examples of situations where reasonable cause might be found, such as the sudden and unexpected absence or inability to act of an individual with responsibility to act, the destruction of relevant records or inability to comply resulting from a fire or other casualty or natural disaster, and reasonable reliance on erroneous oral or written communication by a PBGC employee.

The appendix also describes other types of waivers:

- *Statutory or regulatory requirement.* The appendix notes for completeness that a penalty is waived if a statute or regulation so requires.
- *Legal error.* The appendix provides that a penalty may be waived if the violation arises from reliance on an erroneous interpretation of law—with different standards depending on whether the interpretation is or is not disclosed to PBGC—or, in appropriate circumstances, from a recent change in the law.
- *Pendency of PBGC procedures.* The appendix provides for waiver in some cases of all or a part of a premium penalty that is attributable to the pendency of PBGC review or other procedures.
- *Other circumstances.* The appendix also notes that, in other narrow circumstances, we may waive a penalty where appropriate.

This part of the appendix has been reorganized to group the material differently (placing all the provisions about legal errors under one heading), eliminate an example about an insignificant math error, and add an example of PBGC procedures (other than review procedures) whose pendency could be the basis for a waiver.

The explanation of the ''other circumstances'' waiver category has also been revised. In the 2001 proposed rule, this provision was said to be aimed primarily at cases where a premium penalty assessment would be ''inconsistent with the purposes of title IV.'' That language conveys a standard more restrictive than PBGC now considers appropriate and has been eliminated.

In exercising premium penalty waiver authority and determining whether reasonable cause exists, the premium penalty policy appendix provides that an organization's outside advisors, such as lawyers or actuaries, are treated as if they were part of the organization. Thus, organizations with in-house advisors are treated the same in this respect as those that choose to retain outside advisors. Exercising care in selecting and monitoring advisors is not a basis for a reasonable cause waiver when the advisors are in-house; similarly, it is not considered a basis for a reasonable cause waiver where outside advisors are involved. Because it is so common for premium payers to use advisors in determining premiums, the payment of premiums could not adequately be enforced if premium penalties were waived in such circumstances. Nothing in this final rule is intended to limit any recourse that an organization may have against its outside advisors.

Premium Penalty Procedures

The 2001 proposed rule set forth procedures for assessing and reviewing premium penalties. The procedural provisions are not included in the premium penalty policy appendix at this time. Procedural implications of the new $1,250 per-participant premium may affect further premium penalty procedural guidance.

Miscellaneous Changes

There are a number of organizational and editorial changes from the 2001 proposed rule. Principal among these is the placement of provisions on assessment and waiver toward the beginning of the appendix, with a place reserved for procedural provisions at the end of the appendix. In addition, a new § 4 has been added to the appendix, briefly summarizing the information in the appendix and indicating where it is located.

Compliance With Rulemaking Guidelines

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

This rule is not subject to notice and comment rulemaking requirements under section 553 of the Administrative Procedure Act because it deals only with general statements of PBGC policy. The PBGC nonetheless invited comment on the 2001 proposed rule. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility

Act does not apply. See 5 U.S.C. 601(2), 603, 604.

List of Subjects in 29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

■ For the reasons given above, 29 CFR part 4007 is amended as follows.

PART 4007—PAYMENT OF PREMIUMS

■ 1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 2. In § 4007.8, the introductory text of paragraph (a) is amended by removing the words ''The charge will be based on'' and adding in their place the words ''The amount determined under this paragraph (a) will be based on''; and paragraphs (c) and (d) are revised to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(c) Reasonable cause waivers. PBGC will waive all or part of a late payment penalty charge if PBGC determines that there is reasonable cause for the late payment. Policy guidelines for applying the ''reasonable cause'' standard are in §§ 22 through 25 of the Appendix to this part.

(d) *Other waivers.* PBGC may waive all or part of a late payment penalty charge in other circumstances without regard to whether there is reasonable cause. Policy guidelines for waivers without reasonable cause are in § 21(b)(1), (b)(3), (b)(4), and (b)(5) of the Appendix to this part.

* * * * *

■ 3. An appendix is added to part 4007 to read as follows:

APPENDIX TO PART 4007—POLICY GUIDELINES ON PREMIUM PENALTIES

Sec.

General Provisions

§ 1 What is the purpose of this Appendix?

This appendix sets forth principles and guidelines that we intend to follow in assessing, reviewing, and waiving premium penalties. However, this is only general policy guidance. Our action in each case is guided by the facts and circumstances of the case.

§ 2 What defined terms are used in this Appendix?

The following terms are defined in part 4001 of this chapter: contributing sponsor, ERISA, PBGC, person, plan, and plan administrator. In addition, in this appendix:

(a) *Premium penalty* means a penalty under ERISA section 4007 and under this part for failing to pay a premium in full and on time.

(b) *Waiver* means reduction or elimination of a premium penalty that is being or has been assessed.

(c) *We* means PBGC.

(d) *You* means, according to the context,—

(1) A plan administrator, contributing sponsor, or other person, if—

(i) The person's action or inaction may be the basis for a premium penalty assessment,

(ii) The person may be required to pay the premium penalty, or

(iii) The person is requesting review of the premium penalty; or

(2) An employee or agent of, or advisor to, any of these persons.

§ 3 What is the purpose of a premium penalty?

The basic purpose of a premium penalty is to encourage you to pay premiums in full and on time and to voluntarily self-correct any failure to do so.

§ 4 What information is in this Appendix and how is it organized?

This Appendix has four divisions:

(a) *General provisions.* The General Provisions division (§§ 1–4) tells you the purpose and organization of the Appendix, the purpose of a premium penalty, and the definitions of terms used in the Appendix.

(b) *Premium penalty assessment.* The Premium Penalty Assessment division is reserved.

(c) *Waiver standards.* The Waiver Standards division (§§ 21–25) explains the principles that PBGC follows in waiving premium penalties.

(1) *Reasonable cause.* We waive premium penalties for reasonable cause, as explained in §§ 22–25.

(2) *Other waivers.* We also waive premium penalties in some other circumstances, such as mistake of law, as explained in § 21.

(d) *Procedures.* The Procedures division is reserved.

Premium Penalty Assessment

[Reserved.]

Waiver Standards

§ 21 What are the standards for waiving a premium penalty?

(a) *Facts and circumstances.* In deciding whether to waive a premium penalty in whole or in part under paragraph (b), we consider the facts and circumstances of each case.

(b) *Waivers.*

(1) *Provisions of law.* We waive all or part of a premium penalty if a statute or regulation requires that we do so. For example, ERISA section 4007(b) and § 4007.8 of this part provide for a waiver in certain circumstances involving business hardship, and § 4007.8 of this part also provides for waivers if certain ''safe harbor'' tests are met, and for a waiver of a premium penalty that accrues after the date of a bill for a premium underpayment if you pay the premium owed within 30 days after the date of the bill.

(2) *Reasonable cause.* We waive a premium penalty if you show reasonable cause for a failure to pay a premium in full and on time. See §§ 22 through 25 for guidelines on ''reasonable cause'' waivers. If there is reasonable cause for only part of a failure to pay a premium, we waive the premium penalty only for that part.

(3) *Legal errors.* We may waive all or part of a premium penalty if the failure to pay a premium in full and on time that gives rise to the premium penalty results from certain kinds of legal errors.

(i) *Erroneous legal interpretation—disclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, we waive a premium penalty that arises from the failure if you promptly and adequately call our attention to the interpretation and the relevant facts, and the erroneous interpretation is not frivolous. If the interpretation affects a filing that you make with us, you should call our attention to the interpretation in writing with the filing. If you rely on the interpretation to justify not making a

filing with us, you should call our attention to the interpretation in writing by the time prescribed for the filing not made.

(ii) *Erroneous legal interpretation—undisclosed.* If a failure to pay a premium in full and on time results from your reliance on an erroneous interpretation of the law, and you do not promptly and adequately call our attention to the interpretation and the relevant facts, we may nevertheless waive a premium penalty if the weight of authority supporting the interpretation is substantial in relation to the weight of opposing authority and it is reasonable for you to rely on the interpretation.

(iii) *Recent change in the law.* We may waive all or part of a premium penalty if the law changes shortly before the date a premium payment is due and the premium payment that you make by the due date would have been correct under the law as in effect before the change. In determining whether and to what extent to grant a waiver in a case of this kind, we consider such factors as the length of time between the change in the law and the premium due date, the nature and timing of any publicity given to the change in the law, the complexity of the legal issues, and your general familiarity with those issues.

(4) *Pendency of PBGC procedures.* We may waive all or a part of a premium penalty that is attributable to the pendency of PBGC review or other procedures. For example:

(i) If you request review of a premium penalty, and you make a non-frivolous argument in your request for review that you were not required to pay the premium or that you were, and still are, unable to obtain the information needed to determine the premium, we may waive the portion of the premium penalty that accrues during the review process. If you make such a non-frivolous argument with respect to a portion of the premium, we may apply this principle to that portion.

(ii) We may waive all or a part of a premium penalty if we believe that the pendency of PBGC procedures for identifying a premium delinquency and notifying you of the delinquency contributed to your failure to correct the delinquency more promptly.

(5) *Other circumstances.* We may waive all or part of a premium penalty in other circumstances if we determine that it is appropriate to do so. We intend to exercise this waiver authority only in narrow circumstances.

(c) *Action or inaction of outside parties.* In some cases an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part of your organization may assist you in complying with PBGC requirements. If the outside individual's or firm's action, inaction, or advice causes or contributes to a failure to pay a premium in full and on time, we apply our waiver authority as if the outside individual or firm were part of your organization. In the case of an outside individual who is part of a firm, we generally consider both the individual and the firm to be part of your organization.

§ 22 What is ''reasonable cause''?

(a) *General rule.* In general, there is ''reasonable cause'' for a failure to pay a premium in full and on time to the extent that—

(1) The failure arises from circumstances beyond your control, and

(2) You could not avoid the failure by the exercise of ordinary business care and prudence.

(b) *Overlooking legal requirements.* Overlooking legal requirements does not constitute reasonable cause.

(c) *Action or inaction of outside parties.* If an accountant, actuary, lawyer, pension consultant, or other individual or firm that is not part of your organization assists you in complying with PBGC requirements, there is generally no reasonable cause for a failure to pay a premium in full and on time that arises from circumstances within the control of the outside individual or firm, or could be avoided by the exercise of ordinary business care and prudence by the outside individual or firm. The fact that you exercised care and prudence in selecting and monitoring the outside individual or firm is not a basis for a reasonable cause waiver.

(d) *Size of organization.* If an organization or one or more of its employees is responsible for taking action, the size of the organization may affect what ordinary business care and prudence would require. For example, ordinary business care and prudence would typically require a larger organization to establish more comprehensive backup procedures than a smaller organization for dealing with situations such as computer failure, the loss of important records, and the inability of an individual to carry out assigned responsibilities. Thus, there may be reasonable cause for a small organization's failure to pay a premium in full and on time even though, if the organization were larger, the exercise of ordinary business care and prudence would have avoided the failure.

(e) *Size of premium underpayment.* In general, the larger a premium, the more care and prudence you should use to make sure that you pay it in full and on time. Thus, there may be reasonable cause for a small underpayment even though, under the same circumstances, we would conclude that a larger underpayment could have been avoided by the exercise of ordinary business care and prudence.

(f) *Collection and enforcement.* In determining whether reasonable cause exists, we do not consider either—

(i) The likelihood or cost of collecting the premium penalty, or

(ii) The costs and risks of enforcing the premium penalty by litigation.

§ 23 What kinds of facts does PBGC consider in determining whether there is reasonable cause for a failure to pay a premium?

In determining the extent to which a failure to pay a premium in full and on time arose from circumstances beyond your control and the extent to which you could have avoided the failure by the exercise of ordinary business care and prudence—and thus the extent to which waiver of a premium penalty for reasonable cause is appropriate—we consider facts such as the following:

(a) What event or circumstance caused the underpayment and when the event happened or the circumstance arose. The dates you give should clearly correspond with the underpayment upon which the premium penalty is based.

(b) How that event or circumstance kept you from paying the premium in full and on time. The explanation you give should relate directly to the failure to pay a premium that is the subject of the premium penalty.

(c) Whether you could have anticipated the event or circumstance.

(d) How you responded to the event or circumstance, including what steps you took, and how quickly you took them, to pay the premium and how you conducted other business affairs. Knowing how you responded to the event or circumstance may help us determine what degree of business care and prudence you were capable of exercising during that period and thus whether the failure to pay the premium could or could not have been avoided by the exercise of ordinary business care and prudence.

§ 24 What are some situations that might justify a ''reasonable cause'' waiver?

The following examples illustrate some of the reasons often given for failures to pay premiums for which we may assess penalties. The situation described in each example may constitute reasonable cause, and each example lists factors we consider in determining whether to grant a

premium penalty waiver for reasonable cause in a case of that kind.

(a) *An individual with responsibility for taking action was suddenly and unexpectedly absent or unable to act.* We consider such factors as the following: The nature of the event that caused the individual's absence or inability to act, for example, the resignation of the individual or the death or serious illness of the individual or a member of the individual's immediate family; the size of the organization and what kind of backup procedures it had to cope with such events; how close the event was to the deadline that was missed; how abrupt and unanticipated the event was; how the individual's absence or inability to act prevented compliance; how expensive it would have been to comply without the absent individual; whether and how other business operations and obligations were affected; how quickly and prudently a replacement for the absent individual was selected or other arrangements for compliance were made; and how quickly a replacement for the absent individual took appropriate action.

(b) *A fire or other casualty or natural disaster destroyed relevant records or prevented compliance in some other way.* We consider such factors as the following: The nature of the event; how close the event was to the deadline that was missed; how the event caused the failure to pay the premium; whether other efforts were made to get needed information; how expensive it would have been to comply; and how you responded to the event.

(c) *You reasonably relied on erroneous oral or written advice given by a PBGC employee.* We consider such factors as the following: Whether there was a clear relationship between your situation and the advice sought; whether you provided the PBGC employee with adequate and accurate information; and whether the surrounding circumstances should have led you to question the correctness of the advice or information provided.

(d) *You were unable to obtain information, including records and calculations, needed to comply.* We consider such factors as the following: What information was needed; why the information was unavailable; when and how you discovered that the information was not available; what attempts you made to get the information or reconstruct it through other means; and how much it would have cost to comply.

§ 25 What are some situations that might justify a partial ''reasonable cause'' waiver?

(a) Assume that a fire destroyed the records needed to compute a premium payment. If in the exercise of ordinary business care and prudence it should take you one month to reconstruct the records and pay the premium, but the payment was made two months late, it might be appropriate to waive that part of the premium penalty attributable to the first month the payment was late, but not the part attributable to the second month.

(b) Assume that a plan administrator underpaid the plan's flat-rate premium because of reasonable reliance on erroneous advice from a PBGC employee, and also underpaid the plan's variable-rate premium because the plan actuary used the wrong interest rate. A PBGC audit revealed both errors. PBGC billed the plan for a premium penalty of $5,000—$1,000 for underpayment of the flat-rate premium and $4,000 for underpayment of the variable-rate premium. The plan administrator requested a waiver of the premium penalty. While the erroneous PBGC advice constituted reasonable cause for underpaying the flat-rate premium, there was no showing of reasonable cause for the error in the variable-rate premium. Therefore, we would waive only the part of the premium penalty based on underpayment of the flat-rate portion of the premium ($1,000).

Procedures

[Reserved.]

Issued in Washington, DC, this 13th day of November, 2006.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this interim final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E6–19436 Filed 11–16–06; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD–2006–OS–0209]

RIN 0720–AB02

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2006; TRICARE Dental Program

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: The Department is publishing this interim final rule to implement section 713 of the National Defense Authorization Act for Fiscal Year 2006 (NDAA for FY06), Public Law 109–163. Specifically, that legislation expands the eligibility for survivor benefits under the TRICARE Dental Program (TDP) to include the active duty spouse of a member who dies while on active duty for a period of more than 30 days. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates. Public comments are invited and will be considered for possible revisions to the final rule.

DATES: This rule is effective November 17, 2006.

Comments: Written comments received at the address indicated below by January 16, 2007 will be accepted.

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

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

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

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, a surviving spouse who is a member of the armed forces on active duty for a period of more than 30 days at the time the other active duty military member spouse dies and subsequently separates from active duty, is ineligible for the TDP survivor benefit. The surviving active duty spouse is ineligible because he or she was not enrolled in the program at the time of the spouse's death. Active duty members are not eligible for enrollment in the TDP. There are many dual military couples in the armed forces and the authority provided by section 713 of the NDAA for FY06 will permit the Department to expand the eligibility for survivor benefits under the TDP to include the active duty spouse of a member who dies while on active duty for a period of more than 30 days who subsequently separates from active duty during the three-year survivor period.

II. Regulatory Procedures

Executive Order (EO) 12866

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this interim final rule is not subject to any of these requirements. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive Order 12866 and has been reviewed by the Office of Management and Budget. This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. This is because the effective date of the changes to the TDP contained in section 713 of the NDAA for FY06 was January 6, 2006. This interim rule would amend the CFR to allow the TDP to conform to the new statutory authority. Based on these statutory requirements, the Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be unnecessary, impractical and contrary to the public interest. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

We have examined the impact(s) of the interim final rule under Executive Order 13132 and it does not have policies that have federalism implications that would 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, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Dental program, Dental health, Health care, Health insurance, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense amends 32 CFR part 199 as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.13 is amended by revising paragraphs (c)(3)(ii)(E)(*2*), to read as follows:

§ 199.13 TRICARE dental program.

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(*2*) *Continuation of eligibility.* Eligible dependents of active duty members while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (*i.e.,* Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively), shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death, if, on the date of the death of the member, the dependent is enrolled in the TDP, or is not enrolled by reason of discontinuance of a former enrollment under paragraphs (c)(3)(ii)(E)(*4*)(*ii*) and (c)(3)(ii)(E)(*4*)(*iii*) of this section, or is not enrolled because the dependent was under the minimum age for enrollment at the time of the member's death, or is not qualified for enrollment because the dependent is a spouse who is a member of the armed forces on active duty for a period of more than 30 days but subsequently separates or is discharged from active duty. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

* * * * *

Dated: November 13, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E6–19437 Filed 11–16–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–002]

RIN 1625–AA09

Drawbridge Operation Regulation; Missouri River, Iowa, Kansas, Missouri

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the Missouri River drawbridge regulations covering Iowa, Kansas, and Missouri. The revisions will have the bridges open on signal except during the winter season which will require 24 hours advanced notice. These revisions to the regulations will reduce delays of the vessels transiting through these States on the Missouri River.

DATES: This rule is effective on 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 CGD8–06–002 and are available for inspection or copying at room 2.107f, in the Robert A. Young Federal Building, Eighth Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Commander (dwb), Eighth

Coast Guard District, Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269–2378.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 25, 2006, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Missouri River, Iowa, Kansas, Missouri in the **Federal Register** (71 FR 30106). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Coast Guard is revising these regulations so vessels may pass the bridge without delay. The Coast Guard reviewed the history of civil penalty actions for failure of the Missouri River drawbridges to open for navigation. Meetings were held with the bridge owner and vessel operators to determine the cause for not opening the bridge draw on signal. A procedure was incorporated in the regulations to help reduce the number of vessel delays caused by failure to open the bridge on signal. Experience has shown the procedure was never implemented and vessel delays were not reduced. Therefore, §§ 117.411(b) and 117.687(b), which describe the procedure for operation of the A–S–B Highway and Railroad Bridge at Mile 365.6, are to be eliminated. This drawbridge was never operated in the manner described. It will open on signal as described in §§ 117.411 and 117.687. In addition, the Coast Guard determined that changes were needed to correct inaccuracies in State-related drawbridge operation regulations for § 117.407 (Iowa), § 117.411 (Kansas), and § 117.687 (Missouri).

Discussion of Comments and Changes

There were no comments to the proposed regulatory text.

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.

The Coast Guard expects that these changes will have a minimal economic impact on commercial traffic operating on the Missouri River. The procedure is already in practice at the bridges, and the change to the CFR documents the procedure.

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 rule is neutral to all business entities since it affects only how the vessel operators request bridge openings.

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 could better evaluate its effects on them and participate in the rulemaking.

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 would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. 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, 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 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 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Revise § 117.407 to read as follows:

§ 117.407 Missouri River.

See § 117.691, Missouri River listed under Nebraska.

■ 3. Revise § 117.411 to read as follows:

§ 117.411 Missouri River.

The draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and the date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24 hours advance notice is given.

■ 4. Revise § 117.687 to read as follows:

§ 117.687 Missouri River.

The draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24 hours advance notice is given.

Dated: October 25, 2006.

J.R. Whitehead,

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

[FR Doc. E6–19455 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–021]

RIN 1625–AA09

Drawbridge Operation Regulation; St. Croix River, Prescott, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is changing the regulation governing the Prescott Highway Bridge, across the St. Croix River at Mile 0.3, at Prescott, Wisconsin. Under the rule, the drawbridge need not open for river traffic and may remain in the closed-to-navigation position from November 1, 2006 to April 1, 2007. This rule allows the bridge owners to make necessary repairs to the bridge.

DATES: The rule is effective November 1, 2006 to April 1, 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 [CGD08–06–021] and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Commander (dwb), Eighth Coast Guard District, Bridge Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 269–2378.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 21, 2006, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; St. Croix River, Prescott, WI in the **Federal Register** (71 FR 48498). We received no comment letters on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

On March 26, 2005, the Wisconsin Department of Transportation requested a temporary change to the operation of the Prescott Highway Bridge across the St. Croix River, Mile 0.3, at Prescott, Wisconsin, to allow the drawbridge to remain in the closed-to-navigation position for a 5-month period while the electrical and hydraulic systems are overhauled. Navigation on the waterway consists of both commercial (excursion boat) and recreational watercraft, which may be minimally impacted by the closure period. Currently, the draw opens on signal for the passage of river traffic from April 1 to October 31, 8 a.m. to midnight, except that from midnight to 8 a.m. the draw shall open on signal if notification is made prior to 11 p.m. From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given. The Wisconsin Department of Transportation requested the drawbridge be permitted to remain closed to navigation from November 1, 2006 to April 1, 2007.

Discussion of Comments and Changes

The Coast Guard received no comment letters. No changes were made to this 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects this temporary change to the operation of the Prescott Highway Bridge to have minimal economic impact on commercial traffic operating on the St. Croix River such that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary.

This temporary change will cause minimal interruption of the drawbridge's regular operation, since the change is only in effect during the winter months while the river is frozen.

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. The rule would be in effect for 5 months during the early winter months when the river is frozen over and navigation is practically at a standstill. The Coast Guard expects the impact of this action to be minimal.

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 could better evaluate its effects on them and participate in the rulemaking. 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 1–800–REG–FAIR (1–800–734–3247).

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 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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (14 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 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.

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

■ 2. From November 1, 2006, to April 1, 2007, in § 117.667, suspend paragraph (a) and add paragraphs (d) and (e) to read as follows:

§ 117.667 St. Croix River.

* * * * *

(d) The draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2, and the Hudson Railroad Bridge, Mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) Midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(e) The draw of the Prescott Highway Bridge, Mile 0.3, need not open for river traffic and may be maintained in the closed-to-navigation position from November 1, 2006 to April 1, 2007.

Dated: October 23, 2006.

J.R. Whitehead,

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

[FR Doc. E6–19456 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 04–186 and 02–380; FCC 06–156]

Unlicensed Operation in the TV Broadcast Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allows low power devices to operate on unused television channels in locations where such operations will not result in harmful interference to TV and other authorized services. The Commission believes that this plan will provide for more efficient and effective use of the TV spectrum and will significantly benefit the public by allowing the development of new and innovative types of devices and services for businesses and consumers, without disrupting television and other authorized services using the TV bands.

DATES: Effective December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail *Hugh.VanTuyl@fcc.gov*. or Alan Stillwell, Office of Engineering and Technology (202) 418–2925, e-mail *Alan.Stillwell@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *First Report and Order,* ET Docket No. 04–186 and ET Docket No. 02–380, FCC 06–156, adopted October 12, 2006, and released October 18, 2006. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *fcc@bcpiweb.com*.

Summary of the Report and Order

1. On May 13, 2004, the Commission adopted a *Notice of Proposed Rule Making* (NPRM), 69 FR 34103, June 18, 2004, in this proceeding in which it proposed to allow unlicensed operation in the TV bands at locations where frequencies are not in use by licensed services. To ensure that no harmful interference to TV stations and other authorized users of the spectrum will occur, the Commission proposed to define when a TV channel is unused and to require unlicensed devices to incorporate ''smart radio'' features to identify the unused TV channels in the area where they are located. For the purpose of establishing a plan for minimizing interference, the Commission proposed to classify unlicensed broadband devices to be used in the TV bands into two general functional categories. The first category would consist of lower power ''personal/portable'' unlicensed devices, such as Wi-Fi like cards in laptop computers or wireless in-home local area networks (LANs). The second category would consist of higher power ''fixed/access'' unlicensed devices that are generally operated from a fixed location and may be used to provide a commercial service such as wireless broadband Internet access. The Commission proposed that fixed/access devices incorporate a geo-location method such as a Global Positioning System (GPS) receiver or be professionally installed, and that they must access a database to identify vacant channels at their location. It proposed to require that personal/portable devices operate only when they receive a control signal from a source such as an FM or TV station that identifies the vacant TV channels in that particular area. The Commission also sought comment on the use of spectrum sensing to identify vacant TV channels, but did not propose any specific technical criteria for spectrum sensing.

2. In the *First Report and Order*, the Commission takes a number of important first steps towards allowing the introduction of new low power devices in the broadcast television spectrum (TV bands) on channels/frequencies that are not being used for authorized services (hereinafter referred to as ''TV band devices''). The goal in this proceeding is to allow such devices to operate on unused television channels in locations where such operations will not result in harmful interference to TV and other authorized services. The Commission believes that this plan will provide for more efficient and effective use of the TV spectrum and will significantly benefit the public by allowing the development of new and innovative types of devices and services for businesses and consumers, without disrupting television and other authorized services using the TV bands. Because transmissions in the TV band are subject to less propagation attenuation than transmissions in other bands where lower power operations are permitted (such as unlicensed operations in the 2.4 GHz band), operations in the TV bands can benefit a wide range of service providers and consumers by improving the service range of wireless operations, thereby allowing operators to reach new customers. While there will be significant benefits to the public from its actions, the Commission recognizes that it must balance these benefits with the need to protect authorized services in the TV bands from harmful interference.

3. The Commission also recognizes the importance of conducting tests to ensure that whatever standards are ultimately adopted for TV band devices will protect incumbent radio services from harmful interference. Given the complex and novel sharing issues presented here, it intends to conduct several types of testing, and also encourages interested parties to conduct tests and submit their results into the record of this proceeding. Interested parties that conduct their own tests for the record should provide a test plan that explains in detail the assumptions used and the reasons supporting them.

4. In order to provide sufficient time for the Commission and industry to develop appropriate technical standards for TV band products as well as lead time for industry to design and produce new products, it intends to adopt a Second Report and Order specifying final requirements for devices in the TV bands in the fall of 2007. This will allow the Commission's Laboratory to begin accepting applications for certification of these devices in the TV bands by late 2007. Certification will be granted if the application, upon review, is found to comply with the new technical rules and will allow the manufacture and shipment of products to distribution points. These devices will not be available for sale at retail until after the DTV transition ends on February 17, 2009.

5. The Commission is convinced based on the record in this proceeding that it can adopt rules to allow fixed low power operation on unused spectrum in the TV bands without causing harmful interference to authorized services. There are several factors supporting this conclusion. First, upon completion of the DTV transition, there will be significant unused TV spectrum available in many areas in the country, either because of the separations required between authorized stations to avoid interference or because available TV channels have not been assigned and other services are not using vacant channels. Also, based on the Commission's experience in developing rules for U-NII devices, it believes that it is reasonable to expect that existing technology, such as that used for spectrum sensing, can be adapted to allow devices to identify unused spectrum in a given geographic area and thus allow sharing of the TV bands. Further, the Commission notes that the IEEE 802.22 working group with broad based support is in the process of developing a standard to enable fixed devices to successfully share spectrum with authorized services in the TV bands. Finally, these devices will operate at relatively low power levels and, it is easier to protect incumbent operations in the TV bands, including wireless microphones, when devices are limited to fixed operation.

6. The Commission will exclude low power devices from operating on TV channels 37 and 52–69 to prevent interference to radio astronomy operations and the WMTS on channel 37. Also, channels 52–69 have been reallocated for services other than broadcast television and will no longer be part of the TV bands after the transition. The Commission will also exclude personal/portable TV band devices from operating on channels 14–20 in all areas of the country to prevent possible interference to public safety and other operations in the PLMRS/CMRS. Because personal/portable devices are easily transported and used anywhere, the Commission believes that the most prudent approach to protecting public safety and other PLMRS/CMRS operations on channels 14–20 is to prohibit personal/portable low power TV band devices from operating on those channels in all areas of the country.

7. *Implementation Date.* The Commission will allow low power TV band devices to be marketed immediately after the end of the DTV transition on February 17, 2009, but not before. The Commission believes that this schedule is appropriate for several reasons. First, there are fewer vacant channels available during the DTV transition because most TV stations are currently broadcasting both an analog and a digital signal. There are thus about twice as many TV channels in use now as there will be after the end of the transition when full service analog broadcasting ceases. Also, the TV band is in a state of flux as the Commission develops the final DTV table of allotments and some TV stations still must change channels. In this regard, there will be adjustments in DTV channels that affect the availability of channels in individual markets throughout the remainder of the transition. The Commission also notes the concerns of a number of parties about possible disruption to the DTV transition if unlicensed devices are permitted to operate in the TV bands prior to the end of the DTV transition. The Commission believes that the risk of creating uncertainty that would impede the DTV transition outweighs the benefit of allowing operation of low power devices at a slightly earlier date, especially given that some proponents of low power devices have indicated they would need up to 21 months after the adoption of final technical rules to bring such devices to market. For these reasons, the Commission will allow TV band devices on the market only after the end of DTV transition.

Final Regulatory Flexibility Certification

8. The Regulatory Flexibility Act of 1980, as amended (RFA) [1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

9. In the *First Report and Order*, the Commission decides to allow low power fixed devices to operate on unused spectrum on TV channels 5–13, and 21–51, excluding channel 37. Operation will not be permitted prior to further action by the Commission to develop technical rules that allow devices to operate on those channels without causing interference. Because the Report and Order does not adopt any rules or other compliance requirements, the Commission certifies that the actions in the *First Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *First Report and Order* including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the *First Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Ordering Clauses

10. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r) and 307, this First Report and Order and Further Notice of Proposed Rule Making *is hereby adopted*.

[1] *See* 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in Small Business Act, 15 U.S.C. S 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] Small Business Act, 15 U.S.C. S 632.

11. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *First Report and Order and Further Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–18907 Filed 11–16–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 060322083–6288–03; I.D. 032006C]

RIN 0648–AU04

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Gulf of Mexico Recreational Grouper Fishery Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the seasonal closure provisions of a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes a seasonal closure of the recreational fishery for gag, red grouper, and black grouper in or from the Gulf exclusive economic zone (EEZ). The intended effect of this final rule is to help maintain recreational landings at levels consistent with the red grouper rebuilding plan while minimizing potential shift of fishing effort to associated grouper species.

DATES: This final rule is effective December 18, 2006.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA), are available from Andy Strelcheck, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *Andy.Strelcheck@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Andy Strelcheck, telephone 727–824–5305; fax 727–824–5308; e-mail *Andy.Strelcheck@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the FMP's framework procedure, the Council recommended and NMFS published a proposed rule to implement a regulatory amendment that included a recreational bag limit for Gulf red grouper of one fish per person per day, a zero grouper bag limit for captain and crew of a vessel operating as a charter or headboat, and a February 15 to March 15 seasonal closure of the recreational fishery for gag, red grouper, and black grouper. NMFS requested public comment on the proposed rule through May 1, 2006 (71 FR 16275, March 31, 2006). However, in response to public comment expressing concern about the proposed seasonal closure and because a pertinent, new gag assessment was pending, NMFS separated the proposed management measures into two final rules--one addressing the bag limit provisions, and one addressing the seasonal closure. The bag limit provisions were published in a final rule (71 FR 34534, June 15, 2006) which became effective July 17, 2006. Implementation of the final rule containing the seasonal closure was deferred pending the results of the new gag assessment.

This final rule establishes a February 15 to March 15 seasonal closure of the recreational fishery for gag, red grouper, and black grouper. The seasonal closure will help restrict recreational red grouper landings to levels specified in the rebuilding plan and will prevent or minimize increases in fishing mortality on gag and black grouper that could result from a shift in fishing effort due to the more restrictive red grouper bag limit. A new stock assessment for gag completed in July 2006 indicates the Gulf of Mexico gag stock is undergoing overfishing. Thus, this seasonal closure also contributes to necessary reductions in fishing mortality for gag. The closure is consistent with the existing seasonal closure of the commercial fishery for gag, red grouper, and black grouper and would make the closure more equitable for both user groups and should help improve compliance and enforceability. In addition, the closure will provide further protection for these species because it occurs during important spawning periods for all three species. Black grouper are included in the seasonal closure, in part, because they are similar in appearance to gag and, therefore, difficult for fisherman to distinguish from gag. If black grouper were not included in the closure, compliance with the closure, and therefore the closure's effectiveness would be compromised. For all of these reasons, NMFS believes the seasonal recreational closure for gag, red grouper, and black grouper is warranted.

Additional rationale for the measures in the regulatory amendment is provided in the preamble to the proposed rule and is not repeated here. A summary of public comments and NMFS' responses on the bag limit provisions of the proposed rule are provided in the final rule published June 15, 2006 (71 FR 34534). A summary of public comments received by NMFS on the seasonal closure provisions of the proposed rule and NMFS' responses are provided below. Comments and NMFS' responses to those comments regarding the economic impacts of the closed season are provided under the Classification section of this document.

Comments and Responses

Comment 1: Eight commenters opposed the February 15 to March 15 recreational seasonal closure and believed the closure period would severely impact the livelihood of charter boat captains, crew, and their families.

Response: A 34- to 45-percent reduction is needed to return recreational red grouper landings to levels specified in the rebuilding plan. The February 15 to March 15 closure, when combined with bag limit provisions published in a final rule (71 FR 34534) on June 15, 2006, is estimated to reduce red grouper landings by 34 percent and gag and black grouper landings by 7 percent. The closure includes important spawning seasons for all three species and would overlap the 1-month commercial fishery grouper closure. Prohibiting harvest of all three species will prevent effort shifting from occurring and reduce fishing mortality. Relative to the other closure alternatives considered by the Council, this alternative would result in the fewest cancelled trips and forgone revenues of the closure alternatives considered by the Council.

Comment 2: One commenter suggested creating a closed season of September 15 to October 15 instead of February 15 to March 15.

Response: The seasonal closure was proposed for February 15 to March 15

because the commercial seasonal closure occurs at this time and includes important spawning seasons for gag, red grouper, and black grouper. The Council also considered seasonal closures during April-May and August and was presented with analyses for seasonal closures in September and October. A September 15 to October 15 seasonal closure would result in similar, although slightly greater, reductions in harvest than the preferred February 15 to March 15 seasonal closure. However, a closure during fall would not provide the added benefits of protecting gag, red grouper, and black grouper during spawning seasons or closing the recreational fishery at the same time as the commercial fishery.

Classification

The Administrator, Southeast Region, NMFS, determined the regulatory amendment is necessary for the conservation and management of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A FRFA was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action. As discussed in the proposed rule (71 FR 16275, March 31, 2006), NMFS separated the management measures into two final rules -one addressing the bag limit provisions which published June 15, 2006 (71 FR 34534), and this final rule which addresses the recreational seasonal closures. The IRFA addressed all of the proposed management measures. The FRFA for the June 15, 2006 final rule included discussion of all alternatives for the bag limit provisions and the seasonal closure but focused primarily on the impacts of the bag limit provisions. The following FRFA summary for this final rule restates the discussion of all alternatives but focuses primarily on the analysis of the seasonal closure contained in this final rule.

This final rule will establish a February 15 to March 15 recreational seasonal closure for red grouper, gag, and black grouper. The purpose of this regulatory amendment is to implement management measures for the Gulf of Mexico grouper fishery that will restrict recreational red grouper landings to levels specified in the red grouper rebuilding plan. The Magnuson-Stevens Act provides the statutory basis for this final rule.

Eight comments were received from the public on the economic impacts of the closed season component of the proposed rule. As previously discussed, although consideration of the seasonal closure was deferred, no changes were made in the final rule as a result of these comments. The comments stated that the closure would severely impact the livelihood of charter boat captains, crew, and their families. NMFS agrees that the closure will likely result in reduced bookings and trip receipts. Estimates of the expected impacts have been provided in the assessment and are summarized below. The low red grouper bag limit and bycatch problems associated with adjusting the minimum size limit, however, necessitate closure to achieve the harvest reduction goals. Single species closure raises additional bycatch problems. The seasonal closure specified by the final rule is expected to result in the fewest cancelled trips and forgone revenues of the closure alternatives considered by the Council while providing the added unquantifiable benefits of spawning season protection for the three species.

No duplicative, overlapping, or conflicting Federal rules have been identified.

In June 2003, a moratorium was placed on the issuance of new charter vessel/headboat (for-hire) permits for reef fish. The moratorium was replaced by a limited access system which became effective on June 15, 2006. Currently, approximately 1,625 unique vessels are permitted to operate in this fishery. The for-hire fishery is comprised of charter vessels, which charge fees on a per-vessel basis, and headboats, which charge fees on an individual angler basis. The average charter vessel is estimated to generate $76,960 in annual revenue and $36,758 in annual ''profit'' (computed as gross revenue minus costs; costs exclude depreciation, fixed costs, and returns to owner/operators). The comparable figures for an average headboat are $404,172 in annual gross revenue and $338,209 in annual profits. Some vessels in the for-hire fleet also participate in the commercial fisheries. However, information on the average revenues generated from operation as a commercial vessel and the impacts of these revenues on the overall economic performance of the business operation are unknown.

Although the rule will not directly affect support industries, potential reductions in fishing effort and associated expenditures may have indirect impacts on hotels, restaurants, gear and bait shops, and other associated businesses. Sufficient data are not available to enumerate or characterize these businesses.

The rule will not change current reporting, recordkeeping and other compliance requirements under the FMP. These requirements include permit qualification criteria and participation in data collection programs if selected by NMFS. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills or take excessive time, and, therefore, are deemed not to be onerous.

The Small Business Administration defines a small business in the for-hire fishery sector as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $6.5 million. Given the economic profile of the for-hire fleet presented above, NMFS determined that all for-hire fishing entities that could be affected by this final rule are small business entities. Because all of these entities could be affected, NMFS determined that the final rule will affect a substantial number of small entities.

The determination of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is whether the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities. All for-hire entities affected by the rule are considered small entities, so the issue of disproportionality does not arise in the present case. The profitability question is whether the regulations significantly reduce profit for a substantial number of small entities. For-hire operations, specifically charter boats, will bear the primary burden of the rule, although spill-over impacts are expected in associated industries such as hotels, marinas, and bait and tackle shops. For-hire operations may experience a reduction in bookings, resulting in reduced receipts from for-hire fees, tips, gear rental, food or beverages, and fish-cleaning. The seasonal closure contained in this final rule is estimated to result in a reduction of for-hire fees of up to $2.52 million (approximately $1,550 per vessel) due to cancellation of trips during the closed season, or approximately 2 percent of average gross revenues and 4 percent of average

net revenues per vessel. Sufficient data are not available to determine the precise impact of this final rule on associated industries, but it can be expected that some decline in revenues would occur.

As mentioned in the introduction to this FRFA summary, the following discussion of alternatives includes discussion of the bag limit provisions implemented via the June 15, 2006 final rule (71 FR 34534) and the seasonal closure implemented by this final rule. Six alternatives, including the status quo, were considered to the proposed red grouper bag limit and seasonal closure. The status quo would have allowed continued landing overages in the recreational sector and would, therefore, not meet the Council's objectives because continued overages would not allow the fishery to meet rebuilding goals.

The second alternative would have reduced the red grouper daily bag limit to one fish per angler or three fish per vessel, whichever is less. This alternative is more restrictive than the bag limit in the final rule and, therefore, would result in greater adverse economic impacts due to greater loss of consumer surplus and greater likelihood of trip cancellation.

The third alternative would have increased the red grouper recreational minimum size limit to 22 inches (55.9 cm). An increase in the minimum size limit, however, would be expected to increase bycatch and discard mortality, which is inconsistent with the Council's objective of minimizing bycatch and discard mortality. Thus, this alternative would not meet the Council's objectives.

The fourth alternative would have reduced the red grouper recreational bag limit within the aggregate grouper limit to one per person per day and closed the season for all grouper during August. This alternative would have resulted in greater reductions in consumer surplus and potential foregone expenditures, therefore increasing the adverse economic impacts relative to the final rule.

The fifth alternative would have reduced the red grouper recreational bag limit within the aggregate limit to one per person per day and closed the season for all grouper during April through May. This alternative would also have resulted in greater reductions in consumer surplus and potential foregone expenditures than the final rule.

The sixth alternative would have reduced the red grouper bag limit within the aggregate limit to one per person per day and increased the minimum recreational size limit to 21 inches (53.3 cm). Similar to an increase of the minimum size limit to 22 inches (55.9 cm), excessive bycatch mortality was expected to accrue to this alternative.

The final alternative to the red grouper bag limit would have reduced the red grouper bag limit within the aggregate grouper limit to one fish per angler or three fish per vessel per day, whichever is less, except for reef fish-permitted for-hire vessels with a U.S. Coast Guard Certificate of Inspection. For these vessels, the resultant vessel limit would be one red grouper per two paying passengers. This alternative is more restrictive than the rule and would result in greater adverse economic impacts than the rule.

One alternative, the status quo, was considered for the 0–fish captain and crew grouper bag limit. The status quo, which would allow captain and crew a bag limit equal to that of the recreational angler, in combination with the other actions, would not achieve the necessary red grouper harvest reductions and would not, therefore, meet the Council's objectives. The 0–fish captain and crew bag limit constrains the potential harvest capacity aboard for-hire vessels, limits allowable bag limits to paying clients who are fishing recreationally, and contributes additional reduction in fishing mortality.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 13, 2006.

Samuel D. Rauch III

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (o) is revised and paragraph (u) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of where harvested. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

* * * * *

(u) *Seasonal closure of the recreational fishery for gag, red grouper, and black grouper.* The recreational fishery for gag, red grouper, and black grouper in or from the Gulf EEZ is closed from February 15 to March 15, each year. During the closure, the bag and possession limit for gag, red grouper, and black grouper in or from the Gulf EEZ is zero.

[FR Doc. E6–19481 Filed 11–16–06; 8:45 am]

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Proposed Rules

Federal Register
Vol. 71, No. 222
Friday, November 17, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 305 and 319

[Docket No. APHIS–2006–0121]

RIN 0579–AC19

Importation of Mangoes From India

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes would have to undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declarations providing specific information regarding the treatment and inspection of the mangoes and the orchards in which they were grown. In addition, the mangoes would be subject to inspection at the port of first arrival. This action would allow for the importation of mangoes from India into the continental United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before January 16, 2007.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0121 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0121, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0121.

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

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

The national plant protection organization (NPPO) of India has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow mangoes from India to be imported into the continental United States (the lower 48 States and Alaska). As part of our evaluation of India's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instruction for accessing Regulations.gov).

The PRA, titled ''Importation of Fresh Mango Fruit (*Mangifera indica* L.) From India into the Continental United States; A Qualitative, Pathway-Initiated Pest Risk Assessment'' (June 2006), evaluates the risks associated with the importation of mangoes into the continental United States from India. The PRA and supporting documents identified 20 pests of quarantine significance present in India that could be introduced into the continental United States via mangoes:

- The fruit flies *Bactrocera caryeae* (Kapoor), *Bactrocera correcta (Bezzi), Bactrocera cucurbitae* (Coquillett), *Bactrocera diversa* (Coquillett), *Bactrocera dorsalis* (Hendel), *Bactrocera tau* (Walker), and *Bactrocera zonata* (Saunders);
- The scale insects *Aulacaspis tubercularis* (Newstead), *Ceroplastes rubens* (Maskell), *Coccus viridis* (Green), *Parlatoria crypta* (Mckenzie), and *Pseudaonidia trilobitiformis* (Green);
- The mango flesh weevil *Sternochetus frigidus* (F.) and the mango seed weevil *Sternochetus mangiferae* (F.);
- The fungi *Actinodochium jenkinsii* Uppal, Patel & Kamat, *Cytosphaera mangiferae* Died., *Hendersonia creberrima* Syd., Syd. & Butler, *Macrophoma mangiferae* Hing. & Sharma, and *Phomopsis mangiferae* S. Ahmad; and
- The bacterium *Xanthomonas campestris* pv. *mangiferaeindicae* (Patel *et al.*) Robbs *et al.*

APHIS has determined that measures beyond standard port of entry inspection are required to mitigate the risk posed by these plant pests. The proposed phytosanitary measures include a requirement that the mangoes be treated with a minimum absorbed irradiation dose of 400 gray in accordance with § 305.31 of the phytosanitary treatments regulations in 7 CFR part 305. This is the established generic dose for all insect pests except pupae and adults of the order Lepidoptera. There are no pests of the order Lepidoptera associated with mangoes from India, therefore this treatment would successfully mitigate the risk of all 14 insect pests associated with mangoes from India. Each shipment of fruit would have to be

accompanied by a phytosanitary certificate issued by the NPPO of India certifying that the fruit received the required irradiation treatment. In addition, this irradiation treatment would have to be administered outside of the United States in an APHIS-certified facility and would have to be monitored by APHIS inspectors. At this time India has an irradiation facility, but it is not APHIS-certified. However, the facility is such that it could be upgraded, retrofitted, and certified should India apply for certification.

In accordance with § 305.31, APHIS and the Indian NPPO would have to jointly develop a preclearance work plan that details the activities APHIS and the NPPO will carry out in connection with each irradiation facility to verify the facility's compliance with 7 CFR part 305. Typical activities to be described in the work plan may include frequency of visits to the facility by APHIS and Indian inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the requirements for separation of articles, packaging, and labeling. This facility preclearance work plan would have to be reviewed and renewed by APHIS and the NPPO of India on an annual basis. In addition, the NPPO of India would have to enter into a trust fund agreement with APHIS to provide for all expenses incurred by APHIS while performing preclearance activities, such as inspections for pests not targeted by the irradiation treatment, and treatment monitoring services. Those costs include administrative expenses and all salaries, travel expenses, and other incidental expenses incurred by APHIS in performing these services. The trust fund agreement would also describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and would generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation.

The required irradiation treatment would not mitigate the risks posed by the fungi *Actinodochium jenkinsii, Cytosphaera mangiferae, Hendersonia creberrima, Macrophoma mangiferae,* or *Phomopsis mangiferae* or the bacterium *Xanthomonas campestris* pv. *mangiferaeindicae.* However we consider *Actinodochium jenkinsii, Hendersonia creberrima,* and *Phomopsis mangiferae* to be of low risk of introduction and dissemination within the continental United States. This is because these fungi occur only in tropical areas that roughly correspond to USDA Plant Hardiness Zone 11. In addition, the host range for these fungi appears to be limited to mango. Because the proposed distribution of mangoes from India would be limited to the continental United States, and the mango-producing areas of Florida and California correspond to USDA Plant Hardiness Zone 10b, survival of these pathogens is unlikely.

In order to mitigate the risks posed by *Cytosphaera mangiferae* and *Macrophoma mangiferae,* which we consider to be of medium risk of introduction and dissemination within the continental United States, we are proposing three options: (1) The mangoes be treated with a broad-spectrum post-harvest fungicidal dip, (2) the orchard of origin be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India and be found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae,* or (3) the orchard of origin be treated with a broad-spectrum fungicidal application during the growing season, be inspected at a time prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India, and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae.*

Symptoms of both fungal pathogens can be easily seen and detected in the field on mango leaves and fruit during pre-harvest inspection. Post-harvest diseases do not occur without the presence of fungal symptoms on leaves in the field. In addition, standard phytosanitary procedures in place in India already require the application of fungicidal sprays twice during the mango growing season, once at bloom and again between bloom and harvest. Orchard application of broad spectrum fungicide sprays protects fruit from infection by aerial spores produced on leaves or stems.

In order to mitigate the risks posed by *Xanthomonas campestris* pv. *mangiferaeindicae*, which we also consider to be of medium risk of introduction and dissemination within the continental United States, we are proposing that the shipment be inspected during preclearance activities and found free of *Xanthomonas campestris* pv. *mangiferaeindicae.*

Symptoms of *Xanthomonas campestris* pv. *mangiferaeindicae* are also easily discernible with the naked eye and would most likely be detected during visual inspection of the fruit at the packinghouse. The bacterium is not generally considered a post-harvest disease. Infection occurs most often through wounds which would cause the fruit to be culled during harvest or processing.

We further propose that each shipment of fruit be inspected jointly by APHIS and NPPO of India inspectors and that the accompanying phytosanitary certificate issued by the NPPO of India certifying that the fruit received the required irradiation treatment include two additional declarations. The first additional declaration would depend on which of the three options described above was chosen, *i.e.*, ''the fruit in this shipment was subjected to a post-harvest broad spectrum fungicidal dip,'' or ''the orchard where the fruit in this shipment was grown was inspected prior to harvest and found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*,'' or ''the orchard where the fruit in this shipment was grown was treated with a broad spectrum fungicide during the growing season, was inspected prior to harvest, and the fruit was found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae*.'' The second additional declaration would have to state: ''The fruit in this shipment was inspected during pre-clearance activities and found free of *Cytosphaera mangiferae*, *Macrophoma mangiferae*, and *Xanthomonas campestris* pv. *mangiferaeindicae*.'' Specifically listing the pests on the additional declaration would also serve to alert APHIS inspectors at the point of entry to the specific pests of concern.

The commodity imports would be restricted to commercial shipments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial shipments, as defined in § 319.56–1, are shipments of fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Identification of a particular shipment as commercial is based on a variety of indicators, including, but not limited to, the quantity of produce, the type of packaging, identification of a grower or packinghouse on the packaging, and documents consigning the shipment to a wholesaler or retailer. Commercially produced fruit in India are already subjected to standard commercial cultural and post-harvest practices that reduce the risk associated with plant

pests. While not specifically required by this proposal, standard cultural practices other than the twice yearly application of broad spectrum fungicides (*e.g.*, the regular use of sanitation measures, irrigation, fertilization, and pest control) help to further ensure that the pests of concern do not follow the pathway. All export orchards are registered production sites with traceback capability. Harvested fruit is moved to the packinghouses in a manner that would preclude reinfestation by pests. Culling of blemished and damaged fruit occurs in the field and during the post-harvest commercial processing of the fruit.

The regulations in § 319.56–6 provide that all imported fruits and vegetables shall be inspected, and shall be subject to such disinfection at the port of first arrival as may be required by an inspector. The pre-export inspection conducted by APHIS personnel as part of preclearance activities in the country of export typically serves to satisfy the inspection requirement. Section 319.56–6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is so infested with plant pests that an inspector determines that it cannot be cleaned or treated. We believe that the proposed conditions described above, as well as all other applicable requirements in § 319.56–6, would be adequate to prevent the introduction of plant pests into the continental United States with mangoes imported from India.

The proposed conditions described above for the importation of mangoes from India into the continental United States would be added to the fruits and vegetables regulations as a new § 319.56–2tt. In addition, we would also amend the table in § 305.2(h)(2)(i) of the phytosanitary treatments regulations by amending the entry for India to include mangoes and designate irradiation (IR) as an approved treatment for the specific pests named in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential effects.

Production of mangoes in the United States is limited to three States: Florida, California, and Hawaii. Due to climatic conditions and expanding urbanization in areas of production, mango-producing acreage is small and production minimal. We rely heavily on imports of fresh mangoes in order to meet consumer demand. The majority of mangoes produced in Florida, California, and Hawaii are destined for local markets, with very limited larger-scale commercial production. Below we examine recent production in the three mango-producing States, followed by a discussion of foreign supply.

Florida

Over 80 percent of mango acreage in Florida is located in Miami-Dade County, and the remaining acreage is located in surrounding areas. Mango cultivars commonly grown in Florida, which also make up the majority of varieties currently exported to the United States, are 'Tommy Atkins,' 'Keitt,' 'Haden,' and 'Kent.' The 2002 Census of Agriculture states that Florida had 400 mango-producing farms with 1,373 acres.[1] By 2003, the most recent year for which statistics are available, the number of acres had dropped to 1,300, a 24 percent decline in 3 years. Recent estimates indicate that the acreage has decreased still further, to a modest 1,000 acres in 2005.[2] Only two acres of mangoes have been planted in Florida since 2000. In a 1997 production report, the last year these statistics were gathered, a mango crop of 100,000 bushels (5.5 million pounds) was harvested, with a price of $14.50 per bushel, yielding a total value of $1.45 million.[3] Due to declining acreage, and consequently reduced harvest yield, production and value statistics are no longer maintained. The majority of mangoes produced in Florida are destined for local farmers' and specialty markets, or sold as green fruit for processing. We are unaware of any larger-scale commercial shipments of fresh mangoes by Florida producers.

California

According to the 2002 Census of Agriculture, there were 11 mango-producing farms in California, with an unknown amount of acreage.[4] Until recently, mangoes produced in California were thought to be sold only in local markets. However, recent news reports indicate that there are two commercial mango operations in the Coachella Valley of California that sell their fruit through the Corona College Heights Orange & Lemon Association in Corona, CA.[5] According to the article, the two operations have a combined total of 210 bearing acres, yielding about 275,000 cartons of mangoes (approximately 3.8 million pounds), with a little less than half being certified organic.[6] In addition, one of the growers expects to have an additional 48 acres bearing fruit by 2007. Commercial mango production in California is a relatively new venture, and is expected to grow only gradually. As the article points out, the availability of suitable land for mangoes is limited due to the fruits' susceptibility to frost. For those areas that are not prone to frost, producers are reluctant to switch to mango production from profitable crops such as grapes and citrus because of the heavy initial investments and the long period between first investment and return. The time period between first planting and first production is 5 years for mango trees, so it is not surprising that producers are reluctant to enter into this industry.

Hawaii

In 2002, the Census of Agriculture recorded 212 mango-producing farms in Hawaii, but withheld production acreage to avoid disclosing information for individual operations. In 2004, the Hawaiian field office of the National Agricultural Statistics Service (NASS) reported there were 140 farms, with a total of 275 acres of crops, of which 200 acres yielded utilized production of 380,000 pounds, with a sales value of $350,000. Preliminary reports for 2005 indicate a decrease of 28.5 percent in the number of mango farms to 100, but an increase in total crop acreage to 295. The amount of harvested acres in 2005

[1] USDA–NASS. 2002 Census of Agriculture, Table 31. Fruits and Nuts: 2002 and 1997. Washington, DC: National Agricultural Statistics Service, 2002.

[2] Richard J. Campbell, PhD, Senior Curator of Tropical Fruit, ''International Mango Festival 2005 Curator's Choice Cultivars.'' Coral Gables, FL: Fairchild Tropical Botanic Garden, page updated May 31, 2005. (*http://www.fairchildgarden.org/horticulture/mangocurators.html.*)

[3] USDA–NASS–FL. Tropical Fruit Acres and Trees. Orlando, FL: Florida Agricultural Statistics Service, December 11, 2002 and May 12, 2003.

[4] The production acreage was withheld to avoid disclosing confidential business information for individual farms.

[5] ''Organic Mangos Now Coming Out of California'' by Tim Linden. Web site: *http://theproducenews.com/storydetail.cfm?ID=6216*, August 18, 2006.

[6] *Note:* According to a source describing the harvesting and packing of Florida mangoes, a carton can hold 8 to 20 mangoes depending on the size of the fruit, and have a capacity of 14 lbs (6.35 kg) of fruit (*http://www.hort.purdue.edu/newcrop/morton/mango_ars.html*).

was 190, which represents a slight decrease. However, there was a 39.4 percent increase in utilized production, which, combined with a higher farm price per pound, yielded a 40.2 percent increase in total sales value to $586,000.[7] The amount of commercial production of mangoes in Hawaii is unknown at this time; however, we believe the majority of production is funneled into local markets. We welcome public comment regarding the amount of commercial production of mangoes in Hawaii other than for local markets.

As is evident, U.S. mango production is limited, with most of the fruit sold locally. In fact, official supply and utilization data maintained by USDA's Economic Research Service (ERS) have not recorded domestic production figures since 1998. U.S. consumers are almost entirely dependent on imports to meet domestic demand. Table 1 presents ERS data on the supply and utilization of fresh mangoes, 2002–2004.[8]

TABLE 1.—FRESH MANGOES SUPPLY AND UTILIZATION

Year	Utilization				
	Imports	Total supply	Exports	Consumption	
				Total	Per capita
	Million pounds				Pounds
2002	580.6	580.6	11.8	568.8	1.97
2003	613.8	613.8	14.5	599.4	2.06
2004	609.2	609.2	17.1	592.1	2.01

Preliminary estimates for 2005 indicate annual consumption was 1.9 pounds per person, down slightly from a historic high of a little over 2 pounds per person reached in 2003. Industry experts correlate this decline with lower imports, and believe the downward trend in consumption will be reversed should imports continue higher throughout the rest of 2006.[9] In 2005, 575.1 million pounds of fresh mangoes were imported into the United States, which was a decline from the previous year when imports totaled 609.2 million pounds. Table 2 highlights the volume of fresh mango imports for the calendar year 2005 from the top five countries.

TABLE 2.—FRESH MANGO IMPORTS, VOLUME AND VALUE, JANUARY–DECEMBER 2005

Country	Imports 9/1–5/31	Imports 6/1–8/31	Total yearly imports	Value 9/1–5/31	Value 6/1–8/31	Total yearly value
	Million pounds			1,000 dollars		
Mexico	169.7	180.7	350.4	$51,707	$51,603	$103,310
Peru	65.8	.....	65.8	21,522	.....	21,522
Brazil	56.0	1.6	57.6	17,638	585	18,223
Ecuador	53.1	.....	53.1	13,476	.....	13,476
Haiti	11.4	9.2	20.7	3,886	3,457	7,343
World total	382.9	192.1	575.0	113,309	55,808	169,117

Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics.
Note: HS Codes used were 0804504040 (mangoes fresh, entered 9/1–5/31) and 0804506040 (mangoes fresh, entered 6/1–8/31).

The 2005 trade statistics indicate fresh mangoes were imported from 13 countries, with the overwhelming majority originating from countries in Central and South America. Although the United States imports mangoes from many countries, Mexico is the major supplier, with a market share of more than 60 percent of the annual import volume, and therefore, essentially 60 percent of the U.S. supply of mangoes. Interestingly, though, Mexico is only the fourth leading producer of mangoes, trailing behind India, China, and Thailand. Its proximity to the United States and participation in the North American Free Trade Agreement (NAFTA) provide advantages over other exporting countries of lower transport costs and reduced or no tariffs.[10]

[7] USDA–NASS–HI. Hawaii Tropical Specialty Fruits. Honolulu, HI: National Agricultural Statistics Service USDA, Hawaii Field Office, 2004 and 2005 edition. *Note:* Utilized production may include fresh and processed utilization.

[8] USDA–ERS. Table F–6, Fresh Mangoes: Supply and Utilization, 1980 to date. Washington, DC: Economic Research Service, December 21, 2005.

[9] USDA–ERS. Fruit and Tree Nuts Outlook. May 25, 2006.

[10] USDA–ERS. Fruit and Tree Nuts Briefing Room. Updated: October 8, 2004.

Although the proposed rule would allow imports of all mango varieties, India is currently interested in exporting three varieties of mangoes to the United States—'Kesar,' 'Alfonse,' [11] and 'Banganpalli'—from four States: Andhra Pradesh, Gujarat, Maharashtra, and Uttar Pradesh. Based on a site visit conducted by APHIS officials, we believe the majority of exports would originate from Gujarat and Maharashtra, where there are two and six production areas, respectively, producing 'Kesar' and 'Alfonse' varieties. The harvest season in India starts in late spring, usually April or May, and lasts about 2 months. According to the request from the Government of India, the quantity of mangoes exported to the United States would be about 100 sea containers per year.[12] With India being the world leader in mango production, and a typical export packinghouse having a shipping capacity of 40–50 metric tons (over 88,000 lbs.) per day for 45–50 days of the harvest season, the amount imported into the United States would likely only be limited by U.S. market forces. Entry of Indian mangoes into the domestic market would provide increased variety and greater selection for consumers in the continental United States.

The overwhelming majority of mangoes produced domestically are sold in local markets. Even though the proposed rule could result in an overall increase in fresh mango imports, and thus, an increase in domestic supply, we do not anticipate the price impacts on domestic mango producers to be large. Indian mangoes would primarily compete for market share against other imported mangoes. Based on the higher transportation costs alone, we would expect the price of Indian mangoes to be higher than mangoes coming from countries currently exporting to the United States. Statistics show that in 2004, the export price of Indian mangoes ($595.95/metric tonne) was 16 percent higher than the export price of mangoes from Mexico ($511.96/metric tonne), our primary supplier.[13]

In order to compete with other countries importing mangoes into the United States, India expects to first target niche and gourmet markets by promoting the mangoes as premium quality fruit. Producers indicated to the APHIS site visit team that initially, the mangoes are expected to be sold through premium catalog sales and/or in specialty and ethnic grocers, after which the mangoes would then be sold in the regular retail sector. Additionally, we expect that India would initially target those geographic areas and markets with high concentrations of Asian and South-Asian persons. According to the United States Census in 2000, 11.9 million people, or 4.2 percent of the population, identified themselves as Asian. The 10 states with the largest Asian demographic in 2000 were California, New York, Hawaii, Texas, New Jersey, Illinois, Washington, Florida, Virginia, and Massachusetts, which combined represent 75 percent of the Asian population in the United States. Regionally, the West and the Northeast have the largest concentrations of Asians. Asian Indians represented the third largest specified Asian group, with a total of 1.9 million people who reported Asian Indian alone or in combination with at least one other race or Asian group.[14] Usually, economic theory dictates that an overall increase in supply of a particular commodity would trigger downward pressure on price and result in reduced market share for domestic producers of that commodity. However, we believe the effects on domestic producers of the proposed rule would be minimal, in light of the predominance of imports and the specialty markets that India is expected to target. Based on the information we have at this time, we expect the benefits of opening the market to Indian mangoes would outweigh any expected costs to domestic producers. However, we welcome public comment on possible impacts on domestic entities as a result of the proposed regulation.

The proposed rule would only allow the importation of commercial shipments of fresh mangoes from India provided they have undergone specific phytosanitary requirements. The requirements outlined in the proposed rule include treatment in India of mango fruit with irradiation using a minimum absorbed dose of 400 gray, and preclearance inspection for those pests not targeted by the irradiation treatment. The NPPO of India would enter into a trust fund agreement with APHIS to provide for all expenses incurred by APHIS while performing preclearance activities, including salaries and administrative, travel, and other incidental expenses. Costs, if any, not covered by the trust fund would be minimal. In addition to irradiation and other preclearance activities, current regulations set out a course of action if, on inspection at the port of arrival, any actionable pest or pathogen is identified. We believe these risk-mitigating phytosanitary measures are sufficient to protect against the introduction of quarantine plant pests into the continental United States associated with the importation of mangoes from India.

The proposed rule may affect domestic producers of mangoes, as well as firms that import mangoes, which are likely to be classified as small entities according to U.S. Small Business Administration's (SBA) guidelines.

As described above, there is very little larger-scale commercial production of mangoes within the United States. The overwhelming majority of domestically produced mangoes are sold in local markets. In fact, official supply and utilization data maintained by USDA's Economic Research Service (ERS) have not recorded domestic production figures since 1998. The SBA's size standard for mango farming is $750,000 or less in annual receipts.[15] According to the 2002 Census of Agriculture, there were a total of 623 farms (400 in Florida, 11 in California, and 212 in Hawaii) engaged in mango production. Census data did not include annual sale valuation statistics for mango-producing farms. The exact number of mango farms that would be considered small by SBA standards is unknown. However, based on the small bearing acreage, production principally for local markets, and our dependence on imports to meet domestic demand for mangoes, we would expect the majority of these operations to be classified as small.

[11] This mango variety is also known as 'Alfonso'.

[12] Source: A Qualitative, Pathway-Initiated Pest Risk Assessment, prepared June 2006 (APHIS). *Note:* The average container used to ship mangoes from South America is a 44-foot container, having an average capacity of 22 pallets. Each pallet holds an average of 200 boxes. The average weight of each box is 5.0 kilograms (kg). Thus, the total weight of each container is 200 boxes × 5.0 kg × 22 pallet = 22,000 kg (48,501.70 lbs.). Source: Adly Ibrahim (APHIS).

[13] FAOSTAT–TradeSTAT. Food and Agriculture Organization of the United Nations Trade Databases. (*http://faostat.fao.org*).

[14] The Asian Population: 2000, Census 2000 Brief. Washington, DC: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, Issued February 2002.

[15] Table of Size Standards based on NAICS 2002 [Other Noncitrus Fruit Farming: NAICS code 111339]. Washington, D.C.: U.S. Small Business Administration, effective July 31, 2006.

Other industries that may be affected by the proposed rule, as categorized in the North American Industry Classification System (NAICS), are Fresh Fruit and Vegetable Merchant Wholesalers (NAICS 424480), Fruit and Vegetable Markets (NAICS 445230), and Mail-Order Houses (NAICS 454113).[16] All of these industries are primarily comprised of small entities. There were 4,644 fruit and vegetable merchant establishments that operated for the entire year, with 4,436 of them, or 95.5 percent, operating with fewer than 100 employees. Of the 2,257 fruit and vegetable market establishments that operated for the entire year, only 84 of them had sales of over $5 million, leaving over 96 percent of these establishments with sales less than $5 million. Lastly, there were 8,224 establishments classified under the NAICS code for mail-order houses, of which 7,319 of them, or about 89 percent, had annual sales of less than $10 million.[17] All of the above industries may benefit from the proposed rule by having access to Indian mangoes, which could bolster sales volume and annual revenue.

There are no significant alternatives to the proposed rule that would accomplish the stated objectives. The only alternative to the proposed rule would be to continue to prohibit imports from this region, thereby ignoring evidence that the pest risks associated with mango importation are minimal if we follow specified phytosanitary protocols. This alternative is not a viable option, as it would be inconsistent with international agreements to which the United States is a party that state that regulatory restrictions should be based on scientific evidence and applied only to the extent necessary to protect plant, human, and animal health.

This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

Executive Order 12988

This proposed rule would allow mangoes to be imported into the United States from India. If this proposed rule is adopted, State and local laws and regulations regarding mangoes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation of mangoes from India into the continental United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2006–0121. Please send a copy of your comments to: (1) Docket No. APHIS–2006–0121, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow the importation into the continental United States of mangoes from India under certain conditions. As a condition of entry, the mangoes would have to undergo irradiation treatment and be accompanied by a phytosanitary certificate with additional declaration providing specific information regarding the treatment and inspection of the mangoes and the orchards in which they are grown. In addition, the mangoes would be subject to inspection at the port of first arrival. This action would allow for the importation of mangoes from India, into the continental United States while continuing to provide protection against the introduction of quarantine pests.

This proposed rule will require the use of phytosanitary certificates (foreign), additional declarations, compliance agreements (foreign), preclearance workplans, trust fund agreements, and recordkeeping.

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

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

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

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

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

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5260 hours per response.

Respondents: NPPOs and importers of mangoes.

Estimated annual number of respondents: 154.

[16] SBA size standards are as follows: NAICS code 424480: 100 employees or less; NAICS code 445230: $6.5 million or less in annual receipts; NAICS code 454113 (note: includes those operations that engage in direct catalog sales): $23 million or less in annual receipts.

[17] Establishment and Firm Size based on 2002 Economic Census. Washington, D.C.: U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, Issued December 2005 (wholesale trade) and November 2005 (retail trade).

Estimated annual number of responses per respondent: 33.1428.

Estimated annual number of responses: 5,104.

Estimated total annual burden on respondents: 2,685 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

7 CFR Part 319

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

Accordingly, we propose to amend 7 CFR parts 305 and 319 as follows:

PART 305—PHYTOSANITARY TREATMENTS

1. The authority citation for part 305 would continue to read as follows:

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

2. In § 305.2, the table in paragraph (h)(2)(i) would be amended by adding, under India, an entry for mango to read as follows:

§ 305.2 Approved treatments.

* * * * *

(h) * * *

(2) * * *

(i) * * *

Location	Commodity	Pest	Treatment schedule
*	*	*	*
India			
*	*	*	*
	Mango	Plant pests of the class Insecta except pupae and adults of the order Lepidoptera.	IR
*	*	*	*

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

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

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

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

§ 319.56–2tt Conditions governing the entry of mangoes from India.

Mangoes (*Mangifera indica*) may be imported into the continental United States from India only under the following conditions:

(a) The mangoes must be treated in India with irradiation by receiving a minimum absorbed dose of 400 Gy in accordance with § 305.31 of this chapter.

(b) The risks presented by *Cytosphaera mangiferae* and *Macrophoma mangiferae* must be addressed in one of the following ways:

(1) The mangoes are treated with a broad-spectrum post-harvest fungicidal dip; or

(2) The orchard of origin is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the national plant protection organization (NPPO) of India and the orchard is found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae;* or

(3) The orchard of origin is treated with a broad-spectrum fungicide during the growing season and is inspected prior to the beginning of harvest as determined by the mutual agreement between APHIS and the NPPO of India and the fruit found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae.*

(c) Each shipment of mangoes must be inspected jointly by APHIS and the NPPO of India as part of the required preclearance inspection activities at a time and in a manner determined by mutual agreement between APHIS and the NPPO of India.

(d) The risks presented by *Cytosphaera mangiferae, Macrophoma mangiferae,* and *Xanthomonas campestris* pv. *mangiferaeindicae* must be addressed by inspection during preclearance activities.

(e) Each shipment of fruit must be inspected jointly by APHIS and the NPPO of India and accompanied by a phytosanitary certificate issued by the NPPO of India certifying that the fruit received the required irradiation treatment. The phytosanitary certificate must also bear the following two additional declarations:

(1) A declaration identifying which of the mitigations provided under paragraph (b) of this section was used, *i.e.:*

(i) ''The fruit in this shipment was subjected to a post-harvest broad spectrum fungicidal dip,'' or

(ii) ''The orchard where the fruit in this shipment was grown was inspected prior to harvest and the orchard was found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae,*'' or

(iii) ''The orchard where the fruit in this shipment was grown was treated with a broad spectrum fungicide during the growing season, was inspected prior to harvest, and the fruit was found free of *Cytosphaera mangiferae* and *Macrophoma mangiferae.*''

(2) A declaration stating: ''The fruit in this shipment was inspected during preclearance activities and found free of *Cytosphaera mangiferae, Macrophoma mangiferae,* and *Xanthomonas campestris* pv. *mangiferaeindicae.*''

(f) The mangoes may be imported in commercial shipments only.

Done in Washington, DC, this 14th day of November 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19452 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE127; Notice No. 33–06–01–SC]

Special Conditions: General Electric Company GEnx Model Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for General Electric Company (GE) GEnx turbofan engine models. These engines will have a novel or unusual design feature associated with the fan blades. The Administrator has determined that the applicable part 33 airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the added safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness regulations.

EFFECTIVE DATES: We must receive your comments by December 18, 2006.

ADDRESSES: You may mail two copies of your comments to: Federal Aviation Administration, Engine and Propeller Directorate, Attn: Robert McCabe, Rules Docket (ANE–111), Docket No. NE127, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. You may deliver two copies to the Engine and Propeller Directorate at the above address. You must mark your comments: Docket No. NE127. You may send comments via email to *robert.mccabe@faa.gov*. You must use the subject ''Docket No. NE127''. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Robert McCabe, ANE–111, Rulemaking and Policy Branch, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 237–7138; facsimile (781) 238–7199; email *robert.mccabe@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on this proposal, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 13, 2004, the General Electric Company (GE) applied to the FAA for a new type certificate for the GEnx series engine models. On May 24, 2005, GE submitted a revised application for a type certificate that added models and changed the model designation nomenclature. The turbofan engine models to be certified are GEnx–1B54, GEnx–1B58, GEnx–1B64, GEnx–1B67, GEnx–1B70, GEnx–1B70/72, GEnx–1B70/75, GEnx–1B72, and GEnx–1B75. For these GEnx engine models, GE plans to use carbon graphite composite fan blades incorporating metal leading and trailing edges that use geometry, composite structural materials, and manufacturing methods very similar to those used for the previously certified GE90-series engine fan blades designs.

In lieu of direct compliance to § 33.94(a)(1) for the GEnx fan blades, the FAA has proposed that GE comply with new special conditions that retain the requirements of the original SC–33–ANE–08 created for the GE90–76B, –77B, –85B, –90B, –94B model certification program, and then successfully applied to the GE90–110B1, –113B, and –115B model certification program.

These GE90 series engine model fan blades are manufactured using carbon graphite composite material that also incorporates metal leading and trailing edges. These unusual and novel design features result in the fan blades having significant differences in material property characteristics when compared to conventionally designed fan blades using non-composite metallic materials. GE submitted data and analysis during the GE90–76B, –77B, –85B, –90B, –94B model certification program showing the likelihood that a composite fan blade with fail below the inner annulus flow path line is highly improbable. GE, therefore, questioned the appropriateness of the requirement contained in § 33.94(a)(1) to show blade containment after a failure of the blade at the outermost retention feature.

The FAA determined that the requirements of § 33.94(a)(1) are based on metallic blade characteristics and service history, and were not appropriate for the unusual design features of the composite fan blade design planned for the GE90–76B, –77B, –85B, –90B, –94B model turbofan engines. The FAA determined that a more realistic blade retention test would be achieved with a fan blade failure at the inner annulus flow path line (the complete airfoil only) instead of the outermost blade retention feature as currently required by § 33.94(a)(1).

The FAA, therefore, issued special conditions SC–33–ANE–88 on February 1, 1995 for the GE90–76B, –77B, –85B, –90B, –94B engine models. These special conditions defined additional safety standards for the carbon graphite composite fan blades that were appropriate for the unusual design features of those fan blades and that were determined to be necessary to establish a level of safety equivalent to that established by the airworthiness standards of § 33.94(a)(1). The FAA later determined that these special conditions continued to be appropriate for the amended type certificate applied to the GE90–110B1, –113B, and –115B engine models.

The FAA also determined that the composite fan blade design and construction presents factors other than the expected location of a blade failure that must be considered. Tests and analyses must account for the effects of in-service deterioration of, manufacturing and materials variations in, and environmental effects on, the composite material. Tests and analyses

must also show that a lightning strike on a composite fan blade will not result in a hazardous condition to the aircraft and that the engine will continue to meet the requirements of § 33.75.

Therefore, due to the close similarity of the GEnx model series fan blade design to the previously certified GE90 model series fan blade design, the FAA is proposing to issue similar special conditions as part of the type certification basis for the GEnx engine models in lieu of direct compliance to § 33.94(a)(1). These special conditions define the additional requirements that the Administrator considers necessary to establish a level of safety equivalent to that which would be established by direct compliance to the airworthiness standards of § 33.94(a)(1).

Type Certification Basis

Under 14 CFR 21.17, GE must show that the GEnx series turbofan engine models meet the requirements of the applicable provisions of § 21.21 and part 33. The FAA has determined that the applicable airworthiness regulations in part 33 do not contain adequate or appropriate safety standards for the GEnx series turbofan engine models because of its novel and unusual fan blade design features. Therefore, these special conditions are prescribed under the provisions of 14 CFR 11.19 and § 21.16, and will become part of the type certification basis of the GEnx engine in accordance with 14 CFR 21.17(a)(2).

As discussed above, these special conditions apply only to the GEnx series turbofan engine models. If the type certificate for those models is amended later to include any other models that incorporate the same novel or unusual design features, these special conditions would also apply to the other models under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The GEnx–1B54, –1B58, –1B64, –1B67, –70B, –1B70/72, –1B70/75, –72B and –75B engine models will incorporate the following novel or unusual design features: fan blades to be manufactured using carbon graphite composite material that incorporates metal leading and training edges.

Applicability

As discussed above, these special conditions apply only to the GEnx–1B54, –1B58, –1B64, –1B67, –70B, –1B70/72, –1B70/75, –72B and –75B turbofan engine models. If GE applies later for a change to the type certificate to include another model incorporating the same novel or unusual fan blade design features, these special conditions would apply to that model as well.

Conclusion

This action affects only the carbon fiber composite fan blade design features on the GEnx series turbofan engine models. It is not a rule of general applicability, and it affects only the General Electric Company which has applied to the FAA for certification of these fan blade design features.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the GEnx series turbofan engines.

1. In lieu of the fan blade containment test with the fan blade failing at the outermost retention groove as specified in § 33.94(a)(1), complete the following requirements:

(a) Conduct an engine fan blade containment test with the fan blade failing at the inner annulus flow path line.

(b) Substantiate by test and analyses, or other methods acceptable to the Administrator, that a minimum material properties fan disk and fan blade retention system can withstand without failure a centrifugal load equal to two times the maximum load which the retention system could experience within approved engine operating limitations. The fan blade retention system includes the portion of the fan blade from the inner annulus flow path line inward to the blade dovetail, the blade retention components, and the fan disk and fan blade attachment features.

(c) Using a procedure approved by the Administrator, establish an operating limitation that specifies the maximum allowable number of start-stop stress cycles for the fan blade retention systems. The life evaluation shall include the combined effects of high cycle and low cycle fatigue. If the operating limitation is less than 100,000 cycles, that limitation must be specified in Chapter 5 of the Engine Manual Airworthiness Limitation Section.

(d) Substantiate that, during the service life of the engine, the total probability of the occurrence of a hazardous engine effect defined in § 33.75 due to an individual blade retention system failure resulting from all possible causes will be extremely improbable, with a cumulative calculated probability of failure of less than 10^{-9} per engine flight hour.

(e) Substantiate by test or analysis that not only will the engine continue to meet the requirements of § 33.75 following a lightning strike on the composite fan blade structure, but that the lightning strike will also not cause damage to the fan blades that would prevent continued safe operation of the affected engine.

(f) Account for the effects of in-service deterioration, manufacturing variations, minimum material properties, and environmental effects during the tests and analyses required by paragraphs (a), (b), (c), (d), and (e) of these special conditions.

(g) Propose fleet leader monitoring and field sampling programs for the GEnx engine fan blades that will monitor the effects of usage on fan blade and retention system integrity. The sampling program should use the experience gained on current GE90 engine model monitoring programs, and must be approved by the FAA prior to certification of the GEnx engine models.

Issued in Burlington, Massachusetts on November 7, 2006.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 06–9230 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26166; Directorate Identifier 2006–CE–58–AD]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks on a vertical

stabilizer attachment fitting due to corrosion, have been found on an aircraft in service. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 18, 2006.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26166; Directorate Identifier 2006–CE–58–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Direction générale de l'aviation civile (DGAC), which is the aviation authority for France, has issued French AD No F–2003–366 R1, dated November 24, 2004 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states cracks on a vertical stabilizer attachment fitting due to corrosion have been found on an aircraft in service. This MCAI requires you to inspect the vertical stabilizer attachment fittings and bolts for cracks or corrosion and, if necessary, repair or replace the damaged parts. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EADS SOCATA has issued EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–104, Amendment 1, ATA No. 55, dated August 2004. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 205 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $3,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $680,600, or $3,320 per product.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

EADS SOCATA: Docket No. FAA–2006–26166; Directorate Identifier 2006–CE–58–AD

Comments Due Date

(a) We must receive comments by December 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SOCATA TBM 700 airplanes, serial numbers 1 through 308, plus the serial number 310, certificated in any category.

Note 1: This AD does not apply to airplanes in which both modifications No. MOD70–127–55 and MOD70–129–53 have been factory installed.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states cracks on a vertical stabilizer attachment fitting due to corrosion, have been found on an aircraft in service.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within the next 600 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first after the effective date of this AD, inspect vertical stabilizer attachment fittings and bolts for cracks or corrosion and if necessary repair or replace the damaged part and then apply a corrosion protection reinforcement, following EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–104, Amendment 1, ATA No. 55, dated August 2004.

(2) Repeat the actions of paragraph (e)(1) every 1,200 hours TIS or every 2 annual inspections whichever occurs first after the effective date of this AD, following EADS SOCATA Service Bulletin SB 70–104, Amendment 1, ATA No. 55, dated August 2004.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to Direction générale de l'aviation civile (DGAC) AD

No F–2003–366 R1, dated November 24, 2004; and EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–104, Amendment 1, ATA No. 55, dated August 2004, for related information.

Issued in Kansas City, Missouri, on November 9, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19443 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26234; Directorate Identifier 2006–CE–64–AD]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as loose rivets on frames C18 BIS and C19, which could result in a reduced structural integrity of the tail area. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 18, 2006.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26234; Directorate Identifier 2006–CE–64–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Direction générale de l'aviation civile (DGAC), which is the aviation authority for France, has issued French AD No F–2005–132, dated August 3, 2005 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states there are reports of loose rivets on frames C18 BIS and C19, which could result in a reduced structural integrity of the tail area. This MCAI requires you to inspect the rivets on frames C18 BIS and C19, and, if necessary, apply corrective actions. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EADS SOCATA has issued EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, ATA No. 53, dated June 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 272 products of U.S. registry. We also estimate that it would take about 18 work-hours per product to comply with the proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $2,300 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,017,280, or $3,740 per product.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

EADS SOCATA: Docket No. FAA–2006–26234; Directorate Identifier 2006–CE–64–AD.

Comments Due Date

(a) We must receive comments by December 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to SOCATA TBM 700 airplanes, all serial numbers, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states this Airworthiness Directive (AD) was prompted by reports of loose rivets on frames C18 BIS and C19, which, if not corrected, could result in a reduced structural integrity of the tail area.

Actions and Compliance

(e) Unless already done, within the next 100 hours time-in-service (TIS) or 12 months, whichever occurs later after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS, accomplish a detailed inspection of the area and apply corrective actions as necessary by doing all the applicable actions in accordance with the accomplishment instructions of the EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, ATA No. 53, dated June 2005.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4119; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to Direction générale de l'aviation civile Airworthiness Directive No F–2005–132, dated August 3, 2005 and EADS SOCATA TBM Aircraft Mandatory Service Bulletin SB 70–129, ATA No. 53, dated June 2005, for related information.

Issued in Kansas City, Missouri, on November 9, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–19440 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26095; Airspace Docket No. 06–AEA–014]

Establishment of Class D Airspace; Griffiss Airfield, Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Griffiss Airfield, Rome, NY. This action is necessary for the protection of an activated control tower for Griffiss Airfield, Rome, NY. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 18, 2006.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. FAA–2006–26095; Airspace Docket No. 06–AEA–014, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commuters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–26095; Airspace Docket No. 06–AEA–014'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region 1, Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Griffiss AFB, Rome, NY. The protection of an activated Control Tower makes this action necessary. That airspace would extend from the surface to and including 3,200 feet MSL within a 4.5 mile radius of the Griffiss Airfield, Rome, NY, and within 2 miles each side of bearing 135°/315° from a point at Lat 43°14.03′ N, Long 75°24.42′ W, extending from the 4.5 mile radius zone, to a point 6 miles NW and 6 miles SE of the airport. The class D airspace area would be effective during the specific dates and times established in advance by a notice to airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory. Class D airspace designations for airspace areas extending upward from the surface to and including 3,200 feet MSL are published in Paragraph 5000 of FAA Order 7400.9P, dated September 1, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace areas extending upward from the surface of the earth.

AEA NY (D), Griffiss Airfield [New]

Rome, NY

(Lat. 43°14′03″ N., long. 75°24′42″ W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.5 mile radius of the Griffiss Airfield, Rome, NY, and within 2 miles each side of bearing 135°/315° from a point at Lat 43°14.03′ N, Long 75°24.42′ W, extending from the 4.5 mile radius zone, to a point 6 miles NW and 6 miles SE of the airport. The Class D airspace area is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time thereafter be continuously published in the Airport/Facility Directory.

Issued in Jamaica, New York on October 30, 2006.

Mark D. Ward,

Manager, System Support Group.

[FR Doc. 06–9248 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–26116; Airspace Docket No. 06–AEA–015]

Establishment of Class E–2 Airspace; Griffiss Airfield, Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E–2 airspace at Griffiss Airfield, Rome, NY. The opening of a tower and for the protection of instrument approaches make this action necessary. Controlled airspace extending upward from the surface to the base of the overlying controlled airspace is needed to contain aircraft executing an approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before December 18, 2006.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. FAA–2006–26116; Airspace Docket No. 06–AEA–015, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–26116; Airspace Docket No.: ''06–AEA–015''. The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date

for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket closing both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, FAA Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E–2 airspace at Griffiss Airfield, Rome, NY. The opening of a tower and for the protection of Instrument Approaches makes this action necessary. Controlled airspace extending upward from the surface to the base of the overlying controlled airspace is needed to accommodate the SIAPs. The class E–2 airspace area would be effective during the specific dates and times established in advance by a notice to airmen. The effective date and time would thereafter be continuously published in the Airport/Facility Directory. Class E–2 airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 6002 of FAA Order 7400.9P, dated September 1, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E–2 airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E–2 airspace areas extending upward from the surface of the earth.

AEA NY (D), Griffiss Airfield [New]

Rome, NY

(Lat. 43°14′03″ N., long 75°24′42″ W.)

That airspace extending upward from the surface to the base of the overlying controlled airspace within a 4.5 mile radius of the Griffis Airfield, Rome, NY, and within 2 miles each side of bearing 135°/315° from a point at Lat 43°14.03′N, Long 75°24,42′W, extending from the 4.5 mile radius zone, to a point 10.5 miles NW and 105 miles SE of the airport. The Class E–2 airspace area is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time thereafter be continously published in the Airport/Facility Directory.

Issued in Jamaica, New York on October 30, 2006.

Mark D. Ward,

Manager, System Support Group.

[FR Doc. 06–9246 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–06–237]

RIN 1625–AA09

Drawbridge Operation Regulations; Outer Clam Bay Boardwalk Bridge, Mile 0.3, Near North Naples, Collier County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Outer Clam Bay boardwalk bridge, mile 0.3, near North Naples in Collier County, Florida. This proposed rule would require the draw to open on signal, with at least 30 minutes advance notice. This proposed action will allow the unrestricted movement of pedestrian traffic while not unreasonably interfering with the movement of vessel traffic.

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 (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL, 33131, who 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 are available for inspection or copying at the Seventh Coast Guard District Bridge Branch, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, at (305) 415–6743.

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 [CGD07–06–237], 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 Bridge Branch 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 existing regulations of the Outer Clam Bay boardwalk bridge, mile 0.3, near North Naples, at Collier County, published in 33 CFR 117.323 require the draw to open on signal between 9 a.m. and 5 p.m., if at least one-hour advance notice is given. Between 5 p.m. and 9 a.m., the draw will be left in the open position.

On October 19, 2006, the officials of Collier County requested that the Coast Guard review the existing regulations governing the operation of the Outer Clam Bay boardwalk bridge, because they contended that the regulation is not meeting the needs of pedestrian traffic.

County records indicate that the owner has had one request for an opening since 1986 and the vessel did not show up for the requested opening. Night time vessel traffic is negligible. The boardwalk provides access to a recreational beachfront area 24 hours a day and to leave the bridge in the open position prevents beachgoers from accessing the recreational area by foot and golf cart between the hours of 5 p.m. and 9 a.m.

Discussion of Proposed Rule

This proposed rule would require the Outer Clam Bay boardwalk bridge, mile 0.3, near North Naples at Collier County to open on signal with 30 minutes advance notice. This schedule will allow unrestricted pedestrian and golf cart traffic to cross to the recreation area while providing for the reasonable needs of navigation. Local personnel will be available to open and close the bridge during night time hours.

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 (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposed rule would modify the existing bridge schedule to allow pedestrian and vehicle traffic unrestricted access to the recreation area while providing for the reasonable needs of 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 business, 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 may be small entities: the owners or operators of vessels needing to transit through Outer Clam Bay in the vicinity of the Outer Clam Bay boardwalk bridge, persons intending to cross over the bridge and nearby business owners. 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 proposed 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 the person listed under **FOR FURTHER INFORMATION CONTACT**. 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 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 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 M16475.1D, 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 proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. 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 proposed rule.

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

2. Revise § 117.323 to read as follows:

§ 117.323 Outer Clam Bay.

The draw of the Outer Clam Bay boardwalk shall open on signal if at least 30 minutes advance notice is given.

Dated: October 31, 2006.

D.W. Kunkel,

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

[FR Doc. E6–19457 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 04–186 and 02–380; FCC 06–156]

Unlicensed Operation in the TV Broadcast Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document asks questions and sets forth proposals concerning the rules that will be necessary to enable low power devices to operate in the TV bands without causing harmful interference to other authorized operations in those bands. The process that the Commission will follow in developing the final rules for devices in the TV bands will allow it to develop a thorough record on the various issues involved. While the Commission continues to focus on devices operating on an unlicensed basis, it also asks whether such devices should instead operate on a licensed or hybrid basis. The Commission expects to complete this work and make final decisions in sufficient time for industry to design and produce new products by completion of the DTV transition.

DATES: Comments must be filed on or before January 31, 2007, and reply comments must be filed on or before March 2, 2007.

ADDRESSES: You may submit comments, identified by ET Docket No. 04–186 and 02–380, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.
- *Mail:* [Optional: Include the mailing address for paper, disk or CD–ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, e-mail: *Hugh.VanTuyl@fcc.gov*, or Alan Stillwell, Office of Engineering and Technology, (202) 418–2925, e-mail *Alan.Stillwell@fcc.gov*, TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking,* ET Docket No. 04–186 and 02–380, FCC 06–156, adopted October 12, 2006, and released October 18, 2006. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR

1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

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

Summary of Further Notice of Proposed Rulemaking

1. The purpose of this *Further Notice of Proposed Rule Making* (FNPRM) is to develop additional information concerning the rules that will be necessary to enable low power devices to operate in the TV bands without causing harmful interference to other authorized operations in those bands. TV stations are generally protected from interference within defined signal contours, and the signal level that defines a TV station's protected contour varies depending on the type of station and the frequency band in which the station operates. Consequently, in the *Notice of Proposed Rule Making* (NPRM) 69 FR 34103, June 18, 2004, the Commission proposed to use these service area criteria to define the areas that unlicensed devices must protect from harmful interference, *i.e.*, TV service within the contours defined by these criteria would have to be protected. In the *NPRM*, the Commission considered several different interference avoidance approaches for unlicensed operations for two functional categories of operations—fixed/access and personal/portable devices. Fixed/access devices generally operate at higher power from a fixed location, including outdoors, and may be used to provide a commercial service. Personal/portable devices, on the other hand, are those generally anticipated to operate at lower power, usually indoors or within a small localized area, and include devices such as computers or personal digital assistants (PDAs) that can be moved to operate at different locations. The Commission proposed to require that fixed/access devices incorporate a geo-location method such as GPS or be professionally installed, and that they access a database to identify vacant channels at their location. The Commission proposed that personal/portable devices operate only when they receive a control signal from a source such as an FM or TV station that identifies the vacant TV channels in that particular area. Finally, it sought comment on the possibility of using spectrum sensing as an alternative to the geo-location/database and control signal approaches, but did not make any specific proposals on the use of this technique for identifying unused TV channels.

2. The Commission does not believe there is sufficient information in the record to adopt rules for any of these interference avoidance approaches at this time. There are unresolved issues from the *NPRM* with respect to both the geo-location/database approach and the control signal approach, and the Commission is seeking further comment on ways to resolve those issues. Because the Commission believes that the spectrum sensing approach holds promise, it is making specific proposals concerning this approach. Although the *NPRM* included proposals that different interference avoidance schemes be used for fixed/access and personal/portable devices, commenters responding to this Further NPRM should address whether and how one interference avoidance scheme could be used effectively for both types of TV band devices. Commenters also should address how an interference avoidance scheme would protect TV services within their defined contours.

Licensed vs. Unlicensed Operation

3. In the *NPRM*, the Commission proposed to allow unlicensed operation in the TV bands, but did not address the possibility of instead providing for new low power operations on a licensed basis. A number of parties suggest that if new wireless operations are permitted in the TV bands, they should be on a licensed, rather than an unlicensed, basis. No party provided specific recommendations for how spectrum in the TV band could be assigned on a licensed basis for the devices contemplated in the *NPRM*. In the interest of obtaining a further record on this issue, the Commission seeks comment on whether proposed low power operations in the TV bands should be allowed on an unlicensed, licensed, or hybrid basis.

4. The Commission notes that licensing would require it to determine the rights and obligations of such licensees vis-à-vis other licensees. In contrast to unlicensed use, licensees would, by definition, have rights to transmit in this band with some interference protection. For instance, what would be the allocation status of such licensed operations? How would such services fit within the hierarchy of currently authorized TV and other services in the band? Should they have

equal, superior, or secondary rights to existing services, and if so, which ones? Would TV band devices used by licensed services be required to incorporate the same type of interference avoidance mechanisms and low power limits that are proposed for unlicensed devices? Would an exclusive licensing approach or a non-exclusive, shared approach better serve the Commission's spectrum policy objectives? If the Commission decides to license wireless services on an exclusive basis, it seeks comment on what licensing areas should be used in this band—*e.g.*, nationwide, regional, small geographic areas, or a site-specific approach? Should the Commission divide the TV spectrum into different blocks of channels—*e.g.*, Channels 5 and 6, Channels 7 through 13, Channels 21 through 36, and Channels 38 through 51—and issue separate authorizations to operate on each of these blocks of channels in the relevant geographic area?

5. The Commission seeks comment on these and any other issues relevant to whether TV band devices should be allowed on an unlicensed, licensed, or hybrid basis. It asks commenters to discuss the technical, operational, legal, or economic advantages and costs associated with the various options. Commenters should also discuss the benefits and disadvantages associated with each of these approaches.

Spectrum Sensing and Other Technical Requirements

6. The Commission further explores the viability of spectrum sensing as a method for identifying TV channels that may be used by TV band devices and offers specific technical proposals for the sensing capabilities and parameters that would need to be included in the Commission's rules. It requests additional comment on whether TV band devices should be allowed to use spectrum sensing as a means to determine the availability of unused frequencies in the TV bands and, if so, the technical features and parameters of the sensing capability to be required.

7. *Detection Threshold.* The detection threshold is the sensitivity level that would be used to determine the presence of other signals. The Commission observes that IEEE 802.22 is considering different threshold detection levels depending on the nature of the source signal, with levels as low as −116 dBm. The Commission invites comment as to this value or alternative values for the detection threshold.

8. The Commission appreciates that a variety of additional considerations need to be taken into account in developing the detection threshold for devices in the TV bands. For example, a lower detection threshold infers greater interference protection for services operating in the TV spectrum, but could also result in increased false positives as a response to spurious radio noise or other unlicensed devices, sharply reducing the usefulness of this spectrum for TV band devices. Also, the height of the TV band device transmitting antenna affects the distance that signals propagate, and therefore the distance at which interference could occur. The Commission asks interested parties to address how these factors might be taken into account in developing the appropriate detection threshold.

9. A number of parties have asserted that sensing alone will not be effective in preventing harmful interference to TV broadcasting within its protected contour and to other authorized services in this spectrum due to the problem of the ''hidden node.'' This situation results when there is an obstruction between the sensing receiver and the signal to be detected. In this case, the sensing receiver may fail to detect that a channel is occupied and begin transmitting, thus causing interference to other nearby parties attempting to receive that channel along an unobstructed path. The Commission recognizes that this is indeed a potential problem and request views on its scope and how to deal with this phenomenon effectively. The Commission invites further comment as to how it can ensure the viability of a distributed sensing approach for systems deployed on an unlicensed basis. For example, could this type of operation be achieved simply by requiring every device in a network to have sensing capability and to pass its sensing information on to other devices on the network? Another approach would be to use sensing in combination with other information, such as geolocation, under a set of policy rules that would serve as the gating criteria for access to the spectrum. The Commission solicits comments on these and any other approaches that would deal effectively with the hidden node problem.

10. *Channel Availability Check Time, Move Time and Non-Occupancy Period.* The operating pattern in the TV spectrum typically does not change rapidly because TV stations rarely change their operating characteristics, such as hours of operation, antenna height, power, etc. Nevertheless, the Commission recognizes that operations in the TV spectrum can and do change over time. For example, certain TV broadcasting operations may be on most of the day, but not for brief periods during late night or early morning hours. New low power TV and translator operations could be authorized and come on the air at any time. Wireless microphone operations tend to be used for a period of hours at a particular location, but can also operate anywhere at any time and may not have a signal that is on the air continuously.

11. In light of these factors, the Commission proposes to require that TV band devices that use sensing to determine the availability of unused TV band frequencies perform sensing before accessing a channel and periodically thereafter to ensure that the channel is still available, *i.e.*, unoccupied. The Commission asks commenters to indicate whether there is a need to specify the period of time over which sensing must occur before a channel may be accessed, and if so, what that should be. For example, would 30 seconds be a necessary or sufficient period of time for the initial channel availability check when a device is placed in operation, *i.e.*, turned-on? The Commission also invites comment as to the appropriate period when the channel must be rechecked to determine that it continues to be available. Its initial proposal is to require devices to recheck the channel at least every 10 seconds. The Commission does not propose to require devices to remain off the air for any prescribed period of time after a channel is first determined to be occupied. It believes the requirement to perform sensing before operating should ensure that devices will not cause harmful interference to authorized services that are already on the air.

12. *Channels Over Which Sensing Is Required.* In order to avoid co-channel interference to authorized services in the TV spectrum, sensing is clearly needed in the channel in which the device will operate. The Commission requests comment on the need for sensing in adjacent channels by fixed and personal/portable devices. It also requests comment and information on the threshold levels at which protection should be invoked for sensed adjacent channel signals and whether protections other than simply requiring an unlicensed device to not transmit would be workable and appropriate. For example, if an adjacent channel signal were sensed, could interference be avoided by requiring the device to reduce power rather than cease operation? The Commission further seeks comment on whether any protection requirements are needed for services outside of the channels where

TV band devices would be permitted to operate, and if so, what these would be.

13. *Bandwidth Considerations.* The Commission seeks comment on whether there is a need to specify a sensing bandwidth in addition to a detection threshold, or whether it is necessary to specify only the characteristics of the signals to be detected, and leave the sensing bandwidth to the manufacturer's discretion.

14. *Antenna Considerations.* The Commission invites comment about whether the Commission should require the use of an omnidirectional antenna with a 0 dBi gain for sensing. It also invites comment as to what considerations for sensing should be taken into account for devices that employ a gain antenna for transmission. For example, a TV band device with an omnidirectional sensing antenna may detect that TV signals on a channel are below the monitoring threshold and begin transmitting, but could conceivably cause interference if it uses a higher gain directional transmitting antenna aimed toward a TV receiver. What provisions would be necessary to avoid such a situation? Further, the Commission invites comment on whether any requirements are necessary with respect to the transmit antenna height, such as a maximum antenna height requirement or reduced power when a greater antenna height is used.

15. *Transmit power control.* The Commission proposes to apply the same transmit power control requirements to devices operating in the TV spectrum that apply to U–NII devices at 5 GHz. It invites comment as to whether it should require a greater dynamic range for transmit power control, such as the ability to operate 9 or 12 dB below the limits if that is sufficient to achieve the desired communications. In addition, the Commission invites comment as to whether it should permit adjustments to any TV band device operating parameters, such as the detection threshold, if a TV band device operates at a power level substantially below the limit.

16. *Master/Client Operation.* The Commission proposes to allow fixed operations in the TV bands under a master/client model that is consistent with the model for U–NII devices. That is, each system of TV band devices will have one master device and one or more client devices. It proposes to define a master device as a device operating in a mode in which it has the capability to transmit without receiving an enabling signal. In this mode it would be able to select a channel and initiate a network by sending enabling signals to other devices. A network would always have one device operating in master mode. The Commission proposes to define a client device as a device operating in a mode in which the transmissions are under control of the master. A device in client mode would not be able to initiate a network. A network could have one or more client devices. The Commission seeks comment on this proposal and whether any other approaches would be more appropriate.

17. *Spectrum Sharing.* The Commission invites comment as to whether it may be necessary or appropriate for the Commission to establish minimal technical requirements to facilitate sharing by unlicensed TV band devices, or by TV band devices licensed under a non-exclusive model if the Commission chose to adopt such an approach. For example, such steps might include limitations on the duration of transmissions and repeating spectrum sensing at intervals more frequently than 10 seconds. Parties addressing this matter should make specific proposals. In addition, the Commission asks that parties address the implications of their proposals for potential applications for TV band devices.

18. *Measurement procedures.* The Commission is presenting proposals and inviting comment on certain specific testing matters at this time. In performing the test for detection threshold, it proposes to subject the sensing capabilities of unlicensed devices to an ATSC DTV signal, an NTSC signal and a 200 kHz FM signal with peak levels adjusted to the threshold level. The Commission seeks comment on whether this approach is appropriate or whether some other method should be used. The test procedure for 5 GHz U–NII devices calls for performing the detection tests a number of times and specifies pass/fail ratios. The Commission does not believe such an approach is appropriate here because it should be simpler to detect signals from the types of devices operating in the TV spectrum than for radars, but it invites comment in this regard. Parties suggesting approaches based on multiple tests and pass/fail ratios should offer specific proposals.

Geo-Location/Database Approach

19. The Commission does not maintain a database of all TV and other stations in the TV bands that could be accessed in real-time (or near real-time) by large numbers of unlicensed devices dispersed throughout the country. However, in other cases, the Commission has relied on private parties to develop and maintain databases of certain operations that others can access, and these databases are funded by the entities that use them. For example, the Commission selected the United Telecom Council (UTC) to maintain a database of broadband over power (BPL) systems, and the American Society for Healthcare Engineering of the American Hospital Association (ASHE/AHA) to maintain a database of wireless medical telemetry service devices. In these cases, the Commission developed basic regulations regarding the scope of the databases, solicited proposals from parties interested in developing and maintaining the database, and selected the database provider. The Commission seeks comment on relying on a similar approach here, particularly from parties who would be interested in developing and maintaining a database of operations in the TV bands. It also seeks further comment on some issues regarding the content of and access to a TV band database. For example, what information about stations should be in a database, such as geographic coordinates, type and class of station, power level, antenna height and other antenna characteristics? What information about wireless microphones could be entered in a database so that their location can be ascertained because the Commission does not license them by geographic coordinates? How would an unlicensed device access a database, and how often would a database need to be updated?

20. Finally, the Commission seeks additional comment on some of the technical requirements for TV band devices relying on the geo-location/database approach. For example, what is the appropriate method of geo-location: GPS, professional installation, or some other method? Could devices incorporate Assisted GPS to help receive GPS signals in obstructed and indoor locations? If a device is professionally installed, who should be permitted to install it? What is the appropriate method of determining the required separation from authorized users in the TV bands? How will the geo-location/database approach protect other authorized services, such as wireless microphones, the location of which may not be included in the databases? The Commission seeks comment on these and any other issues that need to be addressed to make this a viable interference avoidance scheme.

Control Signal Approach

21. The control signal approach is essentially a variation of the geo-location/database approach, and some of the same concerns apply to both methods, specifically, those about

maintaining the database and the method used to calculate the required separation between unlicensed devices and authorized stations in the TV bands. As discussed in regards to a geo-location database, a control signal database could be developed and maintained by a private entity selected by the Commission, and the database could be funded by parties who use it. The Commission seeks comment on whether it should develop basic regulations regarding the scope of a database to be used with a control signal approach, solicit proposals from parties interested in developing and maintaining a database, and select a database provider. The Commission particularly seeks comment from parties who would be interested in developing and maintaining a database for the control signal approach. It also seeks further comment on some issues regarding the content of and access to a TV band database. For example, what information about vacant TV spectrum should be in a database and who should determine the list of vacant TV channels in a broadcaster's service area, *e.g.*, the database manager, a designated frequency coordinator? Is there any inherent conflict of interest in permitting broadcasters to identify and to send information identifying channels not licensed to them as vacant and therefore available for use by unlicensed devices?

22. Regarding the technical requirements for unlicensed devices, the Commission seeks further comment on the format and content of the control signal. How will the control signal approach protect other authorized services, such as wireless microphones, the location of which may not be included in the databases? Also, can the control signal approach be relied upon as an interference avoidance mechanism in areas where no broadcast station or other facility sends a control signal?

A. Operation on Channels 14–20 and 2–4

23. The Commission seeks additional comment on whether fixed TV band devices should be allowed on channels 14–20 in those areas of the country where those channels are not used by public safety. It notes that the PLRMS/CMRS is permitted to operate in only 13 metropolitan areas in the country, and on only one to three channels in each area. Further, PLMRS/CMRS operations are limited to a defined radius around geographic coordinates specified in the rules for each metropolitan area. Thus, prohibiting operation of all fixed TV band devices (*e.g.*, devices used for backhaul) on all channels in the range of 14–20 in all parts of the country could preclude operation of fixed low power devices in many areas where these channels are not in use by the PLMRS/CMRS or other authorized services. The Commission seeks comment on whether allowing fixed operation of TV band devices on channels 14–20 would cause harmful interference to public safety. If the Commission were to allow such use, how would it be implemented? Would any of the proposals have to be modified to protect the PLMRS/CMRS? Should the Commission define an ''exclusion zone'' around the specified coordinates of each of the 13 metropolitan areas where operation of low power devices would be prohibited? If so, what would be the appropriate size of the zone and how could it be enforced?

24. The Commission seeks further comment on whether it should allow TV band devices to operate on channels 2–4. In particular, the Commission seeks comment on whether TV interface devices would be more susceptible to interference from low power TV band devices than other TV receivers. The Commission also seeks comment on whether the cabling between a TV interface device and a TV receiver typically provides adequate shielding from unwanted signals on channels 2–4. The Commission also seeks information indicating the extent to which such signals may be picked up directly within the TV receiver. In addition, it notes a trend toward devices that connect directly to a TV receiver without going through the tuner. The Commission seeks comment on how much longer consumers are expected to use TV interface devices that connect to a TV through the tuner rather than an alternative interface connection.

B. Other Issues

25. *Types and Applications of Devices.* The Commission seeks additional comment on the types and applications of unlicensed devices that parties expect to be developed to operate in the TV bands. In particular, it seeks comment on the relationship between the technical requirements it is now proposing and the potential types of TV band devices that could be needed and developed. For example, how would a specific interference avoidance mechanism affect the types of potential applications? The Commission also invites comment as to whether the applications would be different if the Commission were to provide for TV band devices on a licensed basis instead of an unlicensed basis.

26. *Out of Band Emission Limits.* The Commission proposes to require that emissions outside a TV band device's operating channel comply with the § 15.209 limits, but seek comment on whether different emission limits would be more appropriate. Parties that believe limits other than those in § 15.209 are necessary to protect incumbent TV band operations against harmful interference may perform tests and submit the results into the record in this proceeding.

27. The Commission also seeks comment on how out-of-band limits should be specified. Radiated emission limits at TV band frequencies are based on measuring equipment employing CISPR quasi-peak detector function and related measurement bandwidths. The Commission seeks comment on whether there is a better measure available for quantifying effects of interference on incumbent services in the TV bands, *e.g.*, ATSC digital television signals. For example, should measurement bandwidth be larger than the 120 kHz used by CISPR quasi-peak detectors in this frequency range in order to more closely match DTV receiver bandwidths? Should interference effects be quantified by measurements of average power, peak power, or some other function within the recommended measurement bandwidth? The Commission also seeks input on the appropriate emission levels using the proposed measurements. Should the levels be set to be equivalent in some sense to the 15.209 limits or should they be set at a different level?

28. *Direct Pickup Interference and Receiver Desensitization.* The Commission believes that fixed TV band devices will typically not be operated as close to TV receivers as some parties assume and should not generally cause direct pickup interference problems. Although personal/portable TV band devices could be located in close proximity to TV receivers, such devices are typically under control of the same party who can increase the separation distance between them or cease operating a device to eliminate any interference that occurs. The Commission invites parties to submit test results to evaluate the interference potential of low power devices to TV receivers. If any parties discover actual direct pickup interference or other adverse effects on TV receivers or other radio equipment in or adjacent to the TV bands during testing, they can submit results to the Commission that it will consider in the rule making process.

29. *Certification by TCBs.* Because TV band devices would contain new technologies and the Commission proposes new rules to accommodate

them, it expects that many questions about the application of the rules would arise. The Commission proposes that Telecommunication Certification Bodies not be permitted to certify TV band devices until the Commission has experience with them and can properly advise the TCBs on how to apply the applicable rules. The Commission's Laboratory maintains a list of types of devices that TCBs are excluded from certifying, and it proposes to place TV band transmitters on this list until such time as it determines that TCBs are capable of certifying them. The Commission seeks comment on this proposal.

30. *Unlicensed Use in Border Areas near Canada and Mexico.* The Commission asks whether the agreements with Canada and Mexico would need to be modified before it allows unlicensed TV band devices to operate in the border areas. To the extent they would need to be modified, the Commission seeks further comment on the methods that could be used to ensure that unlicensed TV band devices do not operate in the border areas until such time as the appropriate agreements are concluded. The Commission also seeks comment on whether the answers to these questions would be different under a licensed approach, and if so, how. Would these matters be more easily addressed under a licensed approach rather than an unlicensed approach?

Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities small entities by the policies and rules proposed in this Notice of Proposed Rule Making (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided in paragraph 69 of the Further NPRM. The Commission will send a copy of the Report and Order and Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[1]

A. Need for, and Objectives of, the Proposed Rules

32. This *Further NPRM* proposes to allow low power transmitters to operate in the TV broadcast bands at locations where spectrum is not being used by authorized services without causing harmful interference to these services. The Further NPRM seeks comment on whether these TV band devices should be authorized on a licensed, unlicensed or hybrid basis.[2] It would propose to require TV band devices to incorporate ''smart radio'' features to detect vacant TV channels and prevent harmful interference from TV band devices to authorized services operating in the TV bands. These features would include the abilities to (1) Monitor spectrum prior to transmitting to ensure that it is not in use by authorized services, (2) switch frequencies or cease transmitting if an authorized service begins using a previously unused frequency, (3) adjust transmit power to the minimum needed to establish a link, (4) determine geographic location and access a database to determine which channels are in use, and/or (5) receive a control signal and select the operating frequency based on data in the control signal.

33. These proposals, if adopted, will prove beneficial to manufacturers and users of low power transmitters because they will provide for more efficient and effective use of the TV spectrum and allow the development of new and innovative types of wireless devices and communication services for businesses and consumers. The additional frequency bands where operation is proposed can provide an alternative last mile solution to cable or DSL services for delivering high speed Internet services, other data applications, or even video and voice services. This could particularly benefit underserved, rural, or isolated communities where cable and DSL services are not available. Also, because transmissions in the TV band have less signal attenuation through foliage and walls than frequencies above 900 MHz (such as unlicensed operations in the 2.4 GHz band), operations in the TV bands can improve the service range of wireless operations, thereby allowing operators to reach new customers and improve service to existing customers.

B. Legal Basis

34. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

35. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.[4] In addition, the ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

[1] *See* 5 U.S.C. 603(a).

[2] Licensed operation requires the operator to obtain an authorization issued by the Commission to use a particular frequency band. Unlicensed operation may be done without a prior authorization from the Commission. Hybrid operation would be some mix of these two approaches but is not specifically defined in the Further NPRM.

[3] *See* 5 U.S.C. 603(b)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[6] 15 U.S.C. 632.

36. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers.* The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition application to manufacturers of Radio and Television Broadcasting and Communications Equipment. Under the SBA's regulations, a Radio and Television Broadcasting and Wireless Communications Equipment Manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[7] Census Bureau data indicate that there are 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.[8] The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and, therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are at least 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment, and possibly there are more that operate with more than 500 but fewer than 750 employees.

37. *Cellular and Other Wireless Telecommunications.* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunications, which consists of all such firms having 1,500 or fewer employees.'' [9] According to Census Bureau data for 1997, in this category there were 977 firms that operated for the entire year.[10] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.[11] Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

38. Most licensed and unlicensed transmitters are required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation, and the proposed new types of TV band devices would be subject to the same certification requirement. There are no proposed new recordkeeping or reporting requirements in the Further Notice. There are a number of proposed compliance requirements for TV band devices.

39. Transmitters capable of operating in the TV bands would have to incorporate the following features to ensure that they operate on only vacant TV channels. Specifically, a transmitter would have to incorporate a dynamic frequency selection (DFS) mechanism to monitor a TV channel before transmitting. If no signals on a channel were detected above a specified level within a specified period of time, the device would be allowed to transmit on that channel. Otherwise, the device would have to monitor other TV channels to find one that is vacant, or if no vacant TV channels were available, the device would not be allowed to transmit. A TV band device would have to periodically monitor the TV channel on which it transmits during operation, and if any new signals appear, the device would have to switch to another channel within a specified period of time or cease transmitting if no vacant channels are available. A TV band device would also have to incorporate a transmit power control mechanism to lower the output power by 6 dB (4 times lower) than the maximum permitted power of one watt if that level is sufficient to accomplish the desired communications.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

40. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' [12]

41. If the rules proposed in this notice are adopted, we believe they might have a significant economic impact on a substantial number of small entities. For an entity that chooses to manufacture or import equipment for the subject bands, the rules would impose costs for compliance with equipment technical requirements, such as incorporating a DFS mechanism to detect vacant TV channels where the equipment can operate. However, the burdens for complying with the proposed rules would be the same for both large and small entities. Therefore, no disproportionate burden of compliance would be sustained by small entities. Further, the proposals in this NPRM are ultimately beneficial for both large and small entities because they will provide for more efficient and effective use of the TV spectrum and allow the development of new and innovative types of wireless devices and communication services for businesses and consumers. Also, because transmissions in the TV band are subject to less propagation attenuation than transmissions in other bands where lower power operations are permitted (such as unlicensed operations in the 2.4 GHz band), operations in the TV bands can improve the service range of wireless operations, thereby allowing operators to reach new customers.

42. The Further NPRM seeks comment on alternatives to the proposed DFS mechanism for detecting vacant TV channels. Specifically, it seeks additional comment on how to implement the geo-location/database and control signal approaches for identifying vacant TV channels that was proposed in the original NPRM in this proceeding. The geo-location/database method would require that a TV band device incorporate a Global Positioning System (GPS) receiver or be professionally installed to determine its location, and that the device would have to access a database to identify vacant channels at its location. The control signal approach would require that a TV band device operate only when it receives a control signal from a source such as an FM or TV station that identifies the vacant TV channels that

[7] 13 CFR 121.201, NAICS code 334220.

[8] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series—Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[9] 13 CFR 121.201, NAICS code 517211.

[10] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[11] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[12] 5 U.S.C. 603(c)(1)–(c)(4).

could be used by the device in that particular area. We cannot find electrical engineering alternatives, such as exemptions from the requirements to include certain interference avoidance mechanisms into TV band devices that would achieve our goals while treating small entities differently. Nonetheless, we solicit comment on any alternatives commenters may wish to suggest for the purpose of facilitating the Commission's intention to minimize the compliance burden on smaller entities. As described, the compliance burdens would include incorporating certain features into TV band devices to prevent interference to authorized services, such as DFS, transmit power control, geo-location/database access and/or the ability to receive and respond to a control signal.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

43. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(r) and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r) and 307, this First Report and Order and Further Notice of Proposed Rulemaking *is hereby adopted*.

44. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of this First Report and Order and Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 15 to read as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation of part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

2. Section 15.209 is amended by revising the footnote to the table in paragraph (a) to read as follows:

§ 15.209 Radiated emission limits, general requirements.

(a) * * *

* * * * *

* * * Except as provided in paragraph (g) of this section, fundamental emissions from intentional radiators operating under this section shall not be located in the frequency bands 54–72 MHz, 76–88 MHz, 174–216 MHz or 470–806 MHz. However, operation within these frequency bands is permitted under subpart H and under other sections of this part, *e.g.*, §§ 15.231, 15.241 and 15.242.

* * * * *

3. Subpart H is added to part 15 to read as follows:

Subpart H—Unlicensed TV Band Devices

Sec.

§ 15.701 Scope.

This subpart sets out the regulations for unlicensed TV band devices operating in the 76–88 MHz, 174–216 MHz, 512–608 MHz and 614–698 MHz bands.

§ 15.703 Definitions.

(a) *Available Channel*. A radio channel on which a *Channel Availability Check* has not identified the presence of a signal.

(b) *Channel Availability Check*. A check during which the TV band device listens on a particular radio channel to identify whether there is a station operating on that radio channel.

(c) *Channel Move Time*. The time needed by a TV band device to cease all transmissions on the current channel upon detection of a station above the DFS detection threshold.

(d) *Dynamic Frequency Selection (DFS)*. A mechanism that dynamically detects signals from other systems and avoids co-channel operation with these systems.

(e) *DFS Detection Threshold*. The required detection level defined by detecting a received signal strength that is greater than a threshold specified, within the TV band device channel bandwidth.

(f) *In-Service Monitoring*. A mechanism to check a channel in use by the TV band device for the presence of a station.

(g) *Operating Channel*. Once a TV band device starts to operate on an *Available Channel* then that channel becomes the *Operating Channel*.

(h) *Maximum Conducted Output Power*. The total transmit power delivered to all antennas and antenna elements averaged across all symbols in the signaling alphabet when the transmitter is operating at its maximum power control level. Power must be summed across all antennas and antenna elements. The average must not include any time intervals during which the transmitter is off or is transmitting at a reduced power level. If multiple modes of operation are possible (e.g., alternative modulation methods), the *maximum conducted output power* is the highest total transmit power occurring in any mode.

(i) *TV band devices*. Intentional radiators operating in the frequency bands 76–88 MHz, 174–216 MHz, 470–608 MHz and 614–698 MHz.

§ 15.705 Cross reference.

(a) The provisions of subparts A, B, and C of this part apply to unlicensed TV band devices, except where specific provisions are contained in subpart H. Manufacturers should note that this includes the provisions of §§ 15.203 and 15.205.

(b) The requirements of subpart H apply only to the radio transmitter contained in the TV band device. Other aspects of the operation of a TV band device may be subject to requirements contained elsewhere in this chapter. In particular, a TV band device that includes digital circuitry not directly associated with the radio transmitter also is subject to the requirements for unintentional radiators in subpart B of this part.

§ 15.707 General technical requirements.

(a) The maximum conducted output power is 1 watt. If a transmitting antenna of directional gain greater than 6 dBi is used, the peak output power shall be reduced by the amount in dB that the maximum directional gain of the antenna exceeds 6 dBi.

(b) Unwanted emissions shall comply with the following:

(1) Unwanted emissions outside the channel of operation must comply with the general field strength limits set forth in § 15.209.

(2) The provisions of § 15.205 apply to intentional radiators operating under this section.

(3) Any devices using an AC power line are required to comply with the conducted limits set forth in § 15.207.

(c) The device shall automatically discontinue transmission in case of either absence of information to transmit or operational failure. These provisions are not intended to preclude the transmission of control or signaling

information or the use of repetitive codes used by certain digital technologies to complete frame or burst intervals. Applicants shall include in their application for equipment authorization a description of how this requirement is met.

(d) TV band devices are subject to the radio frequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. All equipment shall be considered to operate in a ''general population/uncontrolled'' environment. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(e) Manufacturers of TV band devices are responsible for ensuring frequency stability such that an emission is maintained within the band of operation under all conditions of normal operation as specified in the user's manual.

(f) Dynamic Frequency Selection (DFS). TV band devices shall employ a DFS detection mechanism to detect the presence of authorized stations in the TV bands and to avoid co-channel operation with them. The detection threshold is referenced to a 0 dBi gain antenna. The minimum DFS detection threshold for TV band devices is −116 dBm.

(1) Channel Availability Check Time. A TV band device shall check if there is a station already operating on the channel before it may initiate a transmission on a channel and when it has to move to a new channel. The TV band device may start using the channel if no station with a power level greater than the detection threshold value listed in paragraph (f) of this section is detected within 30 seconds.

(2) In-Service Monitoring. A TV band device shall perform in-service monitoring at intervals no greater than 10 seconds.

(3) Channel Move Time. After a station's presence is detected, all transmissions shall cease on the operating channel within 10 seconds. Transmissions during this period shall consist of normal traffic for a maximum of 200 ms after detection of the station's signal. In addition, intermittent management and control signals can be sent during the remaining time to facilitate vacating the operating channel.

(g) Transmit power control (TPC). TV band devices shall employ a TPC mechanism. The TV band device is required to have the capability to operate at least 6 dB below the maximum conducted output power limit of 1 watt. A TPC mechanism is not required for devices with a maximum conducted output power of less than 500 mW.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060511126–6285–02; I.D. 050306E]

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources; Notification of Rockfish Pilot Program Public Workshop

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

ACTION: Notification of public workshop.

SUMMARY: NMFS will present a public workshop on the Central Gulf of Alaska Rockfish Pilot Program (Program) for potentially eligible participants and other interested parties. NMFS will provide an overview of the Program, discuss the key Program elements and answer questions. NMFS is conducting this public workshop to provide assistance to fishery participants in understanding and reviewing this new Program.

DATES: The workshop will be held on Friday, December 1, 2006, 9 a.m. to 12 p.m. Alaska Standard Time, Kodiak, AK.

ADDRESSES: The workshop will be held at the following location: Kodiak Fisheries Research Center (Main Conference Room), 301 Research Court, Kodiak, Ak 99615.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: On June 7, 2006 (71 FR 33040), NMFS published a proposed rule that would implement the Program as Amendment 68 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). On August 10, 2006, NMFS approved Amendment 68 to the FMP. Amendment 68 establishes a program to allocate specific Central Gulf of Alaska groundfish resources among harvesters and processors. Harvesting and processing privileges for several species of rockfish, incidental harvests of other groundfish species, and halibut prohibited species catch would be allocated to participants that meet specific requirements. Amendment 68 was approved by the North Pacific Fishery Management Council (Council) on June 6, 2005. Amendment 68 implements the Program and is designed to meet the requirements of section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108–109, Section 802). Section 802 specifies the eligible participants, duration of the program, methods for allocating harvesting and processing privileges, and provides NMFS with the authority to regulate processors under this Program.

A final rule implementing Amendment 68 will be published in the **Federal Register** on November 20, 2006. NMFS is conducting public workshops to provide assistance to fishery participants in reviewing the requirements of this new program. A workshop was conducted on November 17, 2006, at the Nordby Conference Center in Fishermen's Terminal, 3919 18th Ave. W. Seattle, WA 98119. NMFS has scheduled a second workshop for December 1, 2006, to be held at the Kodiak Fisheries Research Center (Main Conference Room), 301 Research Court, Kodiak, AK 99615.

At each workshop, NMFS will provide an overview of the Program, and discuss the key Program elements. The key Program elements to be discussed include quota share application; cooperative, limited access, and opt-out fishery participation provisions; cooperative quota transfer provisions; the appeals process; monitoring and enforcement; and electronic reporting. Additionally, NMFS will answer questions from workshop participants. For further information on the Program, please visit the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

Special Accommodations

The workshop is physically accessible to people with disabilities. Requests for special accommodations should be directed to Glenn Merrill (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days before the workshop date.

Dated: November 14, 2006.

James P. Burgess,

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

[FR Doc. E6–19479 Filed 11–16–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 222
Friday, November 17, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 14, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Emergency Conservation Program.

OMB Control Number: 0560–0082.

Summary of Collection: The Farm Service Agency (FSA), in cooperation with the Natural Resources Conservation Service, the Forest Service, and other agencies and organizations, provides eligible producers and landowners cost-share incentives and technical assistance through several conservation and environmental programs to help farmers, ranchers, and other eligible landowners and operators conserve soil, improve water quality, develop forests, and rehabilitate farmland severely damaged by natural disasters. The authorities to collect information for this collection are found under the Food Security Act of 1985, as amended, and the Agricultural Credit Act of 1978 (16 U.S.C. 2201–2205).

Need and Use of the Information: FSA will collect information using forms AD–245, Practice Approval and Payment Application, FSA–18, Applicant's Agreement to Complete an Uncompleted Practice and FSA–849, Emergency Conservation Program Hurricane Gulf of Mexico, Poultry. The collected information will be used to determine if the person, land, and practices are eligible for participation in the respective program and to receive cost-share assistance.

Description of Respondents: Farms.

Number of Respondents: 90,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 67,580.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–19453 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Williamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Williamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan and to provide advice to federal land managers in the Province. The topics to be covered at the meeting include status of BLM Resource Management Plan revisions, discussion of future meeting topics, and information sharing.

DATES: The meeting will be held December 6, 2006 beginning at 9 a.m. PDST.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Judith McHugh Williamette Province Advisory Committee, c/o Williamette National Forest, 211 E. 7th Avenue, Eugene, Oregon 97401, (541) 225–6305 or electronically to *jmchugh@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Judith McHugh, Williamette National Forest, (541) 225–6305.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: November 6, 2006.

Dallas J. Emch,

Forest Supervisor, Williamette National Forest.

[FR Doc. 06–9242 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Wood River Irrigation District Gravity Pressurized Delivery System; Blaine County, ID

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA), gives notice that the record of decision (ROD) for the Final Environmental Impact Statement (FEIS) for the Little Wood River Irrigation District Gravity Pressurized Delivery System, Blaine County, Idaho is available. The ROD was signed and made available via the USDA NRCS Idaho Web site (*http://www.id.nrcs.usda.gov.*) on November 7, 2006. A Notice of Availability of the Final Environmental Impact Statement (FEIS) dated April 26, 2004, was published in the **Federal Register** on May 4, 2004.

FOR FURTHER INFORMATION CONTACT: Richard Sims, State Conservationist, Natural Resources Conservation Service, 9173 W. Barnes Dr. Suite C, Boise, Idaho, 83709; telephone (208) 378–5700.

SUPPLEMENTARY INFORMATION: The Little Wood River Irrigation District proposes to convert the present open irrigation canal delivery system that serves farmland in the Little Wood River valley surrounding Carey City, Blaine County, Idaho, to a closed gravity pressurized irrigation pipeline system. The Natural Resources Conservation Service prepared an Environmental Impact Statement for the proposed project. NRCS has selected Alternative 2—Gravity Pressurized Irrigation Delivery System with On-Farm Irrigation Systems as the Preferred Alternative for implementation. This Alternative includes conversion of the present open irrigation canal delivery system to a closed gravity pressurized irrigation pipeline system.

The purpose and need of this action is to maximize the conservation and use of irrigation water and the energy required to irrigate all of the existing cropland within the project area by providing a reliable water supply, reducing water losses due to seepage in the existing canal delivery system and providing economic stability to the local area.

Three alternatives, including the No Action Alternative, were fully developed and analyzed in the FEIS to address significant issues. The full range of foreseeable environmental consequences was assessed. Among the alternatives considered the preferred alternative best provides a combination of limiting impacts and providing needed enhancements.

The record of decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, the identification of the environmentally preferred alternative, and the rationale for why the environmentally preferred alternative was not the selected action.

The ROD and other NEPA documents are available on the Idaho NRCS Web site at *http://www.id.nrcs.usda.gov* or by contacting the NRCS at the address provided above.

Dated: November 7, 2006.

Richard Sims,

State Conservationist, USDA, NRCS, Idaho.

[FR Doc. E6–19480 Filed 11–16–06; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: December 17, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Suite 10800, Arlington, VA 22202.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *Skennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Flashlight, Olive Drab, 6230–00–264–8261.

NPA: Blue Island Citizens for Persons with Developmental Disabilities, Inc., Blue Island, Illinois.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Janitorial Services, Agricultural Research Service, 1561 Lindig Avenue, St. Paul, Minnesota.

NPA: AccessAbility, Inc., Minneapolis, Minnesota.

Contracting Activity: Agricultural Research Service, St. Paul, Minnesota.

Service Type/Location: Laundry Service, Aberdeen Proving Ground, Aberdeen, Maryland.

NPA: Jeanne Bussard Center, Inc., Frederick, Maryland.

Contracting Activity: Army Contracting Agency, Aberdeen Proving Ground, Maryland.

Service Type/Location: Packaging Service, Hurlburt Field AFB, 304 Terry Avenue, Hurlburt Field AFB, Florida.

NPA: Lakeview Center, Inc., Pensacola, Florida.

Contracting Activity: AF–Hurlburt Field AFB, Hurlburt Field, Florida.

Service Type/Location: Switchboard Operation, VA Medical Center–Birmingham, 7100 South 19th Street, Birmingham, Alabama.

NPA: Alabama Goodwill Industries, Inc., Birmingham, Alabama.

Contracting Activity: VA Medical Center, Augusta, Georgia.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

End of Certification

The following product are proposed for deletion from the Procurement List:

Product

Product/NSN: Cross ''Solo'' Pen and Refill, 7510–01–451–9182, 7510–01–451–9185, 7510–01–451–9187, 7510–01–425–6802.

NPA: In-Sight, Warwick, Rhode Island.

Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

G. John Heyer,

General Counsel.

[FR Doc. E6–19466 Filed 11–16–06; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that two meetings of the Utah Advisory Committee to the U.S. Commission on Civil Rights will be held in Salt Lake City, Utah 84101. Both meetings will be held at Horizonte Instruction and Training Center, 1234 S. Main Street, Salt Lake City. A planning meeting with procedural briefing will be held on Tuesday, December 12, 2006 from 5:30 p.m. to 8:30 p.m. (MST); and a community forum will convene on Wednesday, December 13 from 9 a.m. to 6 p.m. (MST).

The purpose of the planning meeting/procedural briefing on Tuesday, December 12, will be to provide orientation and ethics training for the newly chartered Utah Advisory Committee, brief advisory committee members on Commission and regional activities and plan for future activities. During the procedural briefing portion of the meeting, RMRO staff will review procedures and guidelines for conducting the December 13 forum and share information on the presenters.

The purpose of the community forum on Wednesday, December 13, will be to obtain information and perspectives on the status of civil rights for American Indians in Utah. There will be formal presentations from elected officials, tribal representatives, American Indian and community leaders, and other knowledgeable persons. Also, an open session will be conducted.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 13, 2006.

Ivy L. Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E6–19435 Filed 11–16–06; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[Docket Number: 061113299–6299–01]

Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) Notice

AGENCY: Office of Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce publishes this notice to inform current employees, former employees and applicants for Commerce employment of the rights and protections available to these individuals under Federal antidiscrimination, whistleblower protection and retaliation laws. The Department takes this action pursuant to the notification requirements contained in the Office of Personnel Management regulations. The intent of this action is to ensure that Federal agencies are accountable for violations of antidiscrimination and whistleblower protections laws.

Additional Information: For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724. Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site at *http://www.eeoc.gov* and the OSC Web site at *http://www.osc.gov.*

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, which is known as the No FEAR Act. One purpose of the Act is to ''require Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws''. Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101 (1). The No FEAR Act requires the President, or his designee, to promulgate regulations implementing the Act. The President delegated these responsibilities to the Office of Personnel Management, who issued a final rule on notification and training (71 FR 41095, July 20, 2006). Pursuant to the Office of Personnel Management's regulations, the Department of Commerce provides this No Fear Act Notice to current employees, former employees and applicants for Commerce employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection and retaliation laws. For purposes of the Act, an applicant for Federal employment means an individual applying for employment in or under a Federal agency; a Federal employee means an individual employed in or under a Federal agency; and a former Federal employee means an individual formerly employed in or under a Federal agency.

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, or, in the case of a personnel action, 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 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 the Equal Employment Opportunity Commission (EEOC) notice of intent to sue within 180 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).

In the alternative (or in some cases, in addition), you may 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

A Federal employee 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, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual 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 disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order 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 U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site-*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protections laws listed above. If you believe that 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, each agency 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 an agency 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.

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, the Act and this notice does not create, expand or reduce any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: November 14, 2006.

Suzan J. Aramaki,

Director, Office of Civil Rights, U.S. Department of Commerce.

[FR Doc. E6–19490 Filed 11–16–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–851)

Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review

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

SUMMARY: On July 7, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') for Guangxi Eastwing Trading Co., Ltd. (''Eastwing''). *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review*, 71 FR 38617 (July 7, 2006) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results*. Although no party submitted a case brief, additional surrogate value information has been placed on the record subsequent to the *Preliminary Results* by both Eastwing and the Department. Based on our analysis of the surrogate value information, we made changes to the antidumping duty margin calculations for the final results. We continue to find that Eastwing sold subject merchandise at less than normal value during the period of review (''POR'') February 1, 2005, through August 15, 2005.

EFFECTIVE DATE: November 17, 2006.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Case History

Subsequent to the *Preliminary Results*, on July 27, 2006, Eastwing timely submitted publicly available surrogate value information for the Department to consider in valuing the factors of production. Eastwing did not file a case brief. On September 11, 2006, the Department sent Eastwing a letter asking it to clarify certain information contained in its July 27, 2006, filing, and also placed on the record for comment additional surrogate value information. On September 21, 2006,

Eastwing submitted a timely response and comments in reply to the Department's September 11, 2006, letter. On September 28, 2006, the Department published in the **Federal Register** a notice extending the deadline for the final results. *See Certain Preserved Mushrooms from the People's Republic of China: Extension of Time Limit for Final Results of the 2005 Antidumping Duty New Shipper Review*, 71 FR 56954 (September 28, 2006). Also on September 28, 2006, the Department placed on the record additional surrogate value information for consideration in valuing the factors of production. Eastwing did not comment on this information.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Certain Preserved Mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat v. United States*, 39C F.3d 1378 (Fed. Cir. 2005).

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Changes Since the Preliminary Results

Based on surrogate value comments received from Eastwing and information placed on the record by the Department subsequent to our *Preliminary Results*, we have made revisions to the margin calculation for the final results. Specifically, we have selected new surrogate values for the manure and straw factors of production because the manure and straw corresponding to these new surrogate values better match the inputs used in the production of the subject merchandise. We have also selected new information to use in calculating the financial ratios for factory overhead, selling, general and administrative expenses, and profit. The new financial information, unlike the data used in the *Preliminary Results*, is contemporaneous with the POR and offers a broader representation of the industry. *See Memorandum from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, to the File; New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China: Surrogate Values for the Final Results*, dated November 9, 2006 (''*Final Surrogate Values Memo*''). Our calculation incorporating the new surrogate value data can be found in the *Memorandum from Matthew Renkey, Senior Analyst, through Alex Villanueva, Program Manager, Office 9, to the File; Analysis for the Final Results of the New Shipper Review of Certain Preserved Mushrooms from the Peoples' Republic of China: Guangxi Eastwing Trading Co., Ltd.* (''*Final Analysis Memo*''). Lastly, for the *Preliminary Results*, we inadvertently did not multiply the freight distance and surrogate value by the corresponding factor usage ratio; we have corrected this clerical error in the freight calculation for these final results. *Id.*

Final Results of Review

We find that the following margin exists during the period February 1, 2005, through August 15, 2005:

Exporter/Manufacturer	Weighted—Average Margin (Percent)
Guangxi Eastwing Trading Co., Ltd./Raoping CXF Foods, Inc.	4.31

Assessment Rates

The Department will issue appropriate appraisement instructions directly to U.S. Customs and Border Protection (''CBP'') for Eastwing within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer—specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer—specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these results of the new shipper review for all shipments of subject merchandise from Eastwing entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For subject merchandise manufactured by Raoping CXF Foods, Inc. (''CXF'') and exported by Eastwing, the cash deposit rate will be the rate shown above; (2) for subject merchandise exported by Eastwing but not manufactured by CXF, the cash deposit rate will continue to be the PRC—wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise produced by CXF but not exported by Eastwing, the cash deposit rate will be the rate applicable to the exporter. These requirements will remain in effect until publication of the final results of the next administrative review.

Reimbursement of Duties

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

Administrative Protective Orders

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

This new shipper review and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.214(h).

Dated: November 9, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–19471 Filed 11–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101906B]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Oil and Gas Exploration Activities in the Arctic Ocean off Alaska

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

ACTION: Notice of Intent to prepare a Programmatic Environmental Impact Statement; request for comments.

SUMMARY: NMFS and the Minerals Management Service (MMS) announce their intention to prepare a Programmatic Environmental Impact Statement (PEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA). This PEIS is being prepared to assess the impacts of MMS' annual authorizations under the Outer Continental Shelf Lands Act (OCSLA) to the U.S. oil and gas industry to conduct offshore geophysical seismic surveys in the Chukchi and Beaufort seas off Alaska, and NMFS' authorizations under the Marine Mammal Protection Act (MMPA) to incidentally harass marine mammals while conducting those surveys. Publication of this notice begins the official scoping period that will help clarify previously identified issues and alternatives to be considered in the PEIS. The NMFS and MMS will consider comments received in response to this notice in determining the scope of the PEIS. The public will have additional opportunities to comment on the draft PEIS and any applications received under the MMPA as part of this action.

DATES: Written comments and information must be received no later than December 18, 2006.

ADDRESSES: Comments on the contents of the Draft PEIS should be addressed to Mr. P. Michael Payne, Chief of the Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.101906B@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of MMS' Programmatic Environmental Assessment (PEA) for seismic survey operations in Arctic Alaska waters for the 2006 open water season is available on-line at:*http://www.mms.gov/alaska/ref/pea__be.htm*.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2289, ext 128 or Jill Lewandowski, MMS at 703–787–1703

SUPPLEMENTARY INFORMATION:

Background

In 2006, the MMS prepared a Draft PEA for the 2006 Arctic Outer Continental Shelf (OCS) Seismic Surveys. The MMS assumed in this PEA that up to eight marine seismic surveys (4 each in the Chukchi and Beaufort seas) were likely to occur in 2006 in the Arctic Ocean. NMFS was a cooperating agency in the preparation of the MMS Draft and Final PEAs and made the Draft PEA available upon request (e.g., 71 FR 26055, May 3, 2006). A Final PEA was published and released on June 20, 2006. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS subsequently determined that the MMS Final PEA contained an in-depth and detailed description of the affected environment, a reasonable range of alternatives to the proposed action, mitigation and monitoring measures to reduce impacts on the human environment to non-significant levels, and an analysis of the potential effects of the action and alternatives on the human environment. In view of the information and the analyses contained in the supporting Final PEA, on June 28, 2006, NMFS adopted the Final PEA, issued its own Finding of No Significant Impact (FONSI) and determined that issuance of Incidental Harassment Authorizations (IHAs), under section 101(a)(5)(D) of the MMPA, to oil-and-gas companies for conducting seismic surveys in 2006 in the Arctic Ocean would have a negligible impact on affected marine mammal stocks and not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses of marine mammals.

This FONSI determination was predicated on full implementation of standard mitigation measures for preventing injury or mortality to marine mammals, in addition to area-specific mitigation measures, which included but were not limited to:

(1) a 120–dB rms (root-mean-squared) monitored safety zone for fall migrating cow/calf pairs of bowhead whales in the Beaufort and Chukchi seas;

(2) a 160–dB rms monitored safety zone for aggregations of feeding bowhead and gray whales in the Beaufort and Chukchi seas;

(3) a 180–dB rms exclusion zone for all cetaceans and a 190–dB rms exclusion zone for pinnipeds except the walrus;

(4) seismic shut-down criteria to protect bowhead and/or gray whales, under specific circumstances, when inside the 120–dB or 160–dB monitoring-safety zones; and for all cetaceans within the 180–dB zone and all pinnipeds, except walrus, within the 190–dB zone); and,

(5) a joint industry cooperative program on marine mammal research in the Chukchi Sea.

These mitigation measures were incorporated into NMFS' Selected Alternative and IHA conditions for the 2006 seismic survey operations. Accordingly, NMFS adopted MMS' Final PEA and determined that the preparation of an EIS for this action was not necessary.

Notice of Intent

During the public comment period on MMS' Draft PEA, several comments were received recommending preparation of a Draft EIS under NEPA for this action. While preparation of an EIS on this action was considered, NMFS and MMS determined that the goals and objectives of NEPA could be met, given the level of proposed activities for 2006, by completing a Final PEA and implementing a mitigated FONSI for 2006 that would ensure that all authorized activities would not have a significant effect on

the human environment. At the time, NMFS also began to explore the need to prepare an EIS for future years, if seismic operations were to continue and expand in scope as anticipated.

It is important to note that subsequent to issuance of the IHAs for the 2006 seismic season to Shell (71 FR 50027, August 24, 2006), ConocoPhillips Alaska (CPAI) (71 FR 43112, July 31, 2006), and GX Technology (GXT) (71 FR 49418, August 23, 2006), a District Court Judge in Anchorage in the case of *ConocoPhillips Alaska, Inc* v. *National Marine Fisheries, et al.* issued an order on September 18, 2006, granting a motion to stay the implementation of the CPAI IHA condition requiring a 120–dB monitoring safety zone to protect bowhead whale cow/calf pairs during their annual fall migration out of the Arctic Ocean. The Court agreed that CPAI raised a ''serious question'' regarding the propriety of this additional requirement, meaning that the IHA condition requiring a 120–dB monitoring safety zone would be suspended until the Court is able to fully resolve the dispute. However, the 120–dB mitigation measure was essential to allow NMFS to conclude with a FONSI, especially given the level of uncertainty on the effects of seismic surveys on bowhead whales in Arctic waters. This measure, therefore, became a basic condition for NMFS being able to issue IHAs to Shell, CPAI and GXT in the 2006 seismic season.

It should be recognized that the MMS PEA analyzed the effects of 4 concurrent seismic surveys in the Chukchi Sea and 4 concurrent seismic surveys in the Beaufort Sea during the bowhead migration while in fact, in 2006, only a single company operated at any one time in the Chukchi Sea during the bowhead migration (CPAI from September 25 - October 12 and GXT from October 13 - present). As a result, this significant reduction in the anticipated amount of seismic activity around the bowhead whale migration reduced NMFS' concern this year that the suspension by the Court of one measure by one company would result in an increase of negative impacts to bowhead whales or subsistence hunters. However, there are indications that a similar (4 and 4) or even an increased level of seismic activity may occur in 2007 and beyond. These events may lead to an increased impact to marine mammals, particularly to fall migrating bowhead whale cow/calf pairs. Moreover, if in 2007 or beyond, the level of seismic survey activity in the Chukchi and Beaufort seas increases, it may exceed the level analyzed in the Final PEA. As a result, NMFS has determined that it needs to analyze impacts resulting from a higher level of potential seismic activity over a longer time frame than was addressed in the Final PEA and to reanalyze the range of practical mitigation measures for protecting marine mammals in more detail through preparation of a Draft PEIS for issuing: (1) permits for oil and gas exploration in the Arctic Ocean by MMS, and (2) authorizations to the seismic industry from NMFS to take marine mammals incidental to oil and gas seismic surveys in the Arctic Ocean.

Description of the Specified Activity

Marine geophysical seismic surveys are conducted to obtain information on surface and near-surface geology (high-resolution surveys) and on subsurface structures and formations (2–D and 3–D seismic surveys and vertical seismic profile surveys). Airguns are the acoustic source for 2D and 3D seismic surveys. Their individual size can range from tens to several hundred cubic inches (in^3). A combination of airguns is called an array, and operators vary the source-array size during the seismic survey to optimize the resolution of the geophysical data collected. Airgun array sizes for 2D/3D seismic surveys in Arctic waters have ranged from 1,800–4,000 in^3 but may range up to 6,000 in^3.

These arrays emit pulsed rather than continuous sounds. While most of the energy is directed downward and the short duration of each pulse limits the total energy, the sound can propagate horizontally for several kilometers (Greene and Richardson, 1988; Hall et al., 1994).

Marine-streamer 3D seismic surveys vary markedly depending on client specifications, subsurface geology, water depth, and geological target reservoir. The vessels conducting these surveys generally are 70–90 meters (m) (230–295 ft) long. A 3D source array typically consists of two to three subarrays of six to nine airguns each, and is about 12.5–18 m (41–59 ft) long and 16–36 m (52–118 ft) wide. Vessels tow one to three source arrays, depending on the technical survey-design specifications required for the geologic target, to generate the acoustic energy. The sound-source level (zero-to-peak) associated with 3D seismic surveys ranges between 233 and 240 decibels re 1 microPascal at 1 m. The arrays usually are aligned parallel with one another and towed 50–200 m (164–656 ft) behind the vessel. Following behind the source arrays by another 100–200 m (328–656 ft) are multiple (4–12) streamer-receiver cables, and each streamer can be 3–8 kilometers (km; 1.86–5 mi) long and spread out over a width of 400–900 m (1312–2953 ft). Streamers are passive listening equipment consisting of multiple hydrophone elements.

The airgun array produces a burst of underwater sound by releasing compressed air into the water column that creates an acoustic energy pulse. The release of compressed air every several seconds creates a regular series of strong acoustic impulses separated by silent periods lasting 7–16 seconds, depending on survey type and depth to the target formations. Acoustic signals are reflected off the subsurface sedimentary layers and recorded near the water surface by hydrophones spaced within the streamer cables. Some surveys employ ocean-bottom seismometers as the receiving instrument. Vessel speed is typically 4.5–6 knots (about 4–8 mph) with gear deployed.

Three-Dimensional (3–D) seismic surveying enables a more accurate assessment of potential hydrocarbon reservoirs to optimally locate exploration and development wells, and minimize the number of wells required to develop a field. State-of-the-art interactive computer mapping systems can handle much denser data coverage than older 2–D seismic surveys. Multiple-source and multiple-streamer technologies are used for 3–D seismic surveys. A typical 3–D survey might employ a dual array of up to 18 guns per array. Each array might emit a 3,000 cubic-inch burst of compressed air at 2,000 kilojoule (kJ) of acoustic energy for each burst. The hydrophone streamer array might consist of 6–8 parallel cables, each 6–8 km (3.7–5 mi) long, spaced 75 m (246 ft) apart. A series of 3–D surveys collected over time (4–D seismic survey) is used for reservoir monitoring and management (the movement of oil, gas, and water in the reservoirs can be observed over time). The overall energy output for the permitted activity will be the same, but the firing of the source arrays on the individual vessels will be alternated.

A source array is activated approximately every 10–15 seconds, depending on vessel speed. The timing between activations varies between surveys to achieve the desired spacing required to meet the geological objectives of the survey; typical spacing is either 25 or 37.5 m (82 or 123 ft). Depending on the shotpoint interval, airguns are fired between 20 and 70 times per mile.

Characteristics of Airgun Pulses

Discussion on the characteristics of airgun pulses have been provided in the Final PEA and in previous **Federal**

Register notices (see 69 FR 31792 (June 7, 2004). Reviewers are referred to those documents for additional information.

Scoping

The environmental review of the offshore seismic industry activity and related IHA applications will be conducted in accordance with the requirements of NEPA, its regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, and the NMFS policies and procedures for compliance with those regulations (NOAA Administrative Order 216–6 -Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999).

The activities that will be analyzed in the Draft PEIS will include conducting marine-streamer 3D and 2D seismic surveys, high-resolution site seismic surveys, and ocean-bottom-cable seismic surveys. NMFS and MMS will analyze the effects of seismic noise on marine mammals, fish and fishery resources, and marine birds found in the Chukchi and Beaufort seas. An analysis of the potential socioeconomic impacts, including potential impacts on subsistence uses of marine mammal resources, will also be included. The Draft PEIS' cumulative activities scenario and cumulative impact analysis will focus on oil and gas-related and non-oil and gas-related noise-generating events/activities in both Federal and State of Alaska waters that have been authorized or conducted in the past and that are reasonably likely and foreseeable. Noise contributions from community and commercial development, military activities, and arctic warming will also be considered. Additional issues may be identified as a result of written scoping comments.

The Draft PEIS will analyze the potential adverse impacts of the proposed activities and other non-seismic related activities on environmental resources, and will identify and describe any mitigation measures that could be adopted to avoid and/or minimize those impacts. The Draft PEIS will include, but not be limited to the following issues and concerns: (1) Protection of subsistence resources and the Inupiat culture and way of life; (2) impacts to marine mammals including disturbance to bowhead whale migration patterns; (3) impacts of seismic survey operations on marine fish reproduction, growth, and development; (4) harassment and potential harm of wildlife, including marine birds, by vessel operations and movements; (5) impacts on water and air quality; (6) changes in the socioeconomic environment; (7) impacts to threatened and endangered species; (8)risks of oil spills and their potential impacts on area fish and wildlife resources; (9) incorporation of traditional knowledge in the decision-making process; and, (10) a description of any potential marine mammal mitigation and monitoring measures and an analysis of their potential effectiveness.

PEIS Alternatives

NMFS will explore and evaluate a reasonable range of alternatives in the Draft PEIS, including the proposed action and the no-action alternative. At this time, NMFS has identified 7 alternatives for this action: (1) No seismic-survey permits issued for geophysical exploration activities (No Action); (2) seismic surveys for geophysical-exploration activities would be permitted with existing Alaska OCS G&G (geological and geophysical) exploration stipulations and guidelines; (3) seismic surveys for geophysical exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including a 120–dB monitored safety and/or exclusion zone for marine mammals; (4) seismic surveys for geophysical-exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines and additional protective measures for marine animals, including a 160–dB-monitored safety and/or exclusion zone for marine mammals; (5) seismic surveys for geophysical-exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including 160–dB- and 120–dB monitored safety and/or exclusion zones for marine mammals (Alternatives 3 and 4 combined); (6) seismic surveys for geophysical exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including a 180/190–dB exclusion zone for marine mammals to prevent acoustic injury; and, (7) seismic surveys for geophysical exploration activities would be permitted incorporating existing Alaska OCS G&G exploration stipulations and guidelines but would include additional protective measures for marine animals, including a 180/190–dB exclusion zone and 160–dB and 120–dB monitored safety and/or exclusion zones for marine mammals (Alternatives 5 and 6 combined). Alternative 7 was the Selected Alternative by MMS and NMFS in the 2006 PEA. No identification of a preferred or selected alternative has been made at this time.

Identified Draft PEIS Mitigation and Monitoring Measures

The alternatives in the Draft PEIS will address a suite of potential mitigation and monitoring measures, including:

(1) *Exclusion/Safety Zones*—A 180/190 dB rms isopleth exclusion zone from the sound source that must be free of marine mammals before the survey can begin and must remain free of mammals during the survey. The purpose of an exclusion zone is to protect marine mammals from Level A harassment (injury/harm); the purpose of a safety zone is to prevent interruption of critical natural behaviors that, if significantly disrupted, could result in population level effects, or to avoid an unmitigable adverse impact on subsistence resources. The 180 dB (Level A harassment-injury) applies to cetaceans and walrus and 190 dB (Level A harassment-injury) applies to pinnipeds, other than walrus.

(2) *Monitoring exclusion/safety zones*—Trained marine mammal observers (MMOs) and Inupiat hunters monitor the area around the survey vessel for the presence of marine mammals to maintain a mammal free exclusion zone, monitor for avoidance, or take behaviors. Visual observers monitor the exclusion zone to ensure that marine mammals do not enter the exclusion zone for at least 30 minutes prior to ramp up, during the conduct of the survey, or before resuming seismic-survey work.

(3) *Shut-down/power-down*—The seismic array must be shut-down or powered-down until the exclusion zone is free of marine mammals. All MMOs have the authority to, and will, instruct the vessel operators to immediately stop or de-energize the airgun array whenever a marine mammal is seen within the exclusion zone.

(4) *Ramp-up*—Ramp up is the gradual introduction of sound to deter marine mammals from potentially damaging sound intensities and from approaching the exclusion zone. This technique involves the gradual increase (usually 5–6 dB per 5-minute increment) in emitted sound levels, beginning with firing a single airgun and gradually adding airguns over a period of at least 20–40 minutes, until the desired operating level of the full array is obtained. Ramp-up procedures may begin after MMOs ensure the absence of

marine mammals for at least 30 minutes within the exclusion zone.

(5) *Field Verification*—Before conducting the survey, the operator must verify the radii of the exclusion zone within real-time conditions in the field. This provides for a more accurate exclusion-zone radii rather than relying on modeling techniques before entering the field.

(6) *Aerial Surveys*—Aerial surveys are flown in advance of initiating seismic surveys and related ice-breaking activities over an area that includes the area to be surveyed.

(7) *Temporal/Spatial/Operational Restrictions*— Dynamic management approaches to avoid or minimize acoustic exposure, such as temporal or spatial limitations are based on the presence of a marine mammal in a particular place or time, or during a particularly sensitive behavior (such as feeding or maternal care). In the past, these restrictions have included: (a) A prohibition on surveys in the Chukchi Sea spring-lead system before July 1; (b) under specific circumstances to protect migrating bowhead cow/calf pairs, the standard 180–dB exclusion zone for cetaceans is extended to a monitored 120–dB safety zone; (c) under specific circumstances to protect feeding aggregations of bowhead and/or gray whales, the standard 180–dB exclusion zone for cetaceans is extended to a monitored 160–dB safety zone.

(8) *Dedicated aerial and/or vessel surveys*—As appropriate, dedicated aerial and/or vessel surveys are conducted in the Beaufort and Chukchi seas during the fall bowhead whale migration period to detect migrating bowhead cow/calf pairs, and concentrations of feeding bowhead and gray whales.

Comments

The NMFS requests comments from state, local, and tribal governments; Native Alaskan organizations; Federal agencies; environmental and fish and wildlife organizations; the oil and gas industry; other interested organizations and parties in order to assist in the preparation of a Draft PEIS for the Arctic Ocean OCS Seismic Surveys. In particular, NMFS requests comments on the scope of issues and range of alternatives that should be considered in the Draft PEIS.

Additional opportunities for public review and comment will be provided when the Notice of Availability of the Draft PEIS is published in the **Federal Register**. After release of the Draft PEIS, MMS and NMFS intend to hold public information meetings in Anchorage, Barrow, Kaktovik, Nuiqsuk, Wainwright, Point Lay and Point Hope.

Dated: November 7, 2006

James H. Lecky,

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

[FR Doc. E6–19485 Filed 11–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111406A]

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

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.

SUMMARY: This notice announces receipt of an application for an exempted fishing permit (EFP) from the Aleut Enterprise Corporation (AEC). If granted, this permit would be used to support a project to assess pollock abundance in a portion of the Aleutian Islands subarea and to test the feasibility of managing pollock harvest at a finer temporal and spatial scale using near real-time acoustic surveying. The project is intended to promote the objectives of the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) by improving the use of pollock in the Aleutian Islands subarea.

ADDRESSES: Copies of the EFP application and the environmental assessment (EA) are available by writing to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh. The EA also is available from the Alaska Region, NMFS Web site at *http://www.fakr.noaa.gov/index/analyses/analyses.asp*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at §§ 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received an application for an EFP from the AEC. The purpose of the EFP is to support a project to assess pollock abundance in a portion of the Aleutian Islands subarea and to test the feasibility of managing pollock harvest at a finer temporal and spatial scale using near real-time acoustic surveying. The goal of the project is to improve the use of Aleutian Islands pollock. NMFS currently does not have the resources to conduct acoustic surveys of Aleutian Islands subarea pollock. This project has been developed in cooperation with stock assessment scientists at the NMFS Alaska Fisheries Science Center. The acoustic and biological information from the project would provide a baseline assessment of pollock biomass and distribution in the area that may be fished by small vessels from Adak, Alaska. This information also would be used to determine if the local aggregations of pollock are stable enough during the spawning season to allow for fine-scale spatial and temporal management. Additionally, genetic samples would be collected for stock structure analysis. Better information may lead to improved conservation and harvest management at finer spatial and temporal scales for the Aleutian Islands subarea pollock. Improved harvest management of the Aleutian Islands subarea pollock is needed based on the high uncertainty in the stock structure and the potential effects of the fishery on Steller sea lion populations.

The western distinct population segment (DPS) of Steller sea lions occurs in the Aleutian Islands subarea and is listed as endangered under the Endangered Species Act (ESA). Critical habitat has been designated for this DPS, including waters within 20 nautical miles (nm) of haulouts and rookeries (50 CFR 226.202) and in the Seguam Foraging Area. Pollock is a principal prey species of Steller sea lions.

The U.S. Congress, in Section 803 of the Consolidated Appropriations Act of 2004 (Public Law 108–199), required that the directed fishing allowance of pollock in the Aleutian Islands subarea be allocated to the Aleut Corporation. Only fishing vessels approved by the Aleut Corporation or its agents are allowed to harvest this allowance. To harvest the fish, the Aleut Corporation is allowed to contract only with vessels under 60 feet (18.3 m) length overall

(LOA), or vessels listed under the American Fisheries Act. The allocation was made to the Aleut Corporation for the purpose of furthering the economic development of Adak, Alaska. Public Law 108–199 requires half of the Aleutian Islands pollock allocation to be harvested by small boats (less than 60 feet (18.3 m) LOA) in 2013 and beyond. For safety reasons, fishing in waters closer than 20 nm from shore is preferred by the small boat fleet.

Aleutian Islands subarea pollock had been harvested primarily in Steller sea lion critical habitat until 1999, when the Aleutian Islands subarea was closed to pollock fishing (64 FR 3437, January 22, 1999). In 2003, the Aleutian Islands subarea was opened to pollock fishing outside of critical habitat under regulations implementing the current Steller sea lion protection measures (68 FR 204, January 2, 2003). Since 2005, pollock is allocated to the Aleut Corporation for a directed pollock fishery in the Aleutian Islands subarea, but only outside of Steller sea lion critical habitat. In 2005 and 2006, the Aleut Corporation harvested only 1.2 percent and 16 percent, respectively of their initial annual total allowable catch (TAC) due, in part, to difficulty in finding pollock. Based on historical harvests, pollock aggregations necessary to support the proposed EFP likely occur inside Steller sea lion critical habitat.

Overall, up to four vessels would harvest no more than 3,000 metric tons (mt) of groundfish under the EFP. The EFP participants would retain all groundfish species to accurately document the catch amounts by species and compare this information to the acoustic survey data. The EFP would provide an exemption from maximum retainable amounts specified in Table 11 of 50 CFR part 679 so that the participants may retain and sell all groundfish harvested during compensation fishing.

The EFP would be necessary to allow the applicants to harvest groundfish in portions of Steller sea lion protection areas closed to pollock fishing to verify the acoustic survey data and to compensate the participants for the cost of carrying out the EFP. This EFP project would continue the 2006 EFP acoustic survey study near Atka Island and Kanaga Island. These islands are located within the proposed EFP study area. The acoustic survey must be conducted in an area that is likely to contain concentrations of pollock. The EFP would provide exemptions to some pollock fishing closures between 173° W and 179° W longitudes in Steller sea lion protection areas and in a portion of the Seguam Foraging Area. No more than 1000 mt of groundfish would be harvested from any one degree block in the survey area, and harvest would be limited to no more than one vessel over 60 feet (18.3 m) LOA in a one degree block. Fishing may occur within 0 nm to 3 nm of Steller sea lion haulouts in the study area only to verify acoustic survey data. No more than 10 mt of groundfish may be harvested in a survey verification tow. No compensation fishing would be allowed in waters 0 nm to 3 nm of haulouts and rookeries.

All groundfish harvested will be counted towards the TAC amounts specified for the BSAI in § 679.20 and in the 2007 harvest specifications (71 FR 10894, March 3, 2006), which are scheduled for revision by the end of February 2007. Nearly all groundfish harvested under the EFP would be pollock with minor amounts of Pacific ocean perch. Directed fishing under the EFP would be included in any groundfish fishing closures in the Aleutian Islands subarea due to overfishing concerns.

Fishing under the EFP would occur February 15, 2007, through April 30, 2007, for approximately three weeks. The EFP may be modified to extend the effective date for an additional 12 months. Additional pollock abundance and distribution data would be needed to support the stock assessment and the development of potential finer-scale pollock harvest management.

Significant impacts on the marine environment are not expected because the harvest under the EFP would be limited to four vessels for approximately three weeks in a discrete area with a 3,000 mt limit. Because the study would be in Steller sea lion critical habitat and would include the harvest of a principal prey species for Steller sea lions, a Section 7 consultation under the ESA has been initiated for this action and must be completed before the issuance of the EFP.

In accordance with § 679.6, NMFS has determined that this proposal warrants further consideration and has initiated consultation with the Council by forwarding the application to the Council. The Council will consider the EFP application during its December 4–12, 2006 meeting. The applicant has been invited to appear in support of the application. Interested persons may comment on the application at the Council meeting during public testimony. Information regarding the December 2006 Council meeting is available at the Council's Web site at *http://www.fakr.noaa.gov/npfmc/default.htm*.

Copies of the application and EA are available for review from NMFS (see ADDRESSES).

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

Dated: November 14, 2006.

James P. Burgess,

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

[FR Doc. E6–19427 Filed 11–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102706C]

Marine Mammals; File No. 775-1600; Correction

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

ACTION: Notice; receipt of application for amendment; correction.

SUMMARY: On November 2, 2006, a notice was published in the Federal Register announcing that NMFS had received an application for an amendment to Permit No. 775-1600 from the Northeast Fisheries Science Center in Woods Hole, MA. That document inadvertently omitted the DATES section informing the public of when comments would be accepted on the action. This document corrects that oversight. All other information is unchanged.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Hapeman, (301)713–2289.

SUPPLEMENTARY INFORMATION: The notice of a request for an amendment to scientific research Permit No. 775-1600 (FR 64512; November 2, 2006) contained an error in that it omitted a comment period for the requested action. Accordingly, the **DATES** section is added to read as follows:

DATES: Written, telefaxed, or e-mail comments must be received on or before December 4, 2006.

All other information contained in the document is unchanged.

Dated: November 13, 2006.

P. Michael Payne,

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

[FR Doc. E6–19483 Filed 11–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111406D]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Scientific and Statistical Committee (SSC), Snapper Grouper Advisory Panel, Snapper Grouper Committee, Controlled Access Committee, a joint meeting of its Habitat Committee and Ecosystem-Based Management Committee, Southeastern Data Assessment and Review (SEDAR) Committee, a joint meeting of its Executive Committee and Finance Committee, a joint meeting of its Law Enforcement Advisory Panel and Committee, King and Spanish Mackerel Committee, Economics Committee, Advisory Panel Selection Committee (Closed Session), Personnel Committee (Closed Session), and a meeting of the full Council. In addition, the Council will also hold a public scoping meeting regarding gag grouper management and a general public input session.

DATES: The meeting will be held in December 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Sheraton Atlantic Beach Oceanfront Hotel, 2717 W. Fort Macon Road, Atlantic Beach, NC 28512; telephone: (1–800) 624–8875 or (252) 240–1155, fax: (252) 240–1452. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366 or toll free at (866) SAFMC–10; fax: (843) 769–4520; e-mail: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Scientific and Statistical Committee Meeting: December 3, 2006, 1 p.m. until 6 p.m., December 4, 2006, from 8:30 a.m. until 6 p.m., and December 5, 2006, from 8:30 a.m. until 3 p.m.

The Scientific and Statistical Committee (SSC) meetings will be held concurrently with the Council committee meetings.

December 3, 2006

1 p.m.–4 p.m., The SSC will meet to receive an overview and presentations regarding the recent SEDAR assessment for gag grouper.

4 p.m.–6 p.m., The SSC Biological Subcommittee and SSC Socioeconomic Subcommittee will meet concurrently to continue discussion of the gag grouper assessment and develop recommendations.

December 4, 2006

8:30 a.m.–12 noon, The SSC will meet and receive reports and updates on: Amendment 14 to the Snapper Grouper Fishery Management Plan (FMP) concerning marine protected areas (MPA), and Amendment 15 to the Snapper Grouper FMP regarding rebuilding programs for snowy grouper, black sea bass and red porgy, sale of recreationally caught species in the snapper grouper management complex, permit issues (transferability and renewal times), size limits for queen snapper and silk snapper, and changes to the fishing year for golden tilefish.

In addition, the SSC will review the National MPA Framework, Oculina Evaluation Report, Amendment 18 to the Coastal Migratory Pelagic (mackerel) FMP regarding changes in current total allowable catches (TACs) for king and Spanish mackerel, Amendment 19 to the Coastal Migratory Pelagic FMP concerning options for mackerel management, including separating the current joint FMP from the Gulf of Mexico Fishery Management Council, boundaries, and permit issues if such a separation were to occur. The SSC will also receive an update on the development of the Council's Fishery Ecosystem Plan (FEP) and the FEP Comprehensive Amendment.

1:30 p.m.–2 p.m., The SSC will provide a presentation of findings on the gag grouper assessment to the Snapper Grouper Advisory Panel.

2 p.m.–5 p.m., The SSC Biological Subcommittee and the Socioeconomic Subcommittee will meet concurrently to continue discussion of Amendments 14 and 15 to the Snapper Grouper FMP and develop recommendations.

5 p.m.–6 p.m., The full SSC will meet to receive reports from the subcommittees and to develop recommendations.

December 4, 2006, 6:30 p.m.—The Council will hold a Public Scoping Session to receive input regarding the management of gag grouper.

December 5, 2006

8:30 a.m. until 9:30 a.m., The SSC will provide a presentation of findings and recommendations on the gag grouper assessment and Amendments 14 and 15 to the Snapper Grouper FMP to the Snapper Grouper Committee.

9:30 a.m.–12 noon, The Biological Subcommittee and Socioeconomic Subcommittee will meet concurrently to discuss Amendments 18 and 19 to the Coastal Migratory Pelagics FMP and develop recommendations.

1:30 p.m. until 3 p.m., The full SSC will meet to receive the subcommittee reports. In addition, the SSC will review the SEDAR Research Report, review SSC policy, and hold elections for Chairman and Vice-Chairman.

2. Snapper Grouper Advisory Panel Meeting: December 4, 2006, 1:30 p.m. until 6 p.m.

The Snapper Grouper Advisory Panel (AP) will review and develop recommendations on the following: the SEDAR assessment for gag grouper, Amendment 14 to the Snapper Grouper FMP, the Oculina Evaluation Plan, and the National MPA Framework. The AP will receive a presentation from the SSC regarding its findings and recommendations for the SEDAR gag grouper assessment. The AP will also review Amendment 15 to the Snapper Grouper FMP.

3. Snapper Grouper Committee Meeting: December 5, 2006, 8:30 a.m. until 12 noon

The Snapper Grouper Committee will receive an SSC presentation of findings and recommendations on the SEDAR gag grouper assessment, and Amendments 14 and 15 to the Snapper Grouper FMP. The Committee will also receive a presentation on recommendations from the Snapper Grouper AP, then review and develop recommendations to the Council regarding the SEDAR gag grouper assessment. The Committee will receive a report on a Delphi socioeconomic study regarding Amendment 14 to the Snapper Grouper FMP, then review Amendments 14 and 15 to the Snapper Grouper FMP and provide direction to staff. The Committee will also receive a presentation on potential Individual Fishery Quota (IFQ) and Individual Transferable Quota (ITQ) programs as possible alternatives for Amendment 16 to the Snapper Grouper FMP, and develop recommendations. The Committee will also discuss the Oculina Evaluation plan and develop comments.

4. Controlled Access Committee Meeting: December 5, 2006, 1:30 p.m. until 2:30 p.m.

The Controlled Access Committee will discuss development of and ITQ/IFQ program for the snapper grouper fishery.

5. Joint Habitat and Ecosystem-Based Management Committees Meeting: December 5, 2006, 2:30 p.m. until 4:30 p.m.

The Habitat Committee and Ecosystem-Based Management Committee will meet jointly to receive presentations and updates on: policy statements, status of the Deepwater Coral Research Plan, status of and presentations on the Fishery Ecosystem Plan (FEP), and the FEP Comprehensive Amendment. The Committees will make recommendations as appropriate.

December 5, 2006, 4:30 p.m.—The Council will hold a Public Input Session. Members of the public are invited to address the Council on items listed on the agenda or any other fishery issue that falls under the jurisdiction of the Council.

6. SEDAR Committee Meeting: December 6, 2006, 8:30 a.m. until 10:30 a.m.

The SEDAR Committee will receive an update on Committee activities and develop recommendations regarding the SEDAR program.

7. Joint Executive/Finance Committees Meeting, December 6, 2006, 10:30 a.m. until 12 noon

The Executive Committee will meet jointly with the Finance Committee and will receive updates on budgets, establish Calendar Year (CY) 2007 timelines regarding FMP, amendment, and framework development, and develop the CY 2007 budget.

8. Joint Law Enforcement Advisory Panel and Committee Meeting, December 6, 2006, 1:30 p.m. until 6 p.m.

The Law Enforcement AP and Committee will meet jointly to develop management recommendations for gag grouper, review and develop comments for Amendments 14 and 15 to the Snapper Grouper FMP, the National MPA Framework, and the Oculina Evaluation plan.

9. King and Spanish Mackerel Committee Meeting, December 7, 2006, 8:30 a.m. until 10:30 a.m.

The Mackerel Committee will receive reviews and SSC recommendations regarding Amendments 18 and 19 to the Coastal Migratory Pelagics FMP and develop recommendations to the Council as appropriate.

10. Economics Committee Meeting, December 7, 2006, 10:30 a.m. until 12 noon

As a newly formed committee, the Economics Committee will meet to discuss its organizational function.

11. Advisory Panel Selection Committee Meeting, December 7, 2006, 1:30 p.m. until 2:30 p.m.(CLOSED SESSION)

The Advisory Panel Selection Committee will review advisory panel applications and develop recommendations for Council consideration.

12. Personnel Committee Meeting, December 7, 2006, 2:30 p.m. until 4 p.m. (CLOSED SESSION)

The Personnel Committee will meet in closed session to discuss Council personnel matters.

Council Session: December 7, 2006, 4 p.m. until 6:15 p.m. and December 8, 2006, 8:30 a.m. until 12 noon

Council Session: December 7, 2006, 4 p.m. until 6:15 p.m.

4 p.m.–4:15 p.m., The Council will call the meeting to order, adopt the agenda, and approve the September 2006 meeting minutes.

4:15 p.m.–4:45 p.m., The Council will receive a report from the Scientific and Statistical Committee.

4:45 p.m.–5 p.m., The Council will hear a report from the Snapper Grouper Committee and take action as appropriate.

5 p.m.–5:15 p.m., The Council will hear a report from the Controlled Access Committee and take action as appropriate.

5:15 p.m.–5:30 p.m., The Council will hear a report from the joint meeting of the Habitat Committee and Ecosystem-Based Management Committee and take action as appropriate.

5:30 p.m.–5:45 p.m., The Council will hear a report from the SEDAR Committee and take action as appropriate.

5:45 p.m.–6 p.m., The Council will hear a report from the joint meeting of the Executive Committee and Finance Committes and take action as appropriate.

6 p.m.–6:15 p.m., The Council will hear a report from the joint meeting of the Law Enforcement Advisory Panel and Committee and take action as appropriate.

Council Session: December 8, 2006, 8 a.m.–12 noon.

8 a.m.–9 a.m., The Council will receive a NOAA General Counsel briefing on litigation issues (CLOSED SESSION).

9 a.m.–9:30 a.m., The Council will receive a report from the Mackerel Committee and take action as appropriate.

9:30 a.m.–9:45 a.m., The Council will receive a report from the Economics Committee and take action as appropriate.

9:45 a.m.–10 a.m., The Council will receive a report from the Advisory Panel Selection Committee and take action as appropriate.

10 a.m.–10:15 a.m., The Council will receive a report on the Council Chairmen/NOAA Fisheries Leadership meeting.

10:15 a.m.–12 noon, The Council will review requests for Experimental Fishing Permits as necessary, receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, agency and liaison reports, and discuss other business including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

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

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by December 1, 2006.

Dated: November 14, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–19478 Filed 11–16–06; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: 11 a.m., Friday, December 1, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–9284 Filed 11–15–06; 3:32 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: 11 a.m., Friday, December 8, 2006.

PLACE: 1155 21st St., N.W., Washington, DC., 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–9285 Filed 11–15–06; 3:51 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine act Meeting Notice

TIME AND DATE: 11 a.m., Friday, December 15, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–9286 Filed 11–15–06; 3:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: 11 a.m., Friday, December 22, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–9287 Filed 11–15–06; 3:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings Notice

TIME AND DATE: 11 a.m., Friday, December 29, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–9288 Filed 11–15–06; 3:31 pm]

BILLING CODE 6351–01–M

DEPARMENT OF DEFENSE

Office of the Secretary

No Fear Act

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice.

SUMMARY: This notice provides guidance on the implementation of the ''No Fear Act'' within the Defense Information Systems Agency and is published as required by the No Fear Act which was published on July 20, 2006 (71 FR 139), amending 5 CFR Part 724. The contacts have been published in block style for emphasis.

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

FOR FURTHER INFORMATION CONTACT: Gwendolyn Hicks, (703) 607–6461, Defense Information Systems Agency, P. O. Box 4502, Arlington, VA 22204–4502.

Defense Information Systems Agency–No Fear Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as 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.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency 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, or, in the case of a personnel action, 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 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). In the alternative (or in some cases, in addition), you may

pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Contact the Defense Information Systems Agency (DISA), Equal Employment Opportunity and Cultural Diversity Office (EEOCD) to make contact with an EEO Counselor; or the Manpower, Personnel and Security Directorate (MPS1) for additional information concerning administrative or negotiated grievances. (See contact information below).

Whistleblower Protection Laws

A Federal employee 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, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual 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 disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order 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 U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Contact the DISA, Office of Inspector General (IG) for additional information concerning or to report fraud, waste and abuse. (See contact information below).

Retaliation for Engaging in Protected Activity

A Federal agency 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 that 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.

For additional information, contact the OSC (see contact information above); or the appropriate DISA office (see contact information below).

Disciplinary Actions

Under the existing laws, each agency 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 an agency 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.

Contact MPS1 for additional information concerning disciplinary actions. (See contact information below).

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (e.g., EEO/civil rights office, human resources office or legal office). 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.*

DISA office	Phone No. (DSN 327)	Web site	E-mail address
Office of Equal Employment Opportunity and Cultural Diversity (EEOCD).	(703) 607–6458	*http://www.disa.mil/main/eeo.html*	
Office of General Counsel (GC)	(703) 607–6091	*http://www.disa.mil/main/gc.html*	Generalcounseldisa@disa.mil
Office of Inspector General (IG)	24 Hr Hotline: (703) 607–6317 Main: (703) 607–6300	*http://www.disa.mil/mail/ig.html*	*IG-Hotline@ncr.disa.mil*
Manpower, Personnel and Security (MPS1).	(703) 607–4740 or 4403	*http://www.disa.mil/main/mps.html*	

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the 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 provisions of law specified in 5 U.S.C. 2302(d).

November 13, 2006.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E6–19438 Filed 11–16–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, 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 13, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

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				

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
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				

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
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

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
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

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
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

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Small Business Innovative Research Program (SBIR)—Phase I; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133S–1.

Dates: Applications Available: November 17, 2006. Deadline for Transmittal of Applications: January 31, 2007.

Eligible Applicants: Entities that are, at the time of award, small business concerns as defined by the Small Business Administration (SBA). This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee. For Phase I projects, at least two-thirds of the research and/or analytic activities must be performed by the proposing firm. Furthermore, the total of all consultant fees, facility leases or usage fees, and other subcontracts or purchase agreements may not exceed one-third of the total funding award.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

Estimated Available Funds: The Administration has requested $5,000,000 for the SBIR program for FY 2007, of which we intend to use an estimated $1,125,000 for new Phase I awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for the Office of Special Education and Rehabilitative Services (OSERS), minus prior commitments for Phase II continuation awards.

Estimated Range of Awards: $70,000–75,000.

Estimated Average Size of Awards: $72,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to six months for Phase I awards.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of the U.S. Department of Education (ED or the Department) supported research results, and improve the return on investment from federally funded research for economic and social benefits to the Nation.

Note: This program is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom*

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR Doc 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*

Through the implementation of the NFI and the Plan, NIDRR seeks to—(1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

NIDRR Supports Manufacturing-Related Innovation (Executive Order 13329)

Executive Order 13329 states that continued technological innovation is critical to a strong manufacturing sector of the United States economy and ensures that Federal agencies assist the private sector in its manufacturing innovation efforts. The Department's SBIR program encourages innovative R&D projects that are manufacturing-related, as defined by the Executive Order. Manufacturing-related R&D encompasses improvements in existing methods or processes, or wholly new processes, machines or systems. Broadly speaking, ED's SBIR program encourages R&D in manufacturing through systems level technologies. The projects supported under ED's SBIR program encompass a range of manufacturing-related R&D, including the innovative projects leading to manufacture of such items as artificial intelligence or information technology devices, software, systems, among others. For more information on Executive Order 13329, please visit the following Web site: *http://www.sba.gov/sbir/execorder.html* or contact Lynn Medley at: *lynn.medley@ed.gov*.

Background

The Small Business Reauthorization Act of 2000 (Act) was enacted on December 21, 2000. The Act requires certain agencies, including ED, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I projects determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. An application for Phase I should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept. Scientific or technical feasibility is prerequisite to further ED support in Phase II.

Phase II: Phase II projects expand on the results of and further pursue the development of Phase I projects. Phase II is the principal R/R&D effort of the SBIR program. Applications for Phase II projects must be more comprehensive than applications for Phase I projects; Phase II applications must outline the proposed effort in detail, including the commercial potential of projects or processes developed or researched during the Phase I project. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of their efforts in Phase I. Phase II awards are for periods of up to two years in amounts up to $500,000.

Phase III: In Phase III, the small business grantee must use non-SBIR capital to pursue commercial applications of the R/R&D. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

All SBIR projects funded by NIDRR must address the needs of individuals with disabilities and their families. (See 29 U.S.C. 762). Activities may include conducting manufacturing-related R&D that encompasses improvements in existing methods or processes, or wholly new processes, machines, or systems; exploring the uses of technology to ensure equal access to education, employment, community environments, and information for individuals with disabilities; and improving the quality and utility of disability and rehabilitation research.

Priorities: Under this competition we are particularly interested in applications that address one of the following priorities.

Invitational Priorities: For FY 2007 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Each of the following priorities relate to innovative research utilizing new technologies to address the needs of individuals with disabilities and their families. To meet one of these priorities, the proposed Phase I project must support activities that will contribute to one of the following outcomes:

(1) Increased independence of individuals with disabilities in the workplace, recreational settings, or educational settings through development of technology to support access and promote integration of individuals with disabilities.

(2) Enhanced sensory or motor function of individuals with disabilities through development of technology to support improved functional capacity.

(3) Enhanced workforce participation through development of technology to support access to employment, promote sustained employment, and promote employment advancement for individuals with disabilities.

(4) Enhanced community participation and living for individuals with disabilities through development of accessible information technology including Web access technology, software, and other systems and devices that promote access to information in educational, employment, and community settings, and voting technology that improves access for individuals with disabilities.

(5) Improved interventions and increased use of health-care resources through development of technology to support independent access to health-care services in the community for individuals with disabilities.

Applicants should describe the approaches they expect to use to collect empirical evidence that demonstrates the effectiveness of the technology they are proposing in an effort to assess the efficacy and usefulness of the technology.

Note: NIDRR encourages applicants to adhere to universal-design principles and guidelines for more accessible designs. Universal design is defined as ''the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design'' (The Center for Universal Design, 1997, n.p.). Accessible design of consumer products minimizes or alleviates barriers that reduce the ability of individuals with disabilities to effectively or safely use standard consumer products. (For more information see—*http://www.trace.wisc.edu/docs/consumer_product_guidelines/consumer.pcs/disabil.htm*.)

Reference

The Principles of Universal Design, Version 2.0. Raleigh, NC: North Carolina State University. Web: *http://www.design.ncsu.edu*.

Program Authority: The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638) and title II of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760 *et seq.*).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 81, 82, 84, 85, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $5,000,000 for the SBIR program for FY 2007, of which we intend to use an estimated $1,125,000 for new Phase I awards. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: The estimated amount of funds available for new Phase I awards is based upon the estimated threshold SBIR allocation for OSERS, minus prior commitments for Phase II continuation awards.

Estimated Range of Awards: $70,000–75,000.

Estimated Size of Awards: $72,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of six months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum award amount includes direct and indirect costs and fees.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to six months for Phase I awards.

III. Eligibility Information

1. *Eligible Applicants:* Entities that are, at the time of award, small business concerns as defined by the SBA. This definition is included in the application package.

All technology, science, or engineering firms with strong research capabilities in any of the priority areas listed in this notice are encouraged to participate.

Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business concern must serve as the grantee. For Phase I projects, at least two-thirds of the research and/or analytic activities must be performed by the proposing firm. Furthermore, the total of all consultant fees, facility leases or usage fees, and other subcontracts or purchase agreements may not exceed one-third of the total funding award.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy of the application package from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133S–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable, and required forms, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Single space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller that 10 pitch (characters per inch).
- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs or materials that cannot be photocopied in the body of the application.

The page limit does not apply to Part II, the budget section, including the narrative budget justification; the one-page abstract; the resumes; the bibliography; the letters of support; certifications; statements; related application(s) or award(s); or documentation of multiple Phase II awards, if applicable.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Content Restrictions:* If an applicant chooses to respond to more than one invitational priority, it must submit a separate application for each priority. There is no limitation on the number of different applications that an applicant may submit under this competition. An applicant may submit separate applications on different priorities, or different applications on the same priority. However, an applicant may address only one priority in an application.

The NIDRR Long Range Plan is organized around the following research domains and arenas: (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; and (5) Demographics. Applicants should indicate, for each application, the domain or arena under which they are applying. In their applications, applicants should clearly indicate whether they are applying for a research grant in the area of (1) Community Living and Participation; (2) Health and Function; (3) Technology; (4) Employment; or (5) Demographics. No more than one designation should be selected for each application.

4. *Submission Dates and Times:* Applications Available: November 17, 2006. *Deadline for Transmittal of Applications:* January 31, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

5. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2007. The Small Business Innovative Research Program-CFDA Number 84.133S–1 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Small Business Innovative Research Program—CFDA Number 84.133S–1 at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf.* You also must provide on your application the same D–U–N–S Number used with this registration.

Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133S–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133S–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 35 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The degree to which the grantees are conducting high-quality research, as reflected in the appropriateness of study designs, the rigor with which accepted standards of scientific and engineering methods are applied, and the degree to which the research builds on and contributes to the level of knowledge in the field; and
- The number of new or improved assistive and universally designed technologies, products, and devices developed by grantees that are deemed to improve rehabilitation services and outcomes, enhance opportunities for participation by individuals with disabilities, and are successfully transferred to industry or other private entities for potential commercialization.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6027, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7338 or e-mail: *Lynn.Medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 13, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–19491 Filed 11–16–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Project and Centers Program—Field Initiated (FI) Projects Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133G–1 (Research) and 84.133G–2 (Development).

DATES: *Applications Available:* November 17, 2006.

Deadline for Transmittal of Applications: January 31, 2007.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education (IHEs); and Indian tribes and tribal organizations.

Estimated Available Funds: The Administration has requested $4,600,000 for the FI Projects program for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $195,000—$200,000.

Estimated Average Size of Awards: $197,500.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the FI Projects program is to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

FI projects carry out either research activities or development activities. NIDRR makes two types of grants under the FI Projects program: Research grants (CFDA 84.133G–1) and development grants (CFDA 84.133G–2). Applicants must indicate in their applications whether they are applying for a research grant (84.133G–1) or a development grant (84.133G–2).

In carrying out a research activity under an FI research grant, a grantee must identify one or more hypotheses and, based on the hypotheses identified, perform an intensive, systematic study directed toward producing (1) new scientific knowledge, or (2) better understanding of the subject, problem studied, or body of knowledge.

In carrying out a development activity under an FI development grant, a grantee must use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes. Target population means the group of individuals, organizations, or other entities expected to be affected by the project. More than one group may be involved because a project may affect those who receive services, provide services, or administer services.

Note: Different selection criteria are used for research projects (84.133G–1) and development projects (84.133G–2). In their applications, applicants must clearly indicate whether they are applying for a research grant (84.133G–1) or a development grant (84.133G–2) and must address the selection criteria relevant for their project type. Without exception, NIDRR will review each application based on the designation (i.e., research (84.133G–1) or development (84.133G–2)) made by the applicant. Applications will be determined ineligible and will not be reviewed if they do not include a clear designation of research or development.

Note: This program is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom.*

The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) Foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) Determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) Identify research gaps; (5) Identify mechanisms of integrating research and practice; and (6) Disseminate findings.

Program Authority: 29 U.S.C. 764.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations in 34 CFR part 350.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $4,600,000 for the FI Projects program for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $195,000–$200,000.

Estimated Average Size of Awards: $197,500.

Maximum Award: We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Estimated Number of Awards: 23.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* NIDRR grantees funded under section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)) must participate in the costs of the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number: 84.133G.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 50 pages, using the following standards:

• A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* November 17, 2006.

Deadline for Transmittal of Applications: January 31, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2007. The FI Projects—CFDA Numbers 84.133G–1 (Research) and 84.133G–2 (Development) are both included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the FI Projects program, 84.133G–1 (Research) and 84.133G–2 (Development) at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/getregistered.jsp*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting

authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You may submit all documents electronically, including all information typically included on the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (Applicants must identify either CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) depending on the designation of their proposed project.) 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center—Stop 4260, Attention: (Applicants must identify either CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) depending on the designation of their proposed project.) 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (Applicants must identify either CFDA Number 84.133G–1 (Research) or 84.133G–2 (Development) depending on the designation of their proposed project.) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 350.54 and are in the application package.

Note: There are two different sets of selection criteria for FI projects: one set to evaluate applications proposing to carry out research activities (84.133G–1), and a second set to evaluate applications proposing to carry out development activities (84.133G–2). Each applicant will be evaluated using the selection criteria for the type of project (*i.e.*, research (84.133G–1) or development (84.133G–2)) the applicant designates in its application.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and eventually to public benefits for individuals with disabilities. Applicants should propose projects that are optimally designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes, the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies, including a discussion of measures of effectiveness. Submission of the information identified in this section V.

2. *Review and Selection Process* is voluntary, except where required by the selection criteria listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high quality products. Performance measures for the FI Projects program include—

- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific or engineering methods, and builds on and contributes to knowledge in the field;
- The number of publications per award based on NIDRR-funded research and development activities in refereed journals;
- The number of discoveries, analyses, and standards developed or tested with NIDRR funding that have been judged by expert panels to advance understanding of key concepts, issues, and emerging trends and strengthen the evidence-base for disability and rehabilitation policy, practice, and research;
- The number of new or improved tools and methods developed or tested with NIDRR funding that have been judged by expert panels to improve measurement and data collection procedures and enhance the design and evaluation of disability and rehabilitation interventions, products and devices; and
- The number of new and improved interventions, programs, and devices developed or tested with NIDRR funding that have been judged by expert panels to be successful in improving individual outcomes and increasing access.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews.

The Department's program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html*.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.cessi.net/contracts/pm/doe_nidrr_tsam.html.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6027, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: November 13, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–19493 Filed 11–16–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Engineering Research Centers (RERCs)—RERC for Technologies for Successful Aging Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–1.

DATES: *Applications Available:* November 17, 2006. Deadline for Transmittal of Applications: *January 31, 2007.*

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: $900,000. The Administration has requested $106,705,000 for the National Institute on Disability and Rehabilitation Research program, of which we intend to use an estimated $900,000 for the RERC for Technologies for Successful Aging competition for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $900,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended. For FY 2007, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

The RERC program is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom*. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Priority: This priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on June 2, 2006 (71 FR 32196, 33204).

Note: On June 2, 2006, we also published a notice in the **Federal Register** (71 FR) inviting applications under this priority. None of the applications received in response to the June 2, 2006, notice inviting applications were successful. Accordingly, we are inviting applications for this priority for FY 2007.

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is: *RERC for Technologies for Successful Aging.*

This RERC must research, develop, and evaluate innovative technologies and approaches that will improve the quality of life of older persons with disabilities and promote health, safety, independence, and active engagement. The RERC must emphasize the principles of universal design in its product research and development.

Under this priority, the RERC must be designed to contribute to the following programmatic outcomes:

(1) Increased technical and scientific knowledge-base relevant to its designated priority research area.

(2) Innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its designated priority research area. The RERC must contribute to this outcome by developing and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, and institutions of higher education.

(4) Improved focus on cutting edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with NIDRR and the field regarding trends and evolving product concepts related to its designated priority research area.

(5) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to public and private organizations, persons with disabilities, and employers on policies, guidelines, and standards related to its designated priority research area.

In addition, under this priority, the RERC must—

- Have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings;
- Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;
- Provide as part of its proposal and then implement a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;
- Provide as part of its proposal and then implement, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research, a plan to disseminate its research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties;
- Develop and implement in the first year of the project period, in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by the RERC are successfully transferred to the marketplace;
- Conduct a state-of-the-science conference on its designated priority research area in the third year of the project period and publish a comprehensive report on the final outcomes of the conference in the fourth year of the project period; and
- Coordinate research projects of mutual interest with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published on June 2, 2006 (71 FR 32196) in the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $900,000. The Administration has requested $106,705,000 for the National Institute on Disability and Rehabilitation Research program, of which we intend to use an estimated $900,000 for the RERC for Technologies for Successful Aging competition for FY 2007. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $900,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html*.

To obtain a copy from ED Pubs, write or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E–1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, Application for Federal Assistance; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and budget narrative justification; other required forms; an abstract; Human Subjects narrative; Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: (November 17, 2006.

Deadline for Transmittal of Applications: January 31, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2007. The Rehabilitation Engineering Research Centers Program—CFDA Number 84.133E–1 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Rehabilitation Engineering Research Centers Program

at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133E–1), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–1), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from in 34 CFR 75.210 of EDGAR and 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert review, a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are multi-site, collaborative, controlled studies of interventions and programs.
- The number of accomplishments (*e.g.*, new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR, the number of publications in refereed journals that are based on NIDRR-funded research and development activities.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 13, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–19494 Filed 11–16–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development To Improve Services and Results for Children With Disabilities—Professional Development Center: Children With Autism Spectrum Disorders; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325G.

DATES: *Applications Available:* November 17, 2006. Deadline for Transmittal of Applications: January 2, 2007. Deadline for Intergovernmental Review: March 2, 2007.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $1,000,000 for the Professional Development Center:

Children with Autism Spectrum Disorders competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) Help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants or toddlers with disabilities, or children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(d) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Professional Development Center: Children with Autism Spectrum Disorders.

Background

Autism Spectrum Disorders (ASD), once thought to occur in 4 to 5 out of every 10,000 individuals, is now estimated to occur in 2 to 6 of every 1,000 children. Two recent estimates provided by the Centers for Disease Control and Prevention (CDC) found rates of 3 to 6 per 1,000 children, between the ages of 3 to 10 (*http://www.cdc.gov/ncbddd/autism/asd_common.htm*).

ASD is a complex developmental disability that affects individuals in the areas of communication and social interaction. In addition, unusual learning, attention, and sensory processing patterns are often present. ASD includes autistic disorder, pervasive developmental disorder—not otherwise specified (PDD–NOS, including atypical autism), and Asperger disorder. The increased number of children diagnosed with ASD is a serious concern for families, service providers, and policy-makers, as existing education and other service delivery systems struggle to respond to the educational and other service needs of this population in a comprehensive manner.

The increased incidence of ASD among children has greatly increased the demands placed on early intervention and educational systems due to the complexity of ASD, including the unique ways children with ASD process and respond to information, the variability of how ASD affects each child, and the often extreme and unusual communication and socialization challenges of children with ASD.

Results from Office of Special Education Programs' (OSEP) funded projects and related research have demonstrated that children with ASD who receive intensive early intervention and educational services from skilled personnel often make very significant functional improvements. A growing body of intervention and service research points to the need for greater use of evidence-based practices by school and early intervention personnel.

Priority

This priority supports one cooperative agreement for the establishment and operation of a Professional Development Center (Center) to provide training for district or State level professional development providers. Such training must be designed to: Expand the types and levels of services provided to children with ASD and their families; develop and enhance the specialization or expertise of providers who work with children with ASD; and provide information to professionals and families on the effectiveness of services for children with ASD.

To meet the requirements of this priority, at a minimum, the project must—

(a) Provide training to district or State level professional development providers in: (1) The early diagnosis of ASD, to reduce the numbers of children who are not being diagnosed until after they enter school; (2) the implementation of evidence-based practices with documented successful child outcomes; and (3) the implementation of successful service delivery and funding models designed to increase the coordination of services for children with ASD;

(b) Provide training activities that are consistent with and supportive of Federal activities for children with ASD, such as the Interagency Autism Coordinating Committee (established under Pub. L. 106–310, Title I, Section 104) (see *http://www.nimh.nih.gov/autismiacc/index.cfm* for further information); and with other Federally funded ASD-focused personnel training and technical assistance projects;

(c) Develop an outreach program to identify, select, and enroll a variety of trainee teams that include district or State level professional development providers and families of children with ASD;

(d) Describe, in the grant application, how it will identify training sites that are: (1) Distributed geographically in order to reduce both travel time and costs for trainees, and (2) willing to provide members of trainee teams with opportunities to see and engage in the identified methods and practices in authentic settings;

(e) Provide a range of ongoing site-based training and professional development opportunities, through vehicles such as State and regional

workshops, targeted conferences, summer programs, Web-based seminars and dissemination of training materials developed by the Center;

(f) Establish and maintain a network of professional development sites, trainees, and national consultants to inform the Center's activities;

(g) Assist trainee teams in establishing a system for extending and evaluating the ongoing implementation of evidence-based practices and for monitoring the functional improvement of children with ASD; and

(h) Collect follow-up data on the extent to which the targeted evidence-based practices are used or promoted by trainees and the extent to which the trainee teams have leveraged knowledge and skills acquired through the Center's training to increase individual or community capacity to provide evidence-based practices for children with ASD.

In addition, projects funded under this absolute priority must—

(a) Budget for one three-day Project Directors' meeting in Washington, DC during each year of the project and an additional meeting with the OSEP Project Officer and other appropriate staff in Washington, DC within the first two months of the project to clarify project activities and develop a strategic plan;

(b) Budget five percent of the grant amount annually to support emerging needs as identified jointly through consultation with the OSEP project officer; and

(c) Maintain a Web site that includes relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Fourth and Fifth Years of the Project

In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) and, in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center;

(c) The degree to which the project's activities have contributed to changed practice among professional development providers and others targeted by training and professional development activities; and

(d) The degree to which the project's activities have contributed to improved outcomes for children with ASD.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462(d) and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $90,626,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2007, of which we intend to use an estimated $1,000,000 for the Professional Development Center: Children with Autism Spectrum Disorders competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.325G.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support.

However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times: Applications Available:* November 17, 2006. Deadline for Transmittal of Applications: January 2, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: March 2, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government-wide Grants.gov Apply site in FY 2007. The Professional Development Center: Children with Autism Spectrum Disorders competition—CFDA number 84.325G is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Professional Development Center: Children with Autism Spectrum Disorders competition—CFDA number 84.325G at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/applicants/get_registered.jsp*). These steps include: (1) Registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance). If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you

an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325G), 400 Maryland Avenue, SW., Washington, DC 20202–4260.

or

By mail through a commercial carrier:

U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325G), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325G), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of SF 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence, and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the technical assistance and dissemination activities currently being supported under Part D of IDEA. These measures will be used for the Professional Development Center: Children with Autism Spectrum Disorders competition. The measures are: the percentage of products and services deemed to be of high quality by an independent review panel of qualified

experts or individuals with appropriate expertise to review the substantive content of the products and services; the percentage of products and services deemed to be of high relevance to educational and early intervention policy or practice by an independent review panel of qualified members of the target audiences of the technical assistance and dissemination; and the percentage of all products and services deemed to be of high usefulness by target audiences to improve educational or early intervention policy or practice.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Gail Houle, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4061, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7381.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 13, 2006.

John H. Hager,

Assistant Secretary for Special, Education and Rehabilitative, Services.

[FR Doc. E6–19498 Filed 11–16–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years the information collection packages listed at the end of this notice. Comments are invited on: (a) Whether the extended information collections are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget review and approval of these information collections; they also will become a matter of public record.

DATES: Comments regarding these proposed information collections must be received on or before January 16, 2007. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to: Jeffrey Martus, IM–11/Germantown Building, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290.

or by fax at 301–903–9061 or by e-mail at *Jeffrey.martus@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeffrey Martus at the address listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The information collection packages listed in this notice for public comment include the following:

1. (1) OMB No.: 1910–1400. (2) Package Title: Compliance Statement: Energy/Water Conservation Standards for Appliances. (3) Type of Review: Renewal. (4) Purpose: This information collection provides the Department with the information from manufacturers necessary for verifying that products covered under the Energy Policy and Conservation Act comply with required energy and water conservation standards prior to distribution. (5) Respondents: 48. (6) Estimated Number of Burden Hours: 1,347.

2. (1) OMB No.: 1910–5124. (2) Package Title: Hydrogen, Fuel Cells, and Infrastructure Technologies Program Baseline Knowledge Assessment. (3) Type of Review: Renewal. (4) Purpose: This information is necessary to assess the current knowledge and opinions of the general public concerning hydrogen, fuel cells, and the hydrogen economy. (5) Respondents: 5,495. (6) Estimated Burden Hours: 816.

3. (1) OMB No.: 1910–5125. (2) Package Title: Work for Others by DOE Management and Operating Contractors. (3) Type of Review: Renewal. (4) Purpose: This collection is required by the Department to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively. (5) Respondents: 20. (6) Estimated Number of Burden Hours: 100.

4. (1) OMB No.: 1910–5115. (2) Package Title: Contractor Legal Requirements. (3) Type of Review: Renewal. (4) Purpose: This collection is necessary to provide a basis for DOE decisions on requests from applicable contractors for reimbursement of litigation and other legal expenses. (5) Respondents: 36. (6) Estimated Number of Burden Hours: 515.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91.

Issued in Washington, DC on November 8, 2006.

Lorretta D. Bryant,

Acting Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–19476 Filed 11–16–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy invites public comment on a proposed collection of information that the Department is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The

proposed collection of information is in an interim final rule pertaining to standby support that was published in the **Federal Register** on May 15, 2006.

Request for Comments: Pursuant to 44 U.S.C. 3506(c)(2)(A), the Department invites comment on: (1) Whether the recordkeeping requirements in the interim final rule are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who choose to respond, including through the use of automated collection techniques or other forms of information technology. Additional information about the Department's proposed information collection may be obtained from the contact person named in this notice.

DATES: Comments regarding this collection must be received on or before December 18, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to: Jeffrey Martus, IM–11/Germantown Building, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290.

or by fax at 301–903–9061 or by e-mail at *Jeffrey.martus@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Project Manager, Office of Nuclear Energy, NE–30, U.S. Department of Energy, Room A–264, 19901 Germantown Road, Germantown, MD 20874–1290. (301) 903–6509 or Marvin Shaw, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–52, 1000 Independence Avenue, SW., Washington DC 20585. (202) 586–2906.

SUPPLEMENTARY INFORMATION: The information collection packages listed in this notice for public comment include the following:

(1) OMB No. None.

(2) Collection title: Standby Support for Certain Nuclear Plant Delays.

(3) Type of review: New collection.

(4) Type of respondents: Sponsors of new advanced nuclear facilities.

(5) Estimated number of respondents: Three to five per year.

(6) Estimated total burden hours: 218.

(7) Frequency of response: Single submission.

(8) Abstract: On May 15, 2006, the Department published an interim final rule to implement section 638 of the Energy Policy Act of 2005 that authorizes the Secretary of Energy to enter into Standby Support Contracts with sponsors of advanced nuclear power facilities to provide risk insurance for certain delays attributed to the regulatory process or litigation. (71 FR 28200). That rule contains the following recordkeeping requirements that must be approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) before sponsors can be required to comply with them: (1) Section 950.10(b) contains information collection requirements pertaining to eligibility; (2) Section 950.12(a) contains information collection requirements pertaining to fulfillment of conditions precedent to a Standby Support Contract; and (3) Section 950.23 contains information collection requirements pertaining to submission of claims for payment of covered costs under a Standby Support Contract.

Issued in Washington, DC, on November 8, 2006.

Lorretta D. Bryant,

Acting Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–19482 Filed 11–16–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6681–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060206, ERP No. D–FRC–E03015–MS, Clean Energy Liquefied Natural Gas (LNG) Import Terminal and Natural Gas Pipeline Facilities, Construction and Operation, U.S. Army COE Section 10 and 404 Permits, (FERC/EIS–0192D), Port of Pascagoula, Jackson County, MS.

Summary: EPA expressed environmental concerns about air quality impacts, dredged material disposal, environmental justice, and risk analysis. Rating EC2.

EIS No. 20060207, ERP No. D–FRC–E03016–MS, Casotte Landing Liquefied Natural Gas (LNG) Import and Interstate Natural Gas Transmission Facilities, Construction and Operation, U.S. Army COE Section 404 Permit, (FERC/EIS–0193D), near the City of Pascagoula, Jackson County, MS.

Summary: EPA expressed environmental concerns about air quality impacts, dredged material disposal, environmental justice, and risk analysis. Rating EC2.

EIS No. 20060354, ERP No. D–FHW-F40437–MN, Scott County State Aid Highway (CSAH) 21 Project, Extension from CSAH 42 in Prior Lake to CSAH 18 at Southbridge Parkway in Shakopee, U.S. Army COE Section 404 Permit, Scott County, MN.

Summary: EPA expressed environmental concerns about cumulative impacts to water quality and quantity, wetlands, aquatic resources, forest and wildlife habitat, and the Shakopee Mdewakanton Sioux Community, and requests further clarification on the range of alternatives. Rating EC2.

EIS No. 20060364, ERP No. D–BIA–L65523–WA, Spokane Tribes Integrated Resource Management Plan, Implementation, Stevens County, WA.

Summary: EPA expressed environmental concerns about water quality and quantity impacts. EPA also has concerns about use of the Midnite Mine site before contamination cleanup is completed and monitoring shows the site poses no further threats to human health and the environment. Rating EC1.

Final EISs

EIS No. 20060390, ERP No. F–FHW–D40327–PA, Southern Beltway Transportation Project, Improvement from US–22 in Robinson Township to Interstate 79 in South Fayette Township and Cecil Township, Funding and U.S. Army COE Section

404 Permit, Washington, Allegheny Counties, PA.

Summary: EPA does not object to the preferred alternative.

EIS No. 20060403, ERP No. F–AFS–K65310–CA, Freeman Project, Reduce Hazardous Fuel and Improving Forest Health, Implementation, Lake Recreation Area, Beckworth Ranger District, Plumas National Forest, Plumas County, CA.

Summary: EPA continues to express concerns about water and air quality impacts, and recommends consideration of Alternative 3 as the preferred alternative.

Dated: November 14, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–19472 Filed 11–16–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6681–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 11/06/2006 Through 11/10/2006 Pursuant to 40 CFR 1506.9

EIS No. 20060466, Final EIS, BLM, WY, Pit 14 Coal Lease-by-Application Project, Black Butte Coal Mine, Surface Mining Operations, Federal Coal Lease Application WYW160394, Sweetwater County, WY, Wait Period Ends: 12/18/2006, Contact: Teri Deakin 307–352–0211.

EIS No. 20060467, Draft EIS, FHW, CA, Interstate 5 (Santa Ana Freeway) Project, Improvement from State Route 91 in Orange County to Interstate 605 in Los Angeles County, CA, Comment Period Ends: 01/05/2007, Contact: Steve Healow 916–498–5849.

EIS No. 20060468, Final EIS, NPS, CA, Sequoia and Kings Canyon National Parks, General Management Plan, Middle and South Forks of the Kings River and North Forks of the Kern River, General Management Plan, Tulare and Fresno Counties, CA, Wait Period Ends: 12/18/2006, Contact: Susan Spain 202–245–4692.

EIS No. 20060469, Draft EIS, FHW, 00, U.S. 301 Project Development, Transportation Improvements from MD State Line to DE–1, South of the Chesapeake and Delaware Canal, New Castle County, DE, Comment Period Ends: 02/01/2007, Contact: Robert Kleinburd 302–734–2966.

EIS No. 20060470, Final EIS, FHW, CO, I–25 Valley Highway Project, Transportation Improvement from Logan to U. S. 6, Denver County, CO, Wait Period Ends: 12/18/2006, Contact: Chris Horn 720–963–3017.

EIS No. 20060471, Draft EIS, FHW, IL, Prairie Parkway Study, Transportation System Improvement between Interstate 80 (I–80) and Interstate 88 (I–88) Grundy, Kendall and Kane Counties, Il, Comment Period Ends: 01/16/2007 Contact: Matt Fuller 217–492–4625.

EIS No. 20060472, Draft EIS, MMS, 00, Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales: 2007–2012 Western Planning Area Sales 204, 207, 210, 215, and 218: Central Planning Area Sales 205, 206, 208, 213, 216, and 222, : TX, LA, MS, AL and Fl, Comment Period Ends: 01/02/2007, Contact: Mary Boatman 703–787–1662.

EIS No. 20060473, Final EIS, FHW, MO, Interstate 29/35 Paseo Bridge Corridor, Reconstruct and Widen I–29/35, Missouri River, North Kansas City and Kansas City, Clay and Jackson Counties, MO, Wait Period Ends: 12/18/2006, Contact: Peggy Casey 573–636–7104.

Amended Notices

EIS No. 20060404, Final EIS, SFW, AK, Kodiak National Wildlife Refuge, Draft Revised Comprehensive Conservation Plan, Implementation, AK, Wait Period Ends: 12/15/2006, Contact: Mikel R. Haase 907–786–3402.

Revision of FR Notice Published on 10/06/2006: CEQ Wait Period Ending 11/06/2006 has been Extended to 12/15/2006

Dated: November 14, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–19474 Filed 11–16–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2006–0863; FRL–8243–6]

Industrial Metal Alloy Superfund Site; Winston-Salem, Forsyth County, North Carolina; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under section 122 (h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Industrial Metal Alloys Superfund Site located in Winston-Salem, Forsyth County, North Carolina..

DATES: The Agency will consider public comments on the settlement until December 18, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0863 or Site name Industrial Metal Alloy Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Batchelor.
- *Mail:* Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.'' *Instructions:* Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0863. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as

part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 am until 6:30 pm. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: November 8, 2006.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E6–19470 Filed 11–16–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8243–3]

Public Water System Supervision Program Revisions for the State of Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Minnesota is revising its approved Public Water System Supervision Program. Minnesota has revised the following rules: Consumer Confidence Reports; Lead and Copper Technical Corrections; Synthetic Organic Chemicals/Inorganic Chemicals (SOC/IOC) Technical Amendments; Analytical Methods Technical Corrections; Analytical Methods for Radionuclides; Point of Use Devices; Public Water Supply (PWS) Definition; Administrative Penalty Order (APO) Authority; and Variances and Exemptions for compliance with National Primary Drinking Water Regulations Rule.

EPA has determined that these revisions by the State are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these revisions to the State of Minnesota's Public Water System Supervision Program. This approval action does not extend to public water systems (PWSs) in Indian Country, as the term is defined in 18 U.S.C. 1151. By approving these rules, EPA does not intend to affect the rights of Federally recognized Indian Tribes in Minnesota, nor does it intend to limit existing rights of the State of Minnesota. Any interested party may request a public hearing. A request for a public hearing must be submitted by December 18, 2006, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by December 18, 2006, EPA Region 5 will hold a public hearing. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on December 18, 2006. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Minnesota Department of Health, 625 North Robert Street, P.O. Box 64975, St. Paul, Minnesota 55164–0975, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lynne Roberts, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–0250, or at *Roberts.lynne@epa.gov.*

Authority: (Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 3006–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations).

Dated October 31, 2006.

Mary A. Gade,

Regional Administrator, Region 5.

[FR Doc. E6–19469 Filed 11–16–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket 06–189; FCC 06–154]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing this year's competition report that is to be submitted to Congress. Comments and data submitted by parties will be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Interested parties may file comments on or before November 29, 2006, and reply comments are due on or before December 29, 2006.

ADDRESSES: You may submit comments, identified by MB 06–189, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format

documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION, CONTACT: Anne Levine, Media Bureau, (202) 418–7027, TTY (202) 418–7172, or by e-mail at *Anne.Levine@ fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Inquiry* (*NOI*) in MB Docket No. 06–189, FCC 06–154, adopted October 12, 2006, and released October 20, 2006. The complete text of this *NOI* is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Room CY–A257, Portals II, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet Site at *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the *NOI* may also be purchased from the Commission's duplicating contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or by e-mail *fcc@bcpiweb.com*, or via its website *http://www.bcpiweb.com*.

Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming. This Notice of Inquiry (*NOI*) solicits data and information on for our thirteenth annual report (2006 Report). We request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the market since the *2005 Report*, prospects for new entrants to that market, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming.

2. We encourage thorough and substantive submissions from industry participants and state and local regulators with the best knowledge of the questions and issues raised to ensure the accuracy and usefulness of this Report. We will augment reported information with submissions in other Commission proceedings. In the past, we have had to rely on data from publicly available sources when information has not been provided directly by industry participants and will do so again if necessary. Nevertheless, we are concerned that such publicly available information may not be adequate, especially when various sources provide inconsistent data.

Competition in the Market for the Delivery of Video Programming

3. We ask commenters to provide data on video programming distributors, including cable systems; direct broadcast satellite (DBS) operators; large home satellite dish (C–Band) providers; broadband service providers (BSPs); private cable operators (PCO), also called satellite master antenna television systems; open video systems (OVS); wireless cable systems using frequencies in the broadband radio and educational broadband services; local exchange carrier (LEC) systems; utility-operated systems; commercial mobile radio services (CMRS) and other wireless providers; and over-the-air broadcast television stations. We seek information on video programming distributed over the Internet and via Internet Protocol (IP) networks and through home video sales and rentals. We also seek information that will allow us to evaluate horizontal concentration in the video marketplace, vertical integration between programming distributors and programming services, and other issues relating to the programming available to consumers. We request information on technical issues, including equipment and emerging services. We seek comments regarding developments in foreign markets, as they may contribute to our understanding of domestic markets. Where possible and relevant, we request data as of June 30, 2006.

4. We seek information and statistical data for each type of multichannel video programming distributor (MVPD), including the number of homes passed by each wired technology; the number of homes capable of receiving service via each wireless technology; the number of subscribers and penetration rates for each service (*e.g.*, basic cable service tier (BST), cable programming service tier (CPST), premium, or their equivalents provided by non-cable MVPDs, a la carte, pay-per-view, and video-on-demand (VOD) services); available channel capacity of the system; the number, type, and identity of video programming channels offered, the channel capacity required for such offerings and the tiers on which such programming is offered; and the channel capacity used for non-video services; prices charged for various programming packages and the required equipment; industry and individual firm financial information; information on how video programming distributors compare in terms of relative size and financial resources; data that measure the audience reach of video programming networks as well as relative control over the video distribution market; and information on video distributor expansion into non-video markets such as local telephony, high-speed Internet access, wireless telephone service; and other new technologies being considered, tested, or deployed.

5. We are interested in data and information on the number of homes that have a choice of MVPD services. How many households can receive service from one or more providers (*e.g.*, DBS, wireless cable, PCO) as well as an incumbent cable provider? How many consumers have access to wireline overbuilders and why is the availability of wireline alternatives low relative to wireless alternatives? Where does wireline competition exist, and where is entry likely in the near future? Where has wireline competition once existed but failed? What effect has competition among MVPDs had on consumers (*e.g.*, prices, programming choices, quality of service, and the introduction of video and non-video advanced services)?

6. To evaluate substitution between MVPD technologies, we seek data on relative prices of similar services offered by different types of competitors. What effect does the bundling (packaging) of video, voice, and high-speed data services have on head-to-head competition? We are interested in investigating methods for comparing service packages among MVPDs.

7. Barriers to entry can be regulatory, technological, or financial in origin. We seek to understand what these barriers are and how they impede competition in the MVPD marketplace. Are there any existing Commission regulations or statutory provisions that prevent or discourage new entrants from investing in, or deploying broadband or other networks for the purpose of offering consumers video services? Are there steps that Congress and the Commission may take to reduce barriers to competition in the video market, or to increase consumer choice? We request comments on the effects that franchising and other local and state regulations have on competition in the video marketplace.

8. We request detailed information about programming networks, including ownership, the type of programming networks (*e.g.*, national, regional, local),

and the genre of programming networks (*e.g.*, sports, news, children's, general entertainment, foreign language). We seek information on existing, planned, and terminated or merged programming networks to assess the changes over the past year in the amount and type of video programming that is available to consumers. We also seek information on the nature of trends in the status of programming networks' vertical integration with cable operators and with other media interests. We note that programming networks are being offered in a variety of forms (*e.g.*, multiplexed networks, VOD, shared channels), and we seek comment on whether and how to count such programming networks for assessing trends in vertical integration. We ask commenters to provide information regarding the delivery mode (*i.e.*, satellite or terrestrial delivery) of each national and regional network, as we are unaware of any comprehensive source of this information.

9. We request information on children's, locally-originated, and local news and community affairs programming distributed to consumers by broadcasters and MVPDs. To what extent is programming offered in languages other than English, nationally and locally? How is such programming packaged (*i.e.*, part of CPST, digital tier, separate tier)? We also seek comment regarding public, educational, and governmental access channels, including the number of channels used by cable operators and other MVPDs for this purpose. We ask for information on the programming provided by DBS operators in compliance with their public interest obligation. We also seek information on the use of leased access channels, and ask whether they provide an opportunity for independent programmers to distribute their programming.

10. We seek comment on programmers' access to carriage by MVPDs. We request information on the number of independent networks that launched in the past year, including total subscribers; the distributors that carry them; the manner of carriage (*e.g.*, expanded basic, digital tier, themed digital tier, VOD) and their ongoing efforts to obtain further distribution by cable, DBS, and other service providers. Specifically, we request comment regarding any difficulties programming networks encounter when launching a new service and information on the kinds of carriage arrangements that are required to secure MVPD carriage.

11. We seek information on how video programming distributors package and market their programming. To what extent are MVPDs offering programming on an a la carte basis or in mixed bundles, themed tiers, and subscriber-selected tiers? We seek information on family friendly programming, including the cost and content of these packages. Are family tiers offered on a stand-alone basis or must consumers subscribe to other tiers (*e.g.*, basic service tier, digital tier) to receive them? Do subscribers need additional equipment to receive the family tier? Do MVPDs offer or plan to offer consumers more choice in channel selection, specifically a la carte or themed tiers, rather than traditional tiering of programming services?

12. We seek to assess the extent to which MVPDs have been able to acquire or license programming owned by other video distributors. Is there specific programming, national or regional/local, that is unavailable to either cable or non-cable operators and, if so, why? What effect does vertical integration have on competing distributors' ability to obtain programming? Are there certain ''must-have'' programming services, or genres of services (*e.g.*, regional sports) without which competitive video service providers may find themselves unable to compete effectively? We also seek information on exclusive contracts for all types of programming.

13. We request comment on the effectiveness of our program access, program carriage, and channel occupancy rules. What, if any, video programming services that were once delivered to MVPDs by satellite have been migrated to terrestrial delivery? Which terrestrially delivered networks owned by or affiliated with a program distributor are unavailable to some MVPDs under the so-called terrestrial exemption to the Commission's program access rules? What exclusive programming arrangements exist between programmers and MVPDs? With the advent of VOD, what are the competitive implications of video programming distributors securing exclusive rights to programming for inclusion in their VOD offerings?

14. We request comment on competition issues specific to video programming distribution in rural and smaller markets, including the number of MVPDs serving small and rural markets, their subscribership, the services and video programming options they offer, and the cost for video services. How does competition differ between rural and smaller markets and larger, urban areas? We seek information on alternative technologies, such as digital subscriber line (DSL) and fiber-based Internet Protocol television (IPTV) that small and rural operators are adopting. We seek information on any existing differences in program carriage agreements between larger urban systems and those in small or rural areas, including information on whether buying cooperatives help small or rural operators obtain video programming at discounted rates.

15. We seek specific information regarding MVPD service in Alaska and Hawaii. We are interested in whether, and how, cable, DBS, and other MVPD services offered in these states differ from that provided in other states. How do prices for the various packages of service compare to the average national price for such MVPD services? We also seek information on any differences in the equipment needed by consumers to receive video programming service.

16. We also seek comment on any factors that are unique to competition in multiple dwelling units (MDUs). How common is it for consumers to have choices among video programming services within MDUs?

17. We also invite commenters to provide information on access to programming by persons with disabilities. We seek comment on what, if any, concerns industry and the public have with meeting the upcoming increased captioning requirements for new Spanish language and ''pre-rule'' English language programming. We seek information on the quality, accuracy, placement, technology, and any instances of missing or delayed captions, and the amount of digital programming that contains closed captions translated from analog closed captions. We seek comment on the extent to which digital programming may not be captioned and ask why this is the case. We seek information on the availability of video description, currently provided by programmers on a voluntary basis, and the amount and types of video programming that includes video description.

Cable Television Service

18. For the 2006 Report, we seek updated information on the performance of the cable television industry. We request information regarding cable operators' continuing investments to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. We request information on the development of various methods or technologies to increase system capacity, such as switched digital video technology.

19. For individual cable multiple system operators (MSOs), we request information such as the number of systems upgraded, the channel capacity

(in terms of both analog and digital channel capacity and the compression ratio used for digital transmissions) resulting from upgrades, the number of systems, the number of homes passed by, and the number of subscribers to digital tier services. To what extent is the new capacity used for non-video services? We also seek information on cable operators who have launched or plan to launch digital simulcasts of their analog channel lineups on one or more of their systems. How have the structure and price of service tiers change if a system becomes all-digital? What are the implications for customer premises equipment?

20. We seek information on cable system transactions during the past year, including the names of the buyer and seller, the date and type of transaction (*i.e.*, sale or swap), the name and location of the system, homes passed and number of subscribers, and the price. We request data regarding the effect of clustering (the practice of clustering, whereby operators concentrate their operations in specific geographic areas) on competition in the video programming distribution market.

21. We seek comment on whether cable operators are changing the way they package programming and the role actual or potential competition plays in any such changes. Do cable operators offer or plan to offer genre packages or themed tiers (*e.g.*, family, sports, or lifestyle tiers) or programming on an a la carte basis? We seek information on the programming included on these tiers and their cost, including information on whether subscribers must purchase other tiers in order to subscribe to these tiers or to purchase channels on an a la carte basis.

22. Section 612(g) of the Communications Act provides that when cable systems with 36 or more activated channels are available to 70 percent of households within the U.S. and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. Because data submitted in the record of the *2005 Report* raised questions as to whether the second prong of the so-called ''70/70 test'' had been satisfied, we requested further public comment on this issue. We again request comment and supporting data that would be useful for determining an accurate homes passed statistic, including the number of homes passed by systems with 36 or more activated channels. Have there been developments in the last year that would suggest that the criteria specified under Section 612(g) have been met, and if so, what additional rules should the Commission promulgate to promote diversity of information sources?

23. We request data on the percentage of broadcast stations carried on cable pursuant to retransmission consent agreements and the percentage that are carried pursuant to the must carry provisions. We also seek information on the percentage of required set-aside channels that cable operators currently are using to carry local broadcast signals. To what extent do cable operators pay cash for broadcast station carriage rights, carry non-broadcast programming networks, provide advertising time, or otherwise compensate broadcasters? We also request comment on the effect of retransmission consent compensation on cable rates, the ability of small cable operators to secure retransmission consent on fair and reasonable terms, and the impact of agreements that require the carriage of non-broadcast networks in exchange for the right to carry local broadcast stations on MVPDs and consumers.

24. We also request comment on the ''tier buy-through'' option mandated by Section 623(b)(8) of the Communications Act, including the percentage of subscribers taking advantage of this option; the problems, if any, it creates; the manner in which cable operators make this option known to the public; and the extent to which the option is applicable (*i.e.*, the extent to which programming is offered or purchased on a per-program or per-channel basis).

Direct-to-Home Satellite Services

25. We seek information and data that explain the factors contributing to DBS' growth in the video programming market and that can help us assess whether those characteristics will continue to position DBS as cable's principal competitor. Is there evidence of meaningful price competition between DBS and cable? Do initial DBS equipment costs or other factors prevent cable subscribers from switching despite escalating monthly cable bills? Does the dynamic between the platforms change in markets where DBS offers local broadcast signals?

26. We seek updated information on the geographic characteristics of direct to home (DTH) subscribership and, in particular, DBS subscribership, and the factors that account for its relative strengths or weaknesses in different markets (*e.g.*, areas not served by a cable or other wireline provider vs. other areas). To what extent do DBS subscribers reside in areas not passed by cable systems? What percentage of new DBS subscribers are former cable subscribers or former C-Band subscribers?

27. We seek updated information on the deployment of DBS satellites, and plans to expand DBS satellite fleets. Have these additional satellites resulted in increased channel capacity or the provision of advanced services? What technical methods are DBS providers using to increase capacity?

28. We request updated information on the number of markets where local-into-local television service is offered, or will be offered in the near future, pursuant to the Satellite Home Viewer Improvement Act of 1999, including the number and affiliation of the stations carried. What percentage of DBS subscribers are opting for local programming packages in markets where they are available? What is the cost to consumers of local-into-local broadcast channels? How many markets receive local high definition (HD) programming? What type of equipment is necessary to receive local HD broadcasts and what is the cost of the service and the equipment?

29. On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted, which added new provisions to the Communications and Copyright Acts pertaining to the retransmission by DBS of distant broadcast signals. Throughout 2005, the Commission implemented the provisions of the SHVERA. We request comment on the impact, if any, these provisions have had on the MVPD marketplace. With respect to the new authorization to market broadcast station signals deemed ''significantly viewed,'' to what extent are such signals being made available to subscribers?

30. We request data on prices for DBS programming packages and equipment, and the subscribership of different packages of programming. Do DBS operators offer any programming on an a la carte basis and, if so, what are the prices and subscription requirements associated with such offerings? What additional charges, if any, are required to obtain foreign language or foreign originated programming? We also request information about programming packages available to C-Band subscribers, including the types of packages offered, their prices, and the amount of programming that is offered on an a la carte basis and that is free and unscrambled.

Local Exchange Carriers

31. We previously reported that LEC entry into the MVPD industry has been

limited, but that developments demonstrated renewed LEC interest in providing video programming services. We seek information generally regarding LECs that provide video programming services. Are there any regulatory or statutory impediments to LEC entry in the video service market? Do LECs target specific areas or markets for deployment and what are the determinants of these decisions? How do LEC video services compare to those available from incumbent cable or satellite operators? Is there evidence of price competition between LECs, cable, and satellite operators?

32. The major incumbent local exchange carriers (ILECs) have marketing agreements with DBS providers under which they sell the DBS operator's video services along with their telephony and DSL-based high speed Internet access service. What effect have these agreements had on LEC entry into the video industry? We also request comment on smaller ILECs are reportedly constructing their own all-fiber or mostly fiber networks to deliver video and advanced services to their existing voice and data customers. Are there any unique barriers to entry into smaller and rural video markets?

Broadband Service Providers and Open Video System Operators

33. We request information regarding the provision of video, voice, and data services by broadband service providers (BSPs), including municipal entities, and independent and competitive local exchange carriers (CLEC) overbuilders (to the extent they operate technologically advanced networks capable of providing video and non-video services). Are video programming services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percentage of, BSP subscribers purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services? We seek comment on the effect that BSPs have on video competition, and the characteristics that facilitate BSP competitiveness (*e.g.*, number of subscribers, homes passed, geographical reach, demographics, and business models). Are there still significant barriers to entry? What are the technical and economic factors that determine whether overbuild systems are successful?

Open Video System Operators

34. To what extent are new wireline entrants operating under the open video system (OVS) classification, and what factors (*e.g.*, state and local franchising requirements) cause new entrants to choose the OVS classification? How many subscribers receive video services from OVS operators, and how many subscribers purchase the non-video services offered? We seek information on why new entrants that have chosen the OVS classification and on MVPD entrants that initially chose OVS classification, but have since converted to another framework (*e.g.*, Title VI cable service). Are video and non-video services offered in combination with one another, and, if so, how are rates affected by the packaging of multiple services? What effect do OVS operators have on video competition?

Electric and Gas Utilities

35. We seek information regarding utility companies that provide video services, including broadband over powerline technology. To what extent are video programming services being bundled with telephone, high-speed Internet access, or other utility services and how do these offerings compare with those of incumbent cable operators?

Broadcast Television Service

36. We seek data and comment on the role of broadcast television in the market for the delivery of video programming. We seek data on broadcast network and station audience shares, especially relative to those of non-broadcast programming services. We also request data on broadcast advertising revenue. To what extent has cable gained local, regional, or national advertising market share from broadcast television? What forms of compensation are broadcasters receiving for retransmission consent? In terms of additional sources of revenue, to what extent are cable and DBS operators paying cash compensation for retransmission of broadcast stations? If the compensation is not cash based, how is it accounted for?

37. We request data on the number or percentage of households relying solely on over-the-air broadcast television for programming. We also seek information on the number of MVPD households, by type of MVPD service, that rely on over-the-air reception for local broadcast service on one or more of their television sets not connected to an MVPD. We ask commenters to provide demographic information that might assist us in classifying such households (*e.g.*, urban vs. rural, income, education levels, age).

38. We seek comment on a number of issues concerning the transition to digital television (DTV) service. We request information on the number of households that are able to receive DTV/HDTV programming either over the air or from an MVPD. We seek current data and projections for the number of households that rely on over-the-air reception of broadcast television that have DTV sets, including the number that have built-in or separate DTV tuner capability. What reception difficulties, if any, do viewers that are within the service areas of DTV stations experience, and have there been any advances to address reception performance? Are there unique reception issues that differentiate DTV service from analog service in terms of either better or worse over-the-air reception?

39. We request information regarding the MVPD carriage of DTV programming, in either standard definition (SD) or high definition (HD) formats, and plans to increase the amount of DTV programming carried. How many MVPD subscribers are served by systems that carry DTV programming, and how many households are subscribing to such services when offered as separate packages? We also request comment on carriage agreements between MVPDs and broadcasters. Specifically, how many noncommercial educational broadcast stations are being carried, and under what terms?

40. We seek information on how MVPDs package and price broadcast and non-broadcast DTV programming. What impact will the digital transition have on competition if cable has the capacity to provide broadcast HD programming, but DBS operators do not?

41. We request information on the amount and type of DTV programming offered by broadcasters. To what extent are they using their DTV spectrum for SDTV, HDTV, or multicasting? To what extent are stations locally producing DTV or HDTV programming? To what extent are stations offered network HDTV programming that they are either not equipped to pass through, or for other reasons do not pass through? How are noncommercial educational broadcasters, including PBS affiliates, using the DTV spectrum? Are there differences in the ways that commercial and noncommercial broadcasters are using their DTV spectrum?

42. Have the Commission's programs to educate consumers about the transition to digital television resulted in greater consumer familiarity with DTV in general and HDTV specifically? We seek data regarding consumers' awareness of the DTV transition, including consumer survey results. We

seek information on the consumer education efforts of government, retailers, broadcasters, video programmers and producers, and others. How successful are these consumer education efforts?

43. We seek information on the types of services and content that broadcasters are transmitting using multicasting. We seek information on whether multicasting is limited to large markets, or if stations in small- and medium-sized markets are multicasting. How much multicast programming is locally produced or locally focused? To what extent is the provision of multicast service dependent upon its carriage by cable and other MVPD operators? In how many markets are cable operators and other MVPDs carrying broadcasters' multicast programming, and which markets are they?

44. DTV also allows broadcasters to use part of their digital bandwidth for subscription multichannel video programming services and datacasting. How many TV households subscribe to these services, what markets have access to these services, and what is their expected growth over the next several years? We further request information on how broadcasters are using datacasting to deliver services and content to consumers.

45. We seek updated information on the adoption of the equipment needed to receive digital programming, either over the air or from an MVPD, such as the total number of DTV displays, including HD-ready and enhanced definition (ED)-ready monitors, and set-top, over-the-air tuners, that have been shipped to retailers or sold to consumers. How many DBS receivers contain over-the-air DTV reception capabilities? How many cable set-top boxes include this capability? We also seek information on the development and availability of digital-to-analog converters that will allow digital TV broadcasts to be viewed on analog TV sets. We seek an update on the development of a high-quality, low-cost digital-to-analog converter box for terrestrial DTV reception.

Wireless Cable Systems

46. Wireless cable operators offer limited competition to incumbent cable operators. Many licensees of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) used by wireless cable operators to provide video service have chosen to focus on the delivery of non-video broadband services, such as high-speed Internet service. Have factors such as concerns regarding access to programming, bandwidth considerations, local regulatory considerations, and bundled service offerings, led wireless cable operators to move away from video service?

Private Cable Operators

47. We request information on the types of services offered by private cable operators (PCOs), also known as satellite master antenna television (SMATV) operators. We seek information on the identification of PCO companies, the geographic areas they serve, the programming packages offered, and the prices of such packages compared to those of incumbent cable operators. We seek comment on whether PCOs are using CARS licenses to provide additional competition to incumbent cable operators.

Commercial Mobile Radio Service Providers

48. We request information on the availability and deployment of mobile television services, including information on programming agreements between video programming networks and other content providers and cell phone companies. How many mobile telephone users have access to and subscribe to video programming services? What equipment is required to receive these services, and what is the cost of equipment and service? In which markets are these services available? We are interested in any studies or surveys that explore the use of mobile video services as a complement to, or a substitute for, traditional video services. Do current trends suggest that we should consider mobile telephone providers that offer video programming to be MVPDs?

49. We also seek information on video distribution from other wireless devices, including iPODs and personal digital assistants (PDAs), used to receive such programming. We seek information on the manner in which video content is delivered to these devices (*e.g.*, broadcast vs. Internet downloading). We seek information on how programmers are re-purposing traditional video programming for viewing on these devices, and if programmers are creating content specifically for these new devices.

Internet Video

50. We seek updated information on the types of video services offered over the Internet in both real time and downloadable format. We request comment on its quality relative to traditional video program distribution. We seek projections of whether Internet video will become a viable competitor in the market for the delivery of video programming and, if so, when such competition will emerge. We also seek comment on companies that provide content distribution via the Internet for independent content producers.

Home Video Sales and Rentals

51. We seek information regarding the home video sales and rental market, including data on the number or percentage of households with videocassette recorders (VHS) and digital versatile disc (DVD) players. We request information on the amount of programming available in DVD and VHS formats, for sale and rental, the cost of rentals, and how this compares with the cost of pay-per-view, video-on-demand, or near video-on-demand programming offered by MVPDs. We also seek information on Internet-based video sales and rental services and the effect, if any, they have on video distributors' service offerings, such as VOD and pay-per-view.

Advanced Services

52. We seek information on the advanced services offered by all MVPDs (*e.g.*, VOD, digital video recorders (DVRs), high-speed Internet access, telephony, and HDTV). We request subscribership statistics; cost data; and required equipment for each type of service offered. We request information on how MVPDs bundle these services and how this affects competition.

53. For example, we seek information on the programming that is available through video-on-demand. Is there programming that is produced especially for VOD? How much VOD content is local? What amount of VOD content is exclusive to any one video distributor?

54. We seek information on DVR services provided by MVPDs. What percentage of subscribers has access to operator-supplied DVRs, and how many subscribe to the service? How many use a DVR not supplied by an MVPD? We seek information on the characteristics of the DVRs offered (*e.g.*, single or dual tuner, storage capacity). Do DBS providers still use DVRs to approximate VOD service? What percentage of the DVR set-top boxes are leased as opposed to purchased? Do MVPDs plan to offer a network-based or centralized DVR-like service?

55. In addition, we seek information on the percentage of MVPD Internet access service subscribers that also are video subscribers. How is the service priced, and do video subscribers receive discounts? What is the status of DBS high-speed Internet access (*e.g.*, telephone return path, two-way satellite delivered). Are MVPDs giving

subscribers a choice of Internet service providers? Has any MVPD blocked access to certain kinds of Internet content or applications?

56. Finally, we seek information on the latest developments regarding Voice over Internet Protocol (VoIP) telephony. Is it marketed as part of a bundle of services? Are discounts offered to video subscribers? To what extent are MVPDs phasing out switched circuit telephony?

Technical Issues

57. Technological developments have important consequences for the state of video competition. We seek comment and data on a range of developments related to consumer equipment, navigation devices, the Open Cable Application Platform (OCAP), PacketCable, CableCARDs, advanced compression techniques, technical standards, and home networking.

58. We seek comment on the availability and compatibility of customer premises equipment used to provide video and non-video services. How many households currently have analog television sets that are connected to a set-top box for the provision of various MVPD services. How many of these set-top boxes only provide analog services and how many provide different types of digital service, (*i.e.*, decode and display HD signals). How many of these MVPD set-top boxes also contain cable modems, IP telephony interfaces, DVR capabilities, or home networking capabilities, and how are these services priced? How many set-top boxes are capable of providing video programming on an a la carte basis and is any MVPD offering this service?

59. We also seek information on the retail availability of navigation devices to consumers. How many such devices have been sold? What are the obstacles to equipment manufacturers and others for obtaining approval to attach devices to MVPD systems? How does equipment design, function, and/or availability affect consumer choice and competition between firms in the video programming market? We request information on the development and deployment of electronic programming guides (EPGs), including the number and type of EPGs that video programming distributors offer or plan to offer, and the technologies used to distribute EPGs. We ask commenters to provide information on partnerships between video providers and developers of EPGs, the extent MVPD-affiliated EPGs are available to competitors, and whether subscribers have access to EPGs that are unaffiliated with their video provider? How many products are currently available with plug-and-play functionality, or are soon to be available?

60. We seek updated information on developments CableLabs' OCAP middleware solution. Which manufacturers are incorporating OCAP into their products? How many OCAP compliant products have been deployed, and how many are in use today? What types of applications exist for OCAP? Do smaller cable systems have plans to deploy these devices and, if so, how will they do it? We seek information on the results of OCAP device trials by MSOs in select markets, and whether they are expected to lead to commercial implementations and, if so, when. We request information on industry developments to facilitate bi-directional services and interactive television (ITV) applications and services. We also request updated information on the state of the agreement between the Consumer Electronics Association and the National Cable & Telecommunications Association to incorporate support for OCAP in interactive Digital Cable Ready (iDCR) devices, and whether any technical issues remain.

61. We solicit updated information on PacketCable, the specification standard for the delivery of advanced real-time multimedia services over two-way plant. We also seek updated information CableCARDs, including the number operators have placed in service: the manner in which subscribers must obtain a CableCARD: whether operators require professional installation of the card: and any monthly subscription charges or one-time fees associated with installing or authorizing the CableCARD. Have MVPDs or consumers encountered problems with CableCARDs and how have they been resolved? We seek information on the status of operators to develop multi-stream and two-way CableCARDs, and the impact this development will likely have on the competitive marketplace for digital cable-ready receivers, including DVRs.

62. We request updated information on the development and deployment of any downloadable conditional access systems. We seek comment on what content protection technologies are now available, how they work, and what legal or marketplace impediments have affected the roll-out of such tools. We seek comment on what security measures are in use and the effect of the choice of such security measures on competition. We also invite comment on how the Commission can encourage the development of digital rights management technology that will promote consumer uses of, and access to, high value digital content.

63. We request updates on MVPDs' implementation of advanced video compression technologies (codecs). We are particularly interested in examples of how the implementation of advanced codecs has increased efficiency or created specific benefits flowing to subscribers. In addition, we seek information on industry developments with respect to the creation of specifications and standards to support the wider introduction of home networks by MVPDs.

64. We seek information on the effect that technical rules and standards have on the market for video programming services. Are there specific actions that the Commission may take to foster greater competition among video service providers? Do current technical rules and standards (such as the ''plug-and-play'' standards), provide a level playing field among competitors in the video delivery marketplace?

Foreign Markets

65. We seek information or case studies that address the status of competition in foreign markets for the delivery of video programming because developments in other countries can lend insight into the nature of competition in the United States. Specifically, we seek information regarding the differences between the U.S. market and foreign markets, including differences in pricing; packaging (*e.g.*, a la carte offerings); deployment of VoIP; the DTV transition; and competition among MVPDs or over-the-air service. We seek input from distributors operating both in the United States and abroad. How do different regulatory approaches affect their business models?

Procedural Matters

66. *Authority.* This *NOI* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

67. *Ex Parte Rules.* There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

68. *Comment Information.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing

paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

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

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–19473 Filed 11–16–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center 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 14, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. Century Bancshares of Florida, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Century Bank of Florida, both of Tampa, Florida.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Orion Bancorporation, Inc., Orion, Illinois; to merge with First Mid–America Bancorp, Inc., and thereby indirectly acquire voting shares of The State Bank of Annawan, both of Annawan, Illinois.

Board of Governors of the Federal Reserve System, November 14, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–19449 Filed 11–16–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry

The Program Peer Review Subcommittee (PPRS) of the Board of Scientific Counselors (BSC), Centers for Disease Control And Prevention (CDC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC, NCEH/ATSDR announces a meeting of the subcommittee.

Time and Date: 5 p.m.–7 p.m. Eastern Standard Time, December 5, 2006.

Place: Hilton Atlanta Hotel, 255 Courtland Street, Atlanta, Georgia 30303.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the PPRS will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

Matters to Be Discussed: A review of the history of Program Peer Reviews, current structure and process for reviews; discussion of functional reviews versus programmatic reviews; a review of questionnaires developed by the Subcommittee; a report on the status of two upcoming reviews; and an update on the Five Year Forecasting Timetable for Reviews at NCEH/ATSDR.

Agenda items are subject to change as priorities dictate.

Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 calendar days notice to the public (41 CFR 102–3.150(b)).

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404–498–0622.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: November 13, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 06–9272 Filed 11–16–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–246]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because the use of normal clearance procedures is reasonably likely to cause a statutory deadline to be missed.

The Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 under section 1860D–4 (Information to Facilitate Enrollment) requires CMS to conduct consumer satisfaction surveys regarding the prescription drug plan or the Medicare Advantage prescription drug plan pursuant to section 1860D–4(d) and report the results to Part D eligible individuals at least 30 days prior to the enrollment period. This revised collection adds new Prescription Drug Plan questions as mandated in the MMA. Approval for this request will ensure that CMS is able to conduct the revised Medicare Consumer Assessment of Healthcare Providers and Systems (CAHPS) surveys in time to publicly report the data for the open enrollment period in Fall of 2007.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare CAHPS Survey; *Form Number:* CMS–R–246 (OMB#: 0938–0732); *Use:* The collection of CAHPS measures is necessary to hold health and prescription drug plans accountable for the quality of care and services they deliver. This requirement will allow CMS to obtain information for the proper oversight of the program. This information is used to help beneficiaries choose among plans, contribute to improved quality of care through identification of quality improvement opportunities, and assist CMS in carrying out its responsibilities; *Frequency:* Reporting—Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 600,000; *Total Annual Responses:* 600,000; *Total Annual Hours:* 198,000.

CMS is requesting OMB review and approval of this collection by *December 18, 2006,* with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by December 4, 2006.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by December 4, 2006: Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Bonnie L Harkless. and, OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: November 7, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–19133 Filed 11–16–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10137]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because the use of normal clearance procedures is reasonably likely to cause a statutory deadline to be missed.

For the 2008 contract year, CMS is taking several steps to reduce the person-hours necessary to complete the Part D solicitations. These steps include automating the majority of the Part D and Employer Group Waiver Plan solicitations within CMS' Health Plan Management System (HPMS), incorporating the Pharmacy Access Submission document into the underlying Part D solicitation, and streamlining key information that was previously requested by attachments into attestations in time to qualify applicants prior to the first Monday in June of 2006.

1. *Type of Information Collection Request:* Revision of a currently approved collection.

Title of Information Collection: Application for Prescription Drug Plans (PDP); Application for Medicare Advantage Prescription Drug (MA–PD); Application for Cost Plans to Offer Qualified Prescription Drug Coverage; Application for Employer Group Waiver Plans to Offer Prescription Drug Coverage; Service Area Expansion Application for Prescription Drug Coverage.

Form Number: CMS–10137 (OMB#: 0938–0936).

Use: Collection of this information is mandated in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Coverage for the prescription drug benefit is provided through prescription drug plans (PDP's) that offer drug-only coverage, or through Medicare Advantage organizations that offer integrated prescription drug and health care coverage. PDPs must offer a basic drug benefit. Medicare Advantage Coordinated Care Plans must offer either a basic benefit or may offer broader coverage for no additional cost. Medicare Advantage Private Fee for Service Plans may choose to offer a Part D benefit. Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Plans may also provide a Part D benefit. If any of the contracting organizations meet basic requirements, they may also offer supplemental benefits through enhanced alternative coverage for an additional premium. This collection will be used by CMS to: (1) Insure that applicants meet CMS requirements and (2) support the determination of contract awards.

Frequency: Reporting—Once.

Affected Public: Business or other for-profit and Not-for-profit institutions

Number of Respondents: 216.

Total Annual Responses: 216.

Total Annual Hours: 5,316.

CMS is requesting OMB review and approval of this collection by *December 15, 2006,* with a 180-day approval period. Written comments and recommendation will be considered from the public if received by the individuals designated below by December 1, 2006.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by December 1, 2006: Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Bonnie L Harkless, and, OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

November 9, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–19428 Filed 11–16–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10088 and CMS–R–13]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notification of Fiscal Intermediaries (FIs) and CMS of Co-located Medicare Providers and Supporting Regulations in 42 CFR 412.22 and 412.533; *Use:* Many long term care hospitals (LCTHs) are co-located with other Medicare providers (acute care hospitals, inpatient rehabilitation facilities, skilled nursing facilities, and psychiatric facilities), which leads to potential gaming of the Medicare system based on patient shifting. CMS is requiring LTCHs to notify fiscal intermediaries (FIs) and CMS of co-located providers. In

addition, CMS has established policies to limit payment abuse that will be based on FIs tracking patient movement among these co-located providers. *Form Number:* CMS–10088 (OMB#: 0938–0897; *Frequency:* Reporting—as needed; *Affected Public:* Business or other for profit and Not-for-profit institutions; *Number of Respondents:* 200; *Total Annual Responses:* 200; *Total Annual Hours:* 50.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR 486.301–348; *Use:* Organ Procurement Organizations are required to submit accurate data to CMS through the Organ Procurement and Transplantation Network (OPTN). The data concerns the organ procurement activities, as well as various OPO business activities, including information on its designated service area; structure; various policies, procedures, and protocols; and its quality assessment and performance improvement (QAPI) program. This information is necessary to assure maximum effectiveness in the procurement and distribution of organs. *Form Number:* CMS–R–13 (OMB#: 0938–0688; *Frequency:* Reporting—Every 4 years and as needed; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 58; *Total Annual Responses:* 58; *Total Annual Hours:* 21,427.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: November 7, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–19430 Filed 11–16–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-R–235]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data Use Agreement Information Collection Requirements, Model Language and Supporting Regulations in 45 CFR part 5b. *Use:* The Data Use Agreement (DUA) is needed as part of the review of each CMS data request to ensure compliance with the requirements of the Privacy Act for disclosure of data that contain individually-identifiable information. In addition, the DUA is used to maintain appropriate accounting and tracking of disclosures of records from Privacy Act systems of records. *Form Number:* CMS-R–235 (OMB#: 0938–0734); *Frequency:* Reporting-On occasion; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 1,500; Total *Annual Responses:* 1,500; *Total Annual Hours:* 750.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on *January 16, 2007.*

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 7, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–19431 Filed 11–16–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 6, 2006, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Veronica J. Calvin, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd.,

Rockville, MD 20850, 240–276–0491, ext. 161, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512514. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear an update on the status of recent devices brought before the committee. The committee will also hear a presentation regarding the FDA Critical Path Initiative. The committee will discuss general issues concerning high and low density lipoprotein subfraction assays. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panel/index.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 24, 2006. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 24, 2006.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, 301–827–7292 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 8, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. E6–19492 Filed 11–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board of Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 7–8, 2006.

Time: December 7, 2006, 8:30 a.m. to 5 p.m.

Agenda: NICHD Director's Report presentation, NCMRR Director's Report presentation and various reports on Medical Research Initiatives.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: December 8, 2006, 8:30 a.m. to 12:00 p.m.

Agenda: Other business dealing with the NABMRR Board.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda,MD 20814.

Contact Person: Ralph M. Nitkin, PhD, Director, BSCD, National Center for Medical, Rehabilitation Research, National Institute of Child Health, and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892. (301) 402–4206.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/ncmrr.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9254 Filed 11–16–06; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: December 5, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: For questions or to register, please call Circle Solutions at (703) 902–1139 or via the Web site *http://www.circlesolutions.com/ncs/ncsac.* Advanced registration is required due to space limitations. Registration deadline is November 28, 2006. The agenda will include progress regarding the study plan and protocol, informed consent and genetic aspects of the study.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852.

Contact Person: Marion Balsam, MD, Executive Secretary, National Children's Study Advisory Committee, 6100 Executive Boulevard, Rockville, MD 20892. 301–594–9147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9255 Filed 11–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Program Project.

Date: December 5, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of General Medical Sciences, Office of Scientific Review/Natcher, 45 Center Drive, 3AN–18, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Brian R. Pike, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. 301–594–3907. *pikbr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9256 Filed 11–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel NIH Pathway to Independence Awards.

Date: December 6–7, 2006.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Meredith D. Temple-O'Connor, Ph.D., Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9258 Filed 11–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Training Rehabilitation Applications.

Date: November 28, 2006.

Time: 1 p.m. to 4 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: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852. (301) 435–6889. *bhatnagg@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, 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 13, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9259 Filed 11–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel: Viral Pathogens.

Date: November 28, 2006.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel: Chemoprevention and Carcinogenesis.

Date: November 30, 2006.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lambratu Rahman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–451–3493, *rahmanl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel: EPR Spectroscopy Program Project.

Date: December 5–7, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, 301–435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel: Opportunistic Infections in AIDS.

Date: December 6, 2006.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Oral Microbiology and Immunology.

Date: December 8, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Program Project: Methods for Identification of Low Abundance Metabolites.

Date: December 12–14, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel: Bacterial Pathogenesis.

Date: December 15, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, (301) 435–1148, *wachtelm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 9, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9257 Filed 11–16–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Availability of Biennial Progress Report of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM)

AGENCY: National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Availability of Biennial Progress Report of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM).

SUMMARY: NICEATM announces the availability of the ''Biennial Progress Report of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM): 2004–2005.'' In accordance with requirements of the ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3), this report describes progress made during 2004 and 2005 by ICCVAM and NICEATM. Copies can be obtained on the ICCVAM/NICEATM Web site at *http://iccvam.niehs.nih.gov* or by contacting NICEATM at the address given below.

ADDRESSES: Requests for copies of the report should be sent by mail, fax, or e-mail to Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov*. Courier address: NICEATM, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, NICEATM Director, (phone) 919–541–2384, (e-mail) *niceatm@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3), available at (*http://*

iccvam.niehs.nih.gov/about/PL106545.htm) establishes ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of federal agencies. The ICCVAM Authorization Act of 2000 directs ICCVAM to prepare biennial reports on its progress and make these reports available to the public. Additional information about ICCVAM and NICEATM is available on the following Web site: *http://iccvam.niehs.nih.gov*.

Dated: November 8, 2006.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E6–19487 Filed 11–16–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2001–9046]

Final Report on Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of the Final Report on Tank Level or Pressure Monitoring Devices. This report details the findings of the Coast Guard's study on costs and benefits of alternatives to tank level or pressure monitoring devices.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LCDR Roger K. Butturini, P.E., Regulatory Development Manager, Office of Standards Evaluation and Development (G–PSR–2), U.S. Coast Guard, telephone 202–372–1494 or e-mail *Roger.K.Butturini@uscg.mil.* If you have questions about the technical aspects of the report, contact Ms. Dolores Mercier, Technical Expert, Office of Design and Engineering Standards, U.S. Coast Guard, telephone 202–382–1381 or e-mail *Dolores.Mercier@uscg.mil.* If you have questions on viewing or submitting material to the docket, contact Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION: In section 702 of the Coast Guard and Marine Transportation Authorization Act of 2004 (Pub. L. 108–293,118 Stat 1028 (2004)), Congress directed the Coast Guard to analyze the costs and benefits of methods other than tank level or pressure monitoring (TLPM) devices for detecting loss of oil from cargo tanks into the water. The report was completed in March 2006 and we added a copy of this report into the docket for the original TLPM device rulemaking. You may electronically access the public docket for the original rulemaking by performing a ''Simple Search'' for docket number 9046 on the Internet at *http://dms.dot.gov.* The Final Report is number USCG–2001–9046–166.

Dated: November 3, 2006.

J.G. Lantz,

Director of National and International Standards Assistant Commandant for Prevention.

[FR Doc. E6–19459 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–FA–20]

Announcement of Funding Awards for the Section 811 Supportive Housing for Persons With Disablilities Program, Fiscal Year 2005

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Super Notice of Funding Availability (SuperNOFA) for the Supportive Housing for Persons With Disabilities Program. This announcement contains the names of the awardees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Mr. Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–800–877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Section 811 Supportive Housing for Persons With Disabilities Program is authorized by section 811 of the National Affordable Housing Act (42 U.S.C. 8013). The competition was announced in the SuperNOFA published in the **Federal Register** on March 21, 2005. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.181.

The Section 811 Supportive Housing for Persons With Disabilities Program is designed to provide capital advance funds to nonprofit organizations for the development of independent living projects, group homes and condominium units with the availability of supportive services for very low-income adults 18 years or older with disabilities. Project rental assistance contract funds are also provided to cover the difference between the HUD-approved operating costs of the project and the tenants' contributions for rent.

A total of $115,586,800 of capital advance funds and $20,178,500 of project rental assistance contract funds was awarded to 118 projects for 1,173 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: November 7, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

Appendix A—Fiscal Year 2005 Awardees for Section 811 Supportive Housing for Persons With Disabilities Program

Alabama

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Mobile, AL
Non-Profit Sponsor: Accessible Space
Capital Advance: $1,687,500
Five-year rental subsidy: $266,500
Number of units: 20

Project Location: Mobile, AL
Non-Profit Sponsor: VOA Southeast, Inc.
Capital Advance: $1,318,700
Five-year rental subsidy: $196,500
Number of units: 15

Project Location: Moulton, AL
Non-Profit Sponsor: Foundation Mental Health N Central AL
Capital Advance: $827,400
Five-year rental subsidy: $140,500
Number of units: 11

Alaska

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Anchorage, AK
Non-Profit Sponsor: Anchorage Housing Initiatives
Capital Advance: $1,857,500
Five-year rental subsidy: $301,500
Number of units: 10

Arizona

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Phoenix, AZ
Non-Profit Sponsor: Toby House, Inc.
Capital Advance: $1,982,200
Five-year rental subsidy: $297,500
Number of units: 20

Arkansas

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Benton, AR
Non-Profit Sponsor: Birch Tree Communities
Capital Advance: $1,039,900
Five-year rental subsidy: $182,500
Number of units: 15

Project Location: Bryant, AR
Non-Profit Sponsor: Friendship Community Care Inc
Capital Advance: $889,000
Five-year rental subsidy: $156,500
Number of units: 13

Project Location: McGehee, AR
Non-Profit Sponsor: Albert Roland Jr., Inc
Co-Sponsor: Community Directions, Inc.
Capital Advance: $1,138,500
Five-year rental subsidy: $182,500
Number of units: 15

California

Section 811—Supportive Housing for Persons 2ith Disabilities

Project Location: Glendale, CA
Non-Profit Sponsor: UCP of LA & Ventura Counties
Capital Advance: $3,147,700
Five-year rental subsidy: $518,500
Number of units: 24

Project Location: Northridge, CA
Non-Profit Sponsor: TLC for the Blind
Capital Advance: $538,100
Five-year rental subsidy: $135,500
Number of units: 6

Project Location: Van Nuys, CA
Non-Profit Sponsor: Homes for Life Foundation
Capital Advance: $2,997,900
Five-year rental subsidy: $541,000
Number of units: 25

Colorado

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Aurora, CO
Non-Profit Sponsor: Dev Path Inc
Capital Advance: $1,392,300
Five-year rental subsidy: $291,000
Number of units: 18

Project Location: Centennial, CO
Non-Profit Sponsor: Dev Path Inc
Capital Advance: $464,100
Five-year rental subsidy: $97,000
Number of units: 6

Project Location: Centennial, CO
Non-Profit Sponsor: Dev Path Inc
Capital Advance: $464,100
Five-year rental subsidy: $97,000
Number of units: 6

Project Location: Denver, CO
Non-Profit Sponsor: VOA Ntl Svcs
Capital Advance: $1,492,000
Five-year rental subsidy: $225,500
Number of units: 15

Project Location: Denver, CO
Non-Profit Sponsor: CommonWorks
Capital Advance: $767,000
Five-year rental subsidy: $97,000
Number of units: 6

Project Location: Fort Collins, CO
Non-Profit Sponsor: ASI
Capital Advance: $2,357,800
Five-year rental subsidy: $354,500
Number of units: 23

Project Location: LaJunta, CO
Non-Profit Sponsor: Tri Co Hsg & CDC
Capital Advance: $1,673,900
Five-year rental subsidy: $225,500
Number of units: 15

Connecticut

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Hartford, CT
Non-Profit Sponsor: Broad-Park Development Corporation, Inc.
Capital Advance: $1,617,600
Five-year rental subsidy: $256,500
Number of units: 12

Project Location: New Haven, CT
Non-Profit Sponsor: Fellowship Place, Inc.
Capital Advance: $1,803,800
Five-year rental subsidy: $299,000
Number of units: 14

Delaware

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Smyrna, DE
Non-Profit Sponsor: Krysti Bingham CP Fnd Inc
Co-Sponsor: Carelink Comm Support Svcs
Capital Advance: $459,600
Five-year rental subsidy: $123,500
Number of units: 6

Project Location: Smyrna, DE
Non-Profit Sponsor: The Arc of DE
Capital Advance: $812,900
Five-year rental subsidy: $165,000
Number of units: 8

Florida

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Port Charlotte, FL
Non-Profit Sponsor: Goodwill Industries of SW Florida
Capital Advance: $1,638,600
Five-year rental subsidy: $208,500
Number of units: 14

Georgia

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Austell, GA
Non-Profit Sponsor: Cobb ARC, Inc.
Capital Advance: $325,100
Five-year rental subsidy: $57,500
Number of units: 4

Project Location: Lafayette, GA
Non-Profit Sponsor: Volunteers of America Southeast Inc.
Capital Advance: $778,000
Five-year rental subsidy: $129,000
Number of units: 10

Project Location: Mableton, GA
Non-Profit Sponsor: Cobb ARC, Inc.
Capital Advance: $325,100
Five-year rental subsidy: $57,500
Number of units: 4

Illinois

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Chicago, IL
Non-Profit Sponsor: Chicago House & Soc Ser Agency
Capital Advance: $975,800
Five-year rental subsidy: $90,000
Number of units: 6

Project Location: Joliet, IL
Non-Profit Sponsor: Cornerstone Services Inc
Capital Advance: $582,900
Five-year rental subsidy: $108,500
Number of units: 6

Project Location: Madison, IL
Non-Profit Sponsor: Chestnut Health Systems Inc
Capital Advance: $964,800
Five-year rental subsidy: $126,500
Number of units: 7

Project Location: Monmouth, IL
Non-Profit Sponsor: Warren Achievement Center
Capital Advance: $853,100
Five-year rental subsidy: $144,500
Number of units: 9

Project Location: Park Forest, IL
Non-Profit Sponsor: So Suburban Training and Rehabilitation Ser
Capital Advance: $582,900
Five-year rental subsidy: $108,500
Number of units: 6

Project Location: Pontiac, IL
Non-Profit Sponsor: Mosaic
Capital Advance: $1,076,300
Five-year rental subsidy: $162,500
Number of units: 9

Project Location: Rockford, IL
Non-Profit Sponsor: Accessible Space Inc
Co-Sponsor: Over the Rainbow Assoc
Capital Advance: $2,146,500
Five-year rental subsidy: $342,500
Number of units: 20

Indiana

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Hobart, IN
Non-Profit Sponsor: Southlake Center for Mental health
Capital Advance: $1,605,000
Five-year rental subsidy: $227,000
Number of units: 15

Iowa

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Marshalltown, IA
Non-Profit Sponsor: Center Associates
Capital Advance: $1,288,400
Five-year rental subsidy: $148,000

Number of units: 10

Project Location: Muscatine, IA
Non-Profit Sponsor: Muscatine Welfare Association
Capital Advance: $549,200
Five-year rental subsidy: $74,000
Number of units: 5

Kentucky

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Campbellsville, KY
Non-Profit Sponsor: Christian Care Communities
Capital Advance: $326,100
Five-year rental subsidy: $46,000
Number of units: 3

Project Location: Campbellsville, KY
Non-Profit Sponsor: Christian Care Communities
Capital Advance: $326,100
Five-year rental subsidy: $46,000
Number of units: 3

Project Location: Independence, KY
Non-Profit Sponsor: Christian Care Communities
Capital Advance: $394,600
Five-year rental subsidy: $91,500
Number of units: 6

Project Location: Louisville, KY
Non-Profit Sponsor: Cedar Lake Lodge Inc
Capital Advance: $978,300
Five-year rental subsidy: $137,000
Number of units: 9

Louisiana

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Jonesboro, LA
Non-Profit Sponsor: Macon Ridge Comm Dev Corp
Capital Advance: $1,137,800
Five-year rental subsidy: $196,500
Number of units: 15

Project Location: St. Martinville, LA
Non-Profit Sponsor: Arc of St. Martin
Capital Advance: $1,313,100
Five-year rental subsidy: $217,500
Number of units: 17

Maryland

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Baltimore, MD
Non-Profit Sponsor: Aids Interfaith Residential Services, Inc
Capital Advance: $1,559,100
Five-year rental subsidy: $299,500
Number of units: 18

Project Location: Catonsville, MD
Non-Profit Sponsor: Family Service Foundation, Inc.
Capital Advance: $689,200
Five-year rental subsidy: $106,000
Number of units: 6

Project Location: Hagerstown, MD
Non-Profit Sponsor: Way Station, Inc.
Capital Advance: $789,600
Five-year rental subsidy: $205,500
Number of units: 12

Project Location: Reisterstown, MD
Non-Profit Sponsor: Prologue Inc.
Capital Advance: $706,700
Five-year rental subsidy: $141,000
Number of units: 8

Project Location: Severn, MD
Non-Profit Sponsor: Vesta, Inc.
Capital Advance: $748,200
Five-year rental subsidy: $171,500
Number of units: 10

Massachusetts

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Framingham, MA
Non-Profit Sponsor: Advocates Inc
Capital Advance: $1,125,400
Five-year rental subsidy: $181,500
Number of units: 9

Project Location: Lansborough, MA
Non-Profit Sponsor: Berkshire County Acr
Capital Advance: $455,900
Five-year rental subsidy: $91,000
Number of units: 4

Project Location: Lexington, MA
Non-Profit Sponsor: Supportive Living Inc
Capital Advance: $1,070,400
Five-year rental subsidy: $204,000
Number of units: 9

Project Location: North Andover, MA
Non-Profit Sponsor: American Training Inc
Capital Advance: $493,900
Five-year rental subsidy: $91,000
Number of units: 4

Project Location: Southbridge, MA
Non-Profit Sponsor: Southern Worcester County Association for Retarded
Capital Advance: $1,000,400
Five-year rental subsidy: $159,000
Number of units: 8

Minnesota

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Rogers, MN
Non-Profit Sponsor: National Handicap Housing Institute, Inc.
Capital Advance: $1,781,100
Five-year rental subsidy: $299,500
Number of units: 17

Mississippi

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Vicksburg, MS
Non-Profit Sponsor: Warren-Yazoo Mental Health Services, Inc.
Capital Advance: $1,230,000
Five-year rental subsidy: $245,500
Number of units: 17

Missouri

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Columbia, MO
Non-Profit Sponsor: RAIN of Central Missouri, Inc.
Capital Advance: $903,900
Five-year rental subsidy: $139,500
Number of units: 8

Project Location: Fredericktown, MO
Non-Profit Sponsor: Community Counseling Center, Inc.
Capital Advance: $1,694,800
Five-year rental subsidy: $244,000
Number of units: 15

Project Location: Kansas City, MO
Non-Profit Sponsor: The Community of the Good Shepherd
Capital Advance: $1,022,800
Five-year rental subsidy: $182,000
Number of units: 12

Project Location: St. Louis, MO
Non-Profit Sponsor: Third Ward Neighborhood Council
Capital Advance: $1,718,100
Five-year rental subsidy: $244,000
Number of units: 15

Project Location: Trenton, MO
Non-Profit Sponsor: Green Hills Community Action Agency
Capital Advance: $1,079,300
Five-year rental subsidy: $165,500
Number of units: 11

Nebraska

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Sidney, NE
Non-Profit Sponsor: Panhandle Comm Ser
Co-Sponsor: Reg I Ofc of Human Devl
Capital Advance: $595,100
Five-year rental subsidy: $89,500
Number of units: 6

Nevada

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Las Vegas, NV
Non-Profit Sponsor: Accessible Space, Inc.
Capital Advance: $2,501,200
Five-year rental subsidy: $392,500
Number of units: 24

New Jersey

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Medford, NJ
Non-Profit Sponsor: Allies Inc
Capital Advance: $880,300
Five-year rental subsidy: $178,500
Number of units: 8

Project Location: Parsippany, NJ
Non-Profit Sponsor: Jewish Svc for Devl Dis of NJ
Capital Advance: $507,000
Five-year rental subsidy: $142,000
Number of units: 5

Project Location: Ridgewood, NJ
Non-Profit Sponsor: W Bergen Mtl Healthcare Inc
Capital Advance: $1,443,800
Five-year rental subsidy: $284,000
Number of units: 11

Project Location: Toms River, NJ
Non-Profit Sponsor: Ocean MH Svcs Inc
Capital Advance: $766,300
Five-year rental subsidy: $111,500
Number of units: 5

Project Location: Washington Township, NJ
Non-Profit Sponsor: Alternatives Inc
Capital Advance: $889,300
Five-year rental subsidy: $170,500
Number of units: 6

New Mexico

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Clovis, NM
Non-Profit Sponsor: Eastern Plains Housing Dev Corp

Capital Advance: $1,059,700
Five-year rental subsidy: $208,500
Number of units: 14

New York

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Farmingville, NY
Non-Profit Sponsor: Options for Community Living
Capital Advance: $1,287,700
Five-year rental subsidy: $295,000
Number of units: 9

Project Location: Flushing, NY
Non-Profit Sponsor: Transitional Services for New York Inc
Capital Advance: $1,175,200
Five-year rental subsidy: $328,000
Number of units: 10

Project Location: North Baldwin, NY
Non-Profit Sponsor: Nassau AHRC
Capital Advance: $951,700
Five-year rental subsidy: $262,500
Number of units: 8

Project Location: Spring Valley, NY
Non-Profit Sponsor: Camp Venture Inc
Capital Advance: $1,045,100
Five-year rental subsidy: $341,500
Number of units: 11

Project Location: Syracuse, NY
Non-Profit Sponsor: Humanitarian Org for Multicultural Exp, Inc.
Capital Advance: $930,000
Five-year rental subsidy: $148,000
Number of units: 9

North Carolina

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Asheville, NC
Non-Profit Sponsor: WNC Housing
Capital Advance: $591,700
Five-year rental subsidy: $91,500
Number of units: 6

Project Location: Cary, NC
Non-Profit Sponsor: The Serving Cup
Co-Sponsor: LUTH Family SER of Carolinas, The ARC of North Carolina Inc
Capital Advance: $699,200
Five-year rental subsidy: $91,500
Number of units: 6

Project Location: Charlotte, NC
Non-Profit Sponsor: MH Assn in North Carolina, Inc.
Co-Sponsor: NC Mental Health Consumers Org
Capital Advance: $662,400
Five-year rental subsidy: $54,900
Number of units: 6

Project Location: Concord, NC
Non-Profit Sponsor: MH Assn in North Carolina, Inc.
Co-Sponsor: NC Mental Health Consumers Org
Capital Advance: $500,500
Five-year rental subsidy: $45,900
Number of units: 5

Project Location: Gastonia, NC
Non-Profit Sponsor: 1st Presbytery of the ARP Church
Capital Advance: $1,201,200
Five-year rental subsidy: $182,500
Number of units: 12

Project Location: Lincolnton, NC
Non-Profit Sponsor: UMAR–WNC Inc
Capital Advance: $473,100
Five-year rental subsidy: $91,500
Number of units: 6

Project Location: Waynesville, NC
Non-Profit Sponsor: MH Assn in North Carolina, Inc.
Co-Sponsor: NC Mental Health Consumers Org
Capital Advance: $1,479,200
Five-year rental subsidy: $127,800
Number of units: 15

North Dakota

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Williston, ND
Non-Profit Sponsor: Comm Action Partnership
Capital Advance: $828,500
Five-year rental subsidy: $109,500
Number of units: 8

Ohio

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Akron, OH
Non-Profit Sponsor: Oriana House
Capital Advance: $781,600
Five-year rental subsidy: $145,500
Number of units: 8

Project Location: Canton, OH
Non-Profit Sponsor: Quest Recovery Services
Capital Advance: $405,400
Five-year rental subsidy: $109,000
Number of units: 6

Project Location: Cincinnati, OH
Non-Profit Sponsor: The Resident Home Corporation
Capital Advance: $793,000
Five-year rental subsidy: $130,500
Number of units: 8

Project Location: Cleveland, OH
Non-Profit Sponsor: Oriana House
Capital Advance: $362,800
Five-year rental subsidy: $73,000
Number of units: 4

Project Location: Columbus, OH
Non-Profit Sponsor: Community Housing Network, Inc.
Capital Advance: $1,438,200
Five-year rental subsidy: $225,500
Number of units: 15

Project Location: Cuyahoga Falls, OH
Non-Profit Sponsor: Ohio Multi-County Development Corporation
Co-Sponsor: Community Health Center
Capital Advance: $388,400
Five-year rental subsidy: $109,000
Number of units: 6

Project Location: Grove City, OH
Non-Profit Sponsor: Creative Housing, Inc
Capital Advance: $646,200
Five-year rental subsidy: $129,000
Number of units: 8

Project Location: North Ridgeville, OH
Non-Profit Sponsor: Neighborhood Development Services Inc
Capital Advance: $378,700
Five-year rental subsidy: $73,000
Number of units: 4

Project Location: North Ridgeville, OH
Non-Profit Sponsor: Neighborhood Development Services, Inc.
Capital Advance: $378,700
Five-year rental subsidy: $73,000
Number of units: 4

Project Location: Toledo, OH
Non-Profit Sponsor: Luther Home of Mercy
Capital Advance: $1,136,100
Five-year rental subsidy: $218,000
Number of units: 12

Project Location: West Carrollton, OH
Non-Profit Sponsor: Miami Valley In-Ovations, Inc.
Capital Advance: $584,500
Five-year rental subsidy: $98,000
Number of units: 6

Project Location: Whitehouse, OH
Non-Profit Sponsor: Bittersweet Inc
Capital Advance: $1,088,200
Five-year rental subsidy: $218,000
Number of units: 12

Oklahoma

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Broken Arrow, OK
Non-Profit Sponsor: VOA Ntl Svcs
Capital Advance: $739,200
Five-year rental subsidy: $126,500
Number of units: 9

Project Location: Heavener, OK
Non-Profit Sponsor: KI BOIS Comm Action Found
Capital Advance: $263,700
Five-year rental subsidy: $56,500
Number of units: 4

Project Location: McAlester, OK
Non-Profit Sponsor: KI BOIS Comm Action Found
Capital Advance: $298,200
Five-year rental subsidy: $84,500
Number of units: 6

Oregon

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Newberg, OR
Non-Profit Sponsor: Families United For Independent Living
Co-Sponsor: Tualatin Valley Housing Partners
Capital Advance: $1,597,500
Five-year rental subsidy: $221,000
Number of units: 15

Pennsylvania

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Erie, PA
Non-Profit Sponsor: HANDS, Inc.
Capital Advance: $713,600
Five-year rental subsidy: $131,500
Number of units: 8

Project Location: Meadville, PA
Non-Profit Sponsor: HANDS, Inc.
Capital Advance: $713,600
Five-year rental subsidy: $131,500

Number of units: 8

Project Location: Philadelphia, PA
Non-Profit Sponsor: Columbus Prop Mgmt & Dev Inc
Capital Advance: $1,050,600
Five-year rental subsidy: $223,000
Number of units: 10

Project Location: Steelton, PA
Non-Profit Sponsor: Affordable Hsg Assoc of Dauphin Co
Co-Sponsor: Ctr for Ind Liv Central PA, Inc.
Tri-County HDC, Ltd.
Capital Advance: $1,162,500
Five-year rental subsidy: $267,500
Number of units: 12

Project Location: Wexford, PA
Non-Profit Sponsor: Spina Bifida Assoc of Western PA
Capital Advance: $1,248,800
Five-year rental subsidy: $230,500
Number of units: 14

Puerto Rico

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Mayaguez, PR
Non-Profit Sponsor: Aso. Mayaguezana de Personas con Impedimentos
Capital Advance: $410,300
Five-year rental subsidy: $84,500
Number of units: 6

Project Location: Mayaguez, PR
Non-Profit Sponsor: Aso. Mayaguezana de Personas con Impedimentos
Capital Advance: $410,300
Five-year rental subsidy: $84,500
Number of units: 6

Project Location: Mayaguez, PR
Non-Profit Sponsor: Aso. Mayaguezana de Personas con Impedimentos
Capital Advance: $410,300
Five-year rental subsidy: $84,500
Number of units: 6

Rhode Island

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Central Falls, RI
Non-Profit Sponsor: Gateway Healthcare Inc
Capital Advance: $1,189,300
Five-year rental subsidy: $211,500
Number of units: 10

Project Location: Hopkinton, RI
Non-Profit Sponsor: South Shore Mental Health Center
Capital Advance: $1,189,300
Five-year rental subsidy: $211,500
Number of units: 10

South Carolina

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Orangeburg, SC
Non-Profit Sponsor: Aldersgate Special Needs Ministry, Inc.
Capital Advance: $466,300
Five-year rental subsidy: $84,500
Number of units: 6

Tennessee

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Jamestown, TN
Non-Profit Sponsor: Cumberland Regional Development Corp.
Capital Advance: $951,100
Five-year rental subsidy: $140,500
Number of units: 10

Project Location: Shelbyville, TN
Non-Profit Sponsor: Buffalo Valley, Inc.
Capital Advance: $1,494,100
Five-year rental subsidy: $188,500
Number of units: 15

Texas

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Denton, TX
Non-Profit Sponsor: Denton Affordable Housing Corp
Capital Advance: $717,100
Five-year rental subsidy: $122,000
Number of units: 8

Project Location: Houston, TX
Non-Profit Sponsor: MHMRA of Harris County
Capital Advance: $1,077,500
Five-year rental subsidy: $211,500
Number of units: 15

Virginia

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Buena Vista, VA
Non-Profit Sponsor: Rockbridge Mental Health Clinic Advisory Board,Inc
Capital Advance: $376,700
Five-year rental subsidy: $95,000
Number of units: 6

Project Location: Exmore, VA
Non-Profit Sponsor: ASI
Capital Advance: $1,213,200
Five-year rental subsidy: $221,000
Number of units: 15

Washington

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Walla Walla, WA
Non-Profit Sponsor: Blue Mountain Action
Capital Advance: $719,700
Five-year rental subsidy: $115,000
Number of units: 8

West Virginia

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Wayne, WV
Non-Profit Sponsor: Prestera Ctr for MH Svcs
Capital Advance: $526,200
Five-year rental subsidy: $102,000
Number of units: 6

Wisconsin

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Marshfield, WI
Non-Profit Sponsor: Impact Seven Inc
Capital Advance: $1,010,400
Five-year rental subsidy: $132,500
Number of units: 9

Wyoming

Section 811—Supportive Housing for Persons With Disabilities

Project Location: Sheridan, WY
Non-Profit Sponsor: East Seal Good North R M 2
Capital Advance: $295,700
Five-year rental subsidy: $68,500
Number of units: 5

Project Location: Sheridan, WY
Non-Profit Sponsor: East Seal Good North R M 1
Capital Advance: $1,017,300
Five-year rental subsidy: $205,500
Number of units: 16

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BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–46]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist

the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *ARMY:* Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ZS, Rm 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; (703) 601–2520; *COE:* Ms. Shirley Middleswarth, Army Corps of Engineers, Office of Counsel, CECC–R, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–1295; *GSA:* Mr. John Kelly, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *NAVY:* Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: November 9, 2006.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program

Federal Register Report for 11/17/06

Suitable/Available Properties

Buildings (by State)

Illinois

Bldg. 912
Naval Station
Great Lakes Co: IL 60088–
Landholding Agency: Navy
Property Number: 77200640030
Status: Excess
Comment: 12,000 sq. ft., tailor shop, needs major repairs, presence of asbestos/lead paint, off-site use only

Land (by State)

Louisiana

Vacant Land
Former Barksdale AFB Radio Beacon
Bossier City Co: LA
Landholding Agency: GSA
Property Number: 54200640003
Status: Excess
Comment: 11.59 acres, floodplain
GSA Number: 7–GR–LA–04382

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 183
Anniston Army Depot
Anniston Co: AL 36201–
Landholding Agency: Army
Property Number: 21200640001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2801
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200640002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 24263
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200640003
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 26201, 26204
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200640004
Status: Unutilized
Reasons: Within airport runway clear zone; Extensive deterioration

Bldgs. 29105, 29109
Fort Rucker
Dale Co: AL 36362–
Landholding Agency: Army
Property Number: 21200640005
Status: Unutilized
Reason: Extensive deterioration

California

Bldgs. 00708, 00709
Fort Hunter Liggett
Monterey Co: CA 93928–
Landholding Agency: Army
Property Number: 21200640006
Status: Unutilized
Reason: Extensive deterioration

Bldg. PH546
Naval Base
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77200640027
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Georgia

Bldg. 00262
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640007
Status: Excess
Reason: Extensive deterioration

Bldgs. 01138, 01182
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640008
Status: Excess
Reason: Extensive deterioration

Bldg. 01662
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640009
Status: Excess
Reason: Extensive deterioration

Bldgs. 01708, 01718
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640010
Status: Excess
Reason: Extensive deterioration

Bldgs. 01734, 01799
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640011
Status: Excess
Reason: Extensive deterioration

Bldgs. 02677, 03025
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640012
Status: Excess
Reason: Extensive deterioration

Bldgs. 04000, 04001, 04025
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640013
Status: Excess
Reason: Extensive deterioration

Bldgs. 08601, 08602, 08611
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640014
Status: Excess
Reason: Extensive deterioration

Bldg. 08741
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640015
Status: Excess
Reason: Extensive deterioration

Bldgs. 09030, 09031, 09032
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640016
Status: Excess
Reason: Extensive deterioration

Bldgs. 09033, 09034, 09035
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640017
Status: Excess
Reason: Extensive deterioration

Bldgs. 09037, 09038, 09042
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640018
Status: Excess
Reason: Extensive deterioration

Bldgs. 09059, 09060, 09061
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640019
Status: Excess
Reason: Extensive deterioration

4 Bldgs.
Fort Benning 09062, 09063, 09088, 09089
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640020
Status: Excess
Reason: Extensive deterioration

Bldgs. 09101, 09103, 09105
Fort Benning
Ft. Benning Co: GA 31905–
Landholding Agency: Army
Property Number: 21200640021
Status: Excess
Reason: Extensive deterioration

Picnic Shelter
Strom Thurmond Project
Columbia Co: GA
Landholding Agency: COE
Property Number: 31200640001
Status: Unutilized
Reason: Extensive deterioration

5 Comfort Stations
Hart Co: GA
Location: HAR–16462, HAR–16728, HAR–18358, HAR–17247, HAR–18812
Landholding Agency: COE
Property Number: 31200640002
Status: Unutilized
Reason: Extensive deterioration

Radio Room
Walter F. George Lake
Ft. Gaines Co: GA 39851–
Landholding Agency: COE
Property Number: 31200640004
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldg. 1226
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200640022
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. 3312
Naval Station
Great Lakes Co: IL 60085–
Landholding Agency: Navy
Property Number: 77200640028
Status: Excess
Reason: Secured Area

Bldg. 220
Naval Station
Great Lakes Co: IL 60085–
Landholding Agency: Navy
Property Number: 77200640029
Status: Excess
Reason: Secured Area

Kansas

Storage Bldg.
Perry Wildlife Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640005
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Old Town Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640006
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Sunset Ridge Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640007
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Perry Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640008
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Longview Park Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640009
Status: Excess
Reason: Extensive deterioration

Shower
Longview Park Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640010
Status: Excess
Reason: Extensive deterioration

Shower
Slough Creek Park Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640011
Status: Excess
Reason: Extensive deterioration

Shower
Thompsonville Area
Perry Co: KS 66073–
Landholding Agency: COE
Property Number: 31200640012
Status: Excess
Reason: Extensive deterioration

Kentucky

Bldgs. 00474, 05943
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200640023
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 00230, 00234, 00731
Fort Campbell
Christian Co: KY 42223–
Landholding Agency: Army

Property Number: 21200640024
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Fort Campbell
Christian Co: KY 42223–
Location: 00853, 00854, 00855, 00857, 00858, 00860
Landholding Agency: Army
Property Number: 21200640025
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 02104, 02159
Fort Campbell
Christian Co: KY 42223–
Landholding Agency: Army
Property Number: 21200640026
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Campbell
Christian Co: KY 42223–
Location: 02170, 02172, 02174, 02176, 02178
Landholding Agency: Army
Property Number: 21200640027
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 02182, 02186
Fort Campbell
Christian Co: KY 42223–
Landholding Agency: Army
Property Number: 21200640028
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Campbell
Christian Co: KY 42223–
Location: 02203, 02204, 02205, 02206, 02207
Landholding Agency: Army
Property Number: 21200640029
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 02301, 02402, 02842
Fort Campbell
Christian Co: KY 42223–
Landholding Agency: Army
Property Number: 21200640030
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 05710, 05986
Fort Campbell
Christian Co: KY 42223–
Landholding Agency: Army
Property Number: 21200640031
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06222, 06891
Fort Campbell
Christian Co: KY 42223–
Landholding Agency: Army
Property Number: 21200640032
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 212, 212A, 212B
Blue Grass Army Depot
Richmond Co: Madison KY 40475–
Landholding Agency: Army
Property Number: 21200640033
Status: Unutilized
Reason: Extensive deterioration

Bldgs. F0460, F0461, F0462
Blue Grass Army Depot
Richmond Co: Madison KY 40475–
Landholding Agency: Army
Property Number: 21200640034
Status: Unutilized
Reason: Secured Area

Bldg. 01154
Blue Grass Army Depot
Richmond Co: Madison KY 40475–
Landholding Agency: Army
Property Number: 21200640035
Status: Unutilized
Reason: Extensive deterioration

Louisiana

Bldgs. T1613, T1713, T1714
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640036
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T2530, T2532, T2539
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640037
Status: Unutilized
Reason: Extensive deterioration

Bldg. S4638
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640038
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T7103, T7104, T7105
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640039
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T7142, T7143
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640040
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T7604, T7606
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640041
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T7608, T7609
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640042
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T7614, T7621
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640043
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T7641, T7642
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640044
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T7731, T7839, P7841
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640045
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T8006, T8045
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640046
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T8050, T8087
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640047
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T8246, T8443, T8533
Fort Polk
Ft. Polk Co: LA 71459–
Landholding Agency: Army
Property Number: 21200640048
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 2205
Fort Meade
Ft. Meade Co: MD 20755–
Landholding Agency: Army
Property Number: 21200640049
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4201, 4203
Fort Meade
Ft. Meade Co: MD 20755–
Landholding Agency: Army
Property Number: 21200640050
Status: Unutilized
Reason: Extensive deterioration

Missouri

Bldg. 00645
Fort Leonard Wood
Pulaski Co: MO 65743–
Landholding Agency: Army
Property Number: 21200640051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02553
Fort Leonard Wood
Pulaski Co: MO 65743–
Landholding Agency: Army
Property Number: 21200640052
Status: Unutilized
Reason: Extensive deterioration

Dwelling
Harry S. Truman Project
Roscoe Co: MO
Landholding Agency: COE
Property Number: 31200640013
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldgs. D1305, D1405
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640053
Status: Unutilized
Reason: Extensive deterioration

Bldgs. D1713, A3686, R5556
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640054
Status: Unutilized
Reason: Extensive deterioration

Bldgs. M6750, M6751, M6753
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640055
Status: Unutilized
Reason: Extensive deterioration

Bldgs. M6943, M6946
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640056
Status: Unutilized
Reason: Extensive deterioration

Bldgs. M6950, M6951, M6953
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640057
Status: Unutilized
Reason: Extensive deterioration

Bldg. M7033
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640058
Status: Unutilized
Reason: Extensive deterioration

Bldgs. M7240, M7243, M7248
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640059
Status: Unutilized
Reason: Extensive deterioration

Bldgs. M7250, M7253
Fort Bragg
Ft. Bragg Co: NC 28310–
Landholding Agency: Army
Property Number: 21200640060
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 201
Defense Supply Center
Columbus Co: Franklin OH 43218–
Landholding Agency: Army
Property Number: 21200640061
Status: Unutilized
Reason: Secured Area

Oklahoma

Bldg.
Newt Graham Lock & Dam 18
Inola Co: OK
Landholding Agency: COE
Property Number: 31200640014
Status: Unutilized
Reason: Extensive deterioration

Bldg.
Kerr Lock & Dam 15
Sallisaw Co: OK 74955–
Landholding Agency: COE
Property Number: 31200640015
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Gore Co: OK 74435–
Location: Afton Landing or Bluff Landing
Landholding Agency: COE
Property Number: 31200640016
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Bldgs. T2368, 03274
Letterkenny Army Depot
Chambersburg Co: PA 17201–
Landholding Agency: Army
Property Number: 21200640062
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 00026, 00123
Defense Distribution Depot
New Cumberland Co: York PA 17070–
Landholding Agency: Army
Property Number: 21200640063
Status: Unutilized
Reason: Extensive deterioration

South Carolina

4 Comfort Stations
Oconee Co: SC
Location: HAR–16113, HAR–16208, HAR–17689, HAR–18484
Landholding Agency: COE
Property Number: 31200640003
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldg. I0011
Milan Army Ammo Plant
Milan Co: TN 38358–
Landholding Agency: Army
Property Number: 21200640064
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. M0020
Milan Army Ammo Plant
Milan Co: TN 38358–
Landholding Agency: Army
Property Number: 21200640065
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. N0053
Milan Army Ammo Plant
Milan Co: TN 38358–
Landholding Agency: Army
Property Number: 21200640066
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. Y0100
Milan Army Ammo Plant
Milan Co: TN 38358–
Landholding Agency: Army
Property Number: 21200640067
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. K0315
Milan Army Ammo Plant
Milan Co: TN 38358–
Landholding Agency: Army
Property Number: 21200640068
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldgs. D–3, J–5
Holston Army Ammo Plant
Kingsport Co: TN 37660–
Landholding Agency: Army
Property Number: 21200640069
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. H–8
Holston Army Ammo Plant
Kingsport Co: TN 37660–
Landholding Agency: Army
Property Number: 21200640070
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldgs. 136, 148
Holston Army Ammo Plant
Kingsport Co: TN 37660–
Landholding Agency: Army
Property Number: 21200640071
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area;

Bldgs. 318, 342
Holston Army Ammo Plant
Kingsport Co: TN 37660–
Landholding Agency: Army
Property Number: 21200640072
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Texas

Bldgs. 1177, 1178, 1179
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200640073
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1270, 1275
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200640074
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1276, 1277
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200640075
Status: Unutilized
Reason: Extensive deterioration

Utah

Bldg. 01245
Tooele Army Depot
Tooele Co: UT 84074–
Landholding Agency: Army
Property Number: 21200640076
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area Extensive deterioration

Virginia

Bldgs. 6269, 6272
Fort Lee
Ft. Lee Co: Prince George VA 23801–

Landholding Agency: Army
Property Number: 21200640077
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 8043, 8050
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200640078
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 08530, 08531
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200640079
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11540
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200640080
Status: Unutilized
Reason: Extensive deterioration

Bldg. 0631
Fort Belvoir
Ft. Belvoir Co: VA 22060–
Landholding Agency: Army
Property Number: 21200640081
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldgs. 3065, 3066
Fort Belvoir
Ft. Belvoir Co: VA 22060–
Landholding Agency: Army
Property Number: 21200640082
Status: Unutilized;
Reasons: Secured Area Extensive deterioration

Bldgs. 3067, 3068
Fort Belvoir
Ft. Belvoir Co: VA 22060–
Landholding Agency: Army
Property Number: 21200640083
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldgs. 3069, 3070
Fort Belvoir
Ft. Belvoir Co: VA 22060–
Landholding Agency: Army
Property Number: 21200640084
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldgs. 3071, 3086
Fort Belvoir
Ft. Belvoir Co: VA 22060–
Landholding Agency: Army
Property Number: 21200640085
Status: Unutilized
Reasons: Secured Area Extensive deterioration

Bldgs. 3087, 3099
Fort Belvoir
Ft. Belvoir Co: VA 22060–
Landholding Agency: Army
Property Number: 21200640086
Status: Unutilized
Reasons: Secured Area Extensive deterioration

4 Bldgs.
Philpott Project
Bassett Co: VA –
Landholding Agency: COE
Property Number: 31200640017
Status: Unutilized
Reason: Extensive deterioration

Storage Bldg.
JHK–17552
John H. Kerr Project
Boydton Co: VA –
Landholding Agency: COE
Property Number: 31200640018
Status: Unutilized
Reason: Extensive deterioration
Bldgs. JHK17555, JHK19675
John H. Kerr Project
Boydton Co: VA –
Landholding Agency: COE
Property Number: 31200640019
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 02080
Fort Lewis
Pierce Co: WA 98433–
Landholding Agency: Army
Property Number: 21200640087
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 03448, 03449
Fort Lewis
Pierce Co: WA 98433–
Landholding Agency: Army
Property Number: 21200640088
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 03452, 03458
Fort Lewis
Pierce Co: WA 98433–
Landholding Agency: Army
Property Number: 21200640089
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 03697, 03698
Fort Lewis
Pierce Co: WA 98433–
Landholding Agency: Army
Property Number: 21200640090
Status: Unutilized
Reason: Extensive deterioration

West Virginia

CELRH–OR–BLN
Hinton Co: WV 25951–
Landholding Agency: COE
Property Number: 31200640020
Status: Unutilized
Reason: Secured Area

[FR Doc. E6–19300 Filed 11–16–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Office of Budget, Interior.

ACTION: Notice and request for comments.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection request may be obtained by contacting the Office of Budget at the phone number listed below in the ''**FOR FURTHER INFORMATION CONTACT**'' section. Comments and suggestions on this proposal should be made directly to the Office of Management and Budget. A copy of the comments and suggestions should also be sent to the Office of Budget, at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove the information collection, but may respond after 30 days. Therefore, public comments should be submitted to OMB by *December 18, 2006* in order to be assured of consideration.

ADDRESSES: Send your written comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention, Department of the Interior Desk Officer, by fax to 202–395–6566, or by e-mail to *oira_docket@omb.eop.gov*. Send a copy of your written comments to the Office of Budget, *Attn:* William Howell, Department of the Interior, MS 4116 MIB, 1849 C St., NW., Washington, DC 20240. Individuals providing comments should reference OMB control #1093–0005, ''Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, (43 CFR 44).''

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call William Howell, (202) 208–3157.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of Budget has submitted to OMB for extension or re-approval.

Public Law 97–258 (31 U.S.C. 6901–6907), as amended, the Payment in Lieu of Taxes (PILT) Act, was designed by Congress to help local governments

recover some of the expenses they incur in providing services on public lands. These local governments receive funds under various Federal land payment programs such as the National Forest Revenue Act, the Mineral Lands Leasing Act, and the Taylor Grazing Act. PILT payments supplement the payments that local governments receive under these other programs.

The PILT Act requires that the Governor of each state furnish the Department of the Interior with a listing of payments disbursed to local governments by the states on behalf of the Federal Government under 12 statutes described in Section 4 of the Act (31 U.S.C. 6903). The Department of the Interior uses the amounts reported by the states to reduce PILT payments to units of general local governments from that which they might otherwise receive. If such listings were not furnished by the Governor of each affected state, the Department would not be able to compute the PILT payments to units of general local government within the states in question.

The information collection supporting the PILT Act was initially administered by the Bureau of Land Management, within the Department of the Interior, as ''Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, (43 CFR 1881),'' OMB control #1004–0109. However, in fiscal year 2004, administrative authority for the PILT program was transferred from the Bureau of Land Management to the Office of Budget within the Office of the Secretary of the Department of the Interior. Applicable DOI regulations pertaining to the PILT program to be administered by the Office of the Secretary were published as a final rule in the **Federal Register** on December 7, 2004. Recently, the Office of Budget, within the Office of the Secretary, requested emergency approval of the information collection as ''Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, (43 CFR 44).'' OMB approved the information collection under control #1093–0005. The Office of Budget, Office of the Secretary is now planning to extend the information collection approval for the standard 3 years in order to enable the Department of the Interior to continue to comply with the PILT Act.

II. Data

(1) *Title:* Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, (43 CFR 44).

OMB Control Number: 1093–0005.

Current Expiration Date: 11/30/2006.

Type of Review: Information Collection: Renewal.

Affected Entities: State, Local, or Tribal Government.

Estimated Annual Number of Respondents: 43.

Frequency of response: Annual.

(2) Annual reporting and recordkeeping burden.

Total annual reporting per respondent: 50 hours.

Total annual reporting: 2150 hours.

(3) Description of the need and use of the information: The statutorily-required information is needed to compute payments due units of general local government under the PILT Act (31 U.S.C. 6901–6907). The Act requires that the Governor of each state furnish a statement as to amounts paid to units of general local government under 12 revenue-sharing statutes in the prior fiscal year.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to 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 Office of Management and Budget control number.

Dated: November 13, 2006.

Pam Haze,

Co-Director, Office of Budget, Office of the Secretary.

[FR Doc. E6–19508 Filed 11–16–06; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Construction of a Commercial Development in Lake County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: receipt of application for an incidental take permit; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an Incidental Take Permit (ITP) Application and Habitat Conservation Plan (HCP). Hancock Commons, LLC (applicant) requests an ITP for a duration of 5 years under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 3.7 acres of sand skink (*Neoseps reynoldsi*)—occupied habitat incidental to constructing a shopping center and associated amenities in Lake County, Florida (Project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the Project to the sand skink.

DATES: We must receive any written comments on the ITP application and HCP on or before December 18, 2006.

ADDRESSES: If you wish to review the application and HCP, you may obtain a copy by writing the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL, 32216, or by making an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may email comments to *paula_sisson@fws.gov.* For more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**), telephone: 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION:

Public Review and Comment

Please reference permit number TE132462–0 in all requests or

comments. Please include your name and return address in your email message. If you do not receive a confirmation from us that we have received your email message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background: Due to the reduction in quality and acreage and the rapid development of xeric (bare, scrub-like areas with sandy soils, open canopies) upland communities, the sand skink is reportedly declining throughout most of its range. By some estimates, as much as 90 percent of the scrub ecosystem has already been lost to residential development and conversion to agriculture, primarily citrus groves.

Applicant's Proposal: The applicant is requesting take of 3.7 acres of occupied sand skink habitat incidental to the construction of a shopping center (Hancock Commons) on 13.96 acres in Lake County, Florida. Hancock Commons is located south of State Road 50 and East of Hancock Road, in Section 27, Township 22 South, Range 26 East, near Clermont.

The proposed Hancock Commons development will consist of approximately 38,100 square feet of shopping center space that will support a bank, a fast-food restaurant, a sit-down restaurant, and retail sale. Currently, the property consists primarily of xeric oak forest with scattered open patches of sand and a disturbed area along the western boundary.

The Applicant proposes to mitigate for 3.7 acres of impacts by purchasing a ±43-acre parcel in Polk County, FL, within the boundaries of the Lake Wales Ridge. This property is being referred to as the Eddinger Mitigation Property and is located south of State Road 60, west of Walk-in-the-Water Road, in Section 6, Township 31 South, Range 29 East. This property consists of three tax parcels, the northern two of which are being utilized to mitigate for the impacts associated with the Hancock Commons development.

The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies for a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the sand skink. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

Authority: We provide this notice under Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: November 6, 2006.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E6–19442 Filed 11–16–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Western and Central Gulf of Mexico, Oil and Gas Lease Sales for Years 2007–2012

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability (NOA) of the Draft Environmental Impact Statement and Public Hearings.

SUMMARY: The Minerals Management Service (MMS) has prepared a draft environmental impact statement (EIS) on tentatively scheduled 2007–2012 oil and gas leasing proposals in the Western and Central Gulf of Mexico (GOM), off the States of Texas, Louisiana, Mississippi, and Alabama.

Authority: The NOA and notice of public hearings is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

SUPPLEMENTARY INFORMATION: Federal regulations allow for several proposals to be analyzed in one EIS (40 CFR 1502.4). Since each sale proposal and projected activities are very similar each year for each sale area, the MMS has prepared a single EIS (multisale EIS) for the five Western and six Central GOM lease sales scheduled for 2007–2012 in the draft proposed OCS Oil and Gas Leasing Program: 2007–2012. The multisale approach is intended to focus the NEPA process for individual sales on the differences between the proposed sales and on new issues and information. The multisale EIS will eliminate the repetitive issuance of complete draft and final EIS's for each sale area. The resource estimates and scenario information for the EIS analyses will be presented as a range that would encompass the resources and activities estimated for any of the eleven proposed lease sales. Although this EIS addresses eleven proposed lease sales, at the completion of this EIS process, decisions will be made only for proposed Lease Sale 204 in the Western Planning Area (WPA), and proposed Lease Sale 205 in the Central Planning Area (CPA). Subsequent to these first sales, a NEPA review will be conducted for each of the other proposed lease sales in the 2007–2012 Leasing Program. Formal consultation with other Federal agencies, the affected states, and the public will be carried out to assist in the determination of whether or not the information and analyses in the original multisale EIS are still valid. These consultations and NEPA reviews will be completed before decisions are made on the subsequent sales.

EIS Availability: To obtain a single, printed or CD–ROM copy of the draft EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–

GULF). An electronic copy of the draft EIS is available at the MMS's Internet Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/nepaprocess.html.* Several libraries along the Gulf Coast have been sent copies of the draft EIS. To find out which libraries, and their locations, have copies of the draft EIS for review, you may contact the MMS's Public Information Office or visit the MMS Internet Web site at *http://www.gomr.mms.gov/homepg/regulate/environ/libraries.html.*

Public Hearings: The MMS will hold public hearings to receive comments on the draft EIS. The public hearings are scheduled as follows:

- December 5, 2006, Wyndham Greenspoint, 12400 Greenspoint Drive, Houston, Texas, 1 p.m.
- December 5, 2006, Riverview Plaza Hotel, 64 South Water Street, Mobile, Alabama, 7 p.m.
- December 6, 2006, Hampton Inn and Suites New Orleans-Elmwood, 5150 Mounes Street, Harahan, Louisiana, 1 p.m.
- December 6, 2006, Florida, Marriott Bay Point Resort, 4000 Marriott Drive, Panama City, Florida, 7 p.m.
- December 7, 2006, Larose Civic Center, Larose Regional Park, Larose, Louisiana, 7 p.m.

If you wish to testify at a hearing, you should register one hour prior to the meeting. Each hearing will briefly recess when all speakers have had an opportunity to testify. If there are no additional speakers, the hearing will adjourn immediately after the recess. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearings, you may submit written statements.

Comments: Federal, State, local government agencies, and other interested parties are requested to send their written comments on the draft EIS in one of the following three ways:

1. Electronically using MMS's new Public Connect on-line commenting system at *https://ocsconnect.mms.gov.* This is the preferred method for commenting. From the Public Connect ''Welcome'' screen, search for ''WPA and CPA Multisale EIS 2007–2012'' or select it from the ''Projects Open for Comment'' menu.

2. In written form enclosed in an envelope labeled ''Comments on the Multisale EIS'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment (MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Electronically to the MMS e-mail address: *environment@mms.gov.* Comments should be submitted no later than 45 days from the publication of this NOA.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Mr. Dennis Chew, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2793.

Dated: November 6, 2006.

Robert P. LaBelle,

Acting Associate Director for, Offshore Minerals Management.

[FR Doc. E6–19486 Filed 11–16–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to Office of Management and Budget; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites comments on a currently approved collection of information (OMB Control #1024–0125).

The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the NPS request to renew this information collection, but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments within 30 days of the date on which this notice is published in the **Federal Register**.

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted for thirty days from the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior, (OMB #1024–0125) Office of Information and Regulatory Affairs, OMB by fax at 202/395–6566, or by electronic mail at *OIRA_DOCKET@omb.eop.gov.* Please also send a copy of your comments to Ms. Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW. (2410), Washington, DC 20240, or electronically to *jo_pendry@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, phone: 202–513–7156, fax: 202–371–2090, or at the address above. You are entitled to a copy of the entire ICR package free-of-charge. The National Park Service published the 60-day **Federal Register** notice to solicit comments on this proposed information collection on July 10, 2006, on page 38895.

There were no public comments received as a result of publishing in the **Federal Register** a 60-day Notice of Intention to Request Clearance of Information Collection for this survey.

SUPPLEMENTARY INFORMATION:

Title: Submission of Offers in Response to Concession Opportunities.

OMB Control Number: 1024–0125.

Expiration Date of Approval: December 31, 2006.

Type of request: Extension of a currently approved information collection.

Description of Need: The regulations at 36 CFR part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which provides new legislative authority, policies and requirements for the solicitation, award and administration of NPS concession contracts. The regulations require the submission of offers by parties interested in applying for an NPS concession contract.

NPS has submitted a request to OMB to renew approval of the collection of information in 5 CFR part 1320 and Sections 403(4), (5), (7), and (8) of the Act regarding the submission of offers in response to a concession opportunity. NPS is requesting a 3-year term of approval for this information collection activity.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Persons or entities seeking a National Park Service concession contract.

Total Annual Responses: 240.

Estimate of Burden: Approximately 56 hours per response.

Total Annual Burden Hours: 76,800.

Total Non-hour Cost Burden: $1,120,000.

Specific requirements regarding the information that must be submitted by offerors in response to a prospectus issued by NPS are contained in sections 403(4), (5), (7), and (8) of the Act. Send comments on (1) The need for this collection; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the collection; and (4) ways to minimize the burden, including the use of automated collection techniques or

other forms of information technology; or any other aspect of this collection to the Office of Management and Budget at the above address. Please also send a copy of your comments to the NPS. Please refer to OMB control number 1024–0125 in all correspondence.

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

Dated: November 1, 2006.

Leonard Stowe,

NPS Information Collection, Clearance Officer.

[FR Doc. 06–9243 Filed 11–16–06; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 4, 2006. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by December 2, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

CALIFORNIA

Fresno County

Buehler, Maynard and Katharine, House, 6 Great Oak Circle, Orinda, 06001118

GEORGIA

Taliaferro County

Locust Grove Cemetery, Locust Grove Rd. SE, Sharon, 06001119

HAWAII

Hawaii County

Anna Ranch, 65–1480 Kawaihae Rd., Kamuela, 06001120

IOWA

Cass County

American Legion Memorial Building, 201 Poplar St., Atlantic, 06001121

MARYLAND

Baltimore Independent City

Lion Brothers Company Building, 875 Hollins St., Baltimore (Independent City), 06001123

Carroll County

Arter, Philip and Uriah, Farm, 10 Deep Run Rd. W, Union Mills, 06001124

Howard County

Curtis-Shipley Farmstead, 5771 Waterloo Rd., Ellicott City, 06001127

Linnwood, 2327 Daniels Rd., Ellicott City, 06001126

Washington County

Hays, Joseph C., House, 103–105 W. Main St., Sharpsburg, 06001125

MASSACHUSETTS

Middlesex County Boxborough Old Town Center, Hill Rd., Middle Rd., Picnic St., Boxborough, 06001122

Wetherbee, Levi, Farm, 484 Middle Rd., Boxborough, 06001128

Plymouth County

Sachem Rock Farm, 355 Plymouth St., East Bridgewater, 06001129

NEW HAMPSHIRE

Sullivan County

First Universalist Chapel, 3 2nd New Hampshire Turnpike, Lempster, 06001130

TENNESSEE

Montgomery County

Port Royal Rd., N of the Red R juct W of TN 238, adjacent to the modern Port Royal Rd., Port Royal, 06001131

Rutherford County

Riverside Farm, (Historic Family Farms in Middle Tennessee MPS) 1218 W. Jefferson Pike, Walter Hill, 06001132

A request for a MOVE has been made for the following resource:

PENNSYLVANIA

Lancaster County

Keller's Covered Bridge (Covered Bridges of Lancaster County TR) SW of Ephrata on T 656, Ephrata township, Ephrata vicinity, 80003518

[FR Doc. E6–19495 Filed 11–16–06; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–562]

In the Matter of Certain Incremental Dental Positioning Adjustment Appliances and Methods of Producing Same; Notice of Commission Decision Not To Review the Administrative Law Judge's Initial Determination Granting a Joint Motion To Terminate the Investigation Based on a Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (''ID'') of the presiding administrative law judge (''ALJ'') granting a joint motion to terminate the investigation based on a consent order.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission based on a complaint filed by Align Technology, Inc. of Santa

Clara, California. 71 FR 7995 (Feb. 15, 2006). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain incremental dental positioning adjustment appliances by reason of infringement of certain claims of U.S. Patent Nos. 6,685,469; 6,450,807 (''the '807 patent''); 6,394,801; 6,398,548; 6,722,880; 6,629,840; 6,699,037; 6,318,994; 6,729,876; 6,602,070; 6,471,511; and 6,227,850. The complaint also alleged violation of section 337 by reason of misappropriation of trade secrets. The complaint and notice of investigation named OrthoClear, Inc., of San Francisco, California; OrthoClear Holdings, Inc., of Tortola, British Virgin Islands; and OrthoClear Pakistan Pvt, Ltd., of Lahore, Pakistan as respondents.

On July 10, 2006, the ALJ issued an ID terminating the investigation with respect to the '807 patent. On July 20, 2006, the Commission determined not to review this ID.

On October 13, 2006, complainant Align Technology, Inc. and respondents OrthoClear, Inc.; OrthoClear Holdings, Inc.; and OrthoClear Pakistan Pvt., Ltd. filed a joint motion to terminate the investigation based on a consent order. On October 25, 2006, the Commission investigative attorney filed a response in support of the motion. On October 27, 2006, the ALJ issued the subject ID (Order No. 32), granting the joint motion. No petitions for review have been filed. The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission Rules 210.21, 210.42(h), 19 CFR 210.21, 210.42(h).

Issued: November 13, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–19489 Filed 11–16–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–873–875, 877–880, and 882 (Review)]

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews 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, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 6, 2006.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 6, 2006, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (71 FR 43523, August 1, 2006) was inadequate. The Commission also found that the respondent interested party group responses with respect to Belarus, Latvia, Moldova, and Ukraine were adequate and the respondent interested party group responses with respect to China, Indonesia, Korea, and Poland were inadequate. The Commission found that other circumstances warranted conducting full reviews of the antidumping duty orders concerning steel concrete reinforcing bar from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: November 13, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–19475 Filed 11–16–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a) (2) (B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on September 14, 2006, Kenco VPI, Division of Kenco Group Inc., 350 Corporate Place, Chattanooga, Tennessee 37419, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for distribution to its customers.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL; or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than December 18, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: November 8, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–19446 Filed 11–16–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 03–12]

Daniel Koller, D.V.M., Denial of Application; Introduction and Procedural History

On November 22, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Daniel Koller, D.V.M. (Respondent) of San Diego, California, and Portland, Oregon. The Show Cause Order proposed to revoke Respondent's DEA Certificate of Registration, BK 5633525, as a veterinary practitioner, which was issued to him at his San Diego address, and to deny his pending application for a registration as a veterinary practitioner at the proposed registered location of 3150 NE 82nd Avenue, Portland, Oregon. As grounds for the action, the Show Cause Order alleged that Respondent's registration would be inconsistent with the public interest. *See* 21 U.S.C. 823(f) and 824(a)(4).

In pertinent part, the Show Cause Order alleged that on December 5, 2001, Respondent submitted an application for a registration as a veterinary practitioner at 3150 NE 82nd Avenue, Portland, Oregon, and that on the application, Respondent had indicated that the State of California had revoked his state license in 1978 for non-drug related conduct but had re-instated his license in 1982. *See* Show Cause Order at 2. The Show Cause Order alleged that on February 13, 2002, DEA Diversion Investigators (DIs) interviewed Respondent at his proposed registered location. *See id.* The Show Cause Order alleged that Respondent told the DIs that he had started over 30 veterinary clinics under the name ''Companion Pet Clinic'' in Oregon, Arizona, Washington and Idaho, and that Respondent obtains a DEA registration for the particular clinic and operates the clinic until he finds a veterinarian to purchase the practice. *See id.* The Show Cause Order also alleged that Respondent ''retain[s] a financial interest in each new clinic.'' *Id.*

The Show Cause Order further alleged that during the interview, Respondent told the DIs that he maintained a law practice in San Diego, California, and that he anticipated hiring temporary veterinarians at the Portland location during the periods in which he returned to San Diego, and that the temporary veterinarians and clinic support staff would have access to the safe in which the controlled substances were stored. *See id.* at 3. The Show Cause Order alleged ''that by affording such access, [Respondent] would not be providing effective controls and procedures against diversion.'' *Id.*

The Show Cause Order alleged that during the on-site inspection, the DIs observed that a partial bottle of Pentobarbital euthanasia solution, a Schedule II controlled substance, was stored in a safe. *See id.* at 3. The Show Cause Order further alleged that Respondent had a bottle of Ketamine, a Schedule III controlled substance, in his laboratory coat pocket. *See id.* The Show Cause Order alleged that Respondent told the DIs that he had brought the Ketamine from his registered location in San Diego, and that he had borrowed the Pentobarbital from the Companion Pet Clinic in Forest Grove, Oregon. *See id.* The Show Cause Order alleged that these acts ''constitute[] a violation of 21 CFR 1301.12, which requires each separate location to be registered.'' *Id.* at 3.

The Show Cause Order next alleged that Respondent had told the DIs that the California Veterinary Board was going to place him in a diversion program because Respondent had self-administered Telazol, a Schedule III controlled substance which is used as a veterinary anesthetic. *See id.* The Show Cause Order further alleged that Respondent explained that he had taken this drug because he had undergone knee replacement surgery and had trouble sleeping. *See id.* The Show Cause Order also alleged that Respondent failed to disclose to the DIs that on December 20, 2001, the California Veterinary Board had ordered the interim suspension of his license as a result of his Telazol abuse and that the order remained in effect on the date of the interview. *See id.*

The Show Cause Order alleged that on October 27, 2001, San Diego police officers and paramedics responded to a 911 call placed by Respondent's daughter which reported that Respondent's wife had suddenly lost consciousness and that Respondent was lying on a bed in a semi-conscious state. *See id.* The Show Cause Order alleged that upon arrival at Respondent's residence, paramedics found that Respondent's wife had fresh puncture wounds with blood oozing from her left arm and that Respondent had fresh puncture wounds with blood oozing from his right arm. *See id.* The Show Cause Order also alleged that the paramedics found a hypodermic needle with fresh blood on it lying near Respondent. *See id.* The Show Cause Order further alleged that Respondent was under the influence of a controlled substance, that Respondent was arrested, and that during a search incident to the arrest, police found a 5 ml. vial of Telazol, a Schedule III controlled substance, in his right front pants pocket, and that the vial's top had been punctured. *See id.*

The Show Cause Order next alleged that the police obtained a warrant and conducted a search of Respondent's residence. *See id.* at 5. The Show Cause Order alleged that during the search, the police did not find any controlled substance dispensing logs, purchasing records, or inventory reports in Respondent's residence, even though federal law requires controlled substance records to be maintained at the registered location. *See id.* at 6. The Show Cause Order also alleged that the police found a variety of controlled substances during the search most of which were not secured in a safe. *See id.* at 5.

The Show Cause Order next alleged that in January 2000, Dr. Parminder Nagra, a friend and business associate of Respondent (who owned a Companion

Pet Clinic located at 8483 SW. Canyon Road, Portland, Oregon, and was a partner in a clinic located at 14292–A SW. Allen Blvd, Beaverton, Oregon) was killed in an automobile accident. *See id.* at 7–8. The Show Cause Order alleged that in March 2000, Respondent contacted DEA's Portland office seeking an application for a registration at the Canyon Road clinic that was inherited by Dr. Nagra's widow and told a DEA investigator that he was seeking to stock the facility with controlled substances to maintain its operational capacity. *See id.* at 8. The Show Cause Order further alleged that Respondent told the DEA investigator that he resided in, and practiced law in, San Diego, and that he did not intend ''to move to Oregon to be a veterinarian at the Canyon Road clinic.'' *Id.*

The Show Cause Order further alleged that during a telephone conversation on May 26, 2000, Respondent told a DEA investigator that he had been ordering controlled substances that were shipped to his San Diego address, which he then mailed to the Canyon Road facility. *See id.* The Show Cause Order alleged that Respondent acknowledged that this was a violation of Federal law, but ''DEA [was] forcing [Respondent] to operate like this.'' *Id.* The Show Cause Order alleged that during the conversation Respondent again stated that while he lived in San Diego, he had opened numerous clinics in California, Oregon, Washington, and Arizona, that Respondent had obtained DEA registrations for the clinics in order to stock them with controlled substances, and that he maintained each registration until he either sold the clinic or found a permanent veterinarian who would work there and obtain his or her own registration. *See id.*

The Show Cause Order further alleged that on July 28, 2000, DEA investigators interviewed Respondent at DEA's San Diego field office to discuss the nature of Respondent's business practices and whether Respondent's activities complied with Federal law. *See id.* at 9. The Show Cause Order alleged that during the interview, Respondent stated that he practiced as a relief veterinarian approximately two weeks per month and also practiced administrative law at his San Diego residence. *See id.*

The Show Cause Order alleged that during the interview, Respondent stated that a potential buyer had been found for the Beaverton, Oregon clinic, who would run the clinic for a six-month trial period, but if the arrangement proved unsatisfactory, Respondent could not guarantee that he would refrain from sending controlled substances to the Beaverton clinic in order to keep it open. *See id.* The Show Cause Order further alleged that Respondent told DEA investigators that during the period in which he was attempting to find a permanent veterinarian for the Beaverton clinic, he had ordered controlled substances that were delivered to his San Diego residence and then shipped them to Beaverton. *See id.* at 9–10. The Show Cause Order alleged that because the Beaverton location was not registered, Respondent's conduct constituted an unlawful distribution of controlled substances. *See id.*

Finally, the Show Cause Order alleged that Respondent's existing registration should be revoked because Respondent lacked authority under California law to handle controlled substances. *Id.* at 10. The Order also alleged that Respondent's conduct in overdosing on veterinary controlled substances and failing to adequately safeguard controlled substances at his San Diego location constituted acts which rendered his registration inconsistent with the public interest. *Id.* As for his pending application for a registration, the Show Cause Order alleged that Respondent ''anticipate[d] permitting temporary veterinarians and unregistered technicians to have access to controlled substances at the proposed registered location * * * despite being told that DEA would not permit such access.'' *Id.* at 11. The Show Cause Order concluded by alleging that Respondent's ''past experience dispensing controlled substances, [his] failure to comply with pertinent laws and regulations regarding controlled substances, and [his] failure to maintain effective controls against diversion, renders [his] registration * * * inconsistent with the public interest.'' *Id.*

Respondent, through his counsel, requested a hearing. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner, who conducted a hearing in Portland, Oregon, on November 4–6, 2003, and May 11, 2004. At the hearing, both parties presented testimonial and documentary evidence; following the hearing, both parties submitted briefs.

On November 15, 2005, the ALJ submitted her decision. The ALJ held that because Respondent's registration had expired on December 31, 2003, and Respondent had not filed a renewal application, the revocation aspect of the proceeding was moot. *See* ALJ at 11 n.2. With respect to his pending application, the ALJ held that Respondent ''is unable or unwilling to accept the responsibilities inherent in a DEA registration'' and therefore recommended that it ''be denied.'' *Id.* at 33. Neither party filed exceptions. The record was then transmitted to me for final agency action.

Having considered the record as a whole, I hereby issue this decision and final order. I adopt the ALJ's findings of fact and conclusions of law except as expressly noted herein. For the reasons set forth below, I concur with the ALJ's recommendation that Respondent's application be denied.

Findings

Respondent holds a D.V.M. degree which he obtained from the University of California at Davis School of Veterinary Medicine in 1974. Respondent also holds a J.D. degree which he obtained from the University of California's Hastings College of Law in 1981. Respondent has maintained practices in both veterinary medicine and the law. *See id.* at 11.

At the time this proceeding commenced, Respondent held a California Veterinarian's License with an expiration date of January 31, 2003. Govt. Exh. 10. Respondent also holds a license to practice veterinary medicine in Oregon.

Respondent also held DEA Registration, BK 5633525, which was issued to him at the registered location of 12897 Corbett St., San Diego, California, and which had an expiration date of December 31, 2003. *Id.* at n. 11. Respondent did not, however, file a timely renewal application of his DEA registration, and thus the registration expired. *Id.*

In April 1982, Respondent and his partner Bill Barnett opened the first Companion Pet Clinic in Tigard, Oregon. Sometime thereafter, Respondent and his partner hired Kevin Knighton, D.V.M., to work as a veterinarian at the Tigard clinic. In 1983, Dr. Knighton bought out Mr. Barnett's interest and became Respondent's partner. Between 1983 and 1990, Respondent and Dr. Knighton established about eighteen to twenty clinics. Under their business plan, Respondent and his partner hired young veterinarians who desired to eventually own their own practices. After a period of several years, Respondent and his partner sold the clinics to the veterinarian for a minimal down payment and financed the balance at ten to twelve percent interest. Dr. Knighton testified that while either he or Respondent held a DEA registration for a clinic, both the full time and relief veterinarians they hired did not have registrations. *See* ALJ at 11–12, Tr. 432–38.

Dr. Knighton testified that at the clinics, controlled substances were maintained in a locked safe, and that only certain personnel had access to the key. Tr. 437. Dr. Knighton also testified that the clinics kept a controlled substances logbook for each controlled substance and that every cc (a volumetric measure) used was logged. *Id.* at 437–38. Dr. Knighton further testified that to his knowledge, no controlled substances were diverted from any of these clinics. *Id.* at 437.

Mrs. Baldev Nagra testified that in 1989, she and her husband, Parminder Nagra, a veterinarian, emigrated to the United States. In 1991, the Nagras purchased the Companion Pet Clinic which was located in West Slope, Oregon, from Respondent and Dr. Knighton. The Nagras also became limited partners in the Veterinary Investment Group, an entity which Respondent established to construct and develop new clinics. *See* ALJ at 13.[1] One of the Veterinary Investment Group's projects was the construction of a new clinic in Beaverton, Oregon, which was built for Dr. Nagra, and which Dr. Nagra would take over after selling his West Slope clinic. Tr. 258–60.

In January 2000, Dr. Nagra was killed in an automobile accident. According to the testimony of Mr. John Madigan, it was essential to find a full time veterinarian for the Beaverton facility because the partnership was incurring expenses of ten to fifteen thousand dollars per month whether it was open or closed. *Id.* at 261. Mr. Madigan further testified that Dr. Nagra had been the DEA registrant at the Beaverton facility, *id.* at 263, and that it took about six months before the partnership could hire a full time veterinarian. *Id.* at 277.

Mrs. Nagra testified that the West Slope clinic was a large investment for the Nagras, and that following her husband's death, the clinic could not obtain controlled substances because the clinic did not have a full time veterinarian with a DEA registration for the location. *Id.* at 221–22. Mrs. Nagra further testified that she contacted Respondent because the clinic needed controlled substances to remain open and that Respondent subsequently ordered controlled substances which he sent to the clinic. *Id.* at 225. Mrs. Nagra testified that she logged the drugs in and that Respondent supplied her with drugs from San Diego for ''probably five months,'' at which point the clinic hired a full time veterinarian who obtained a registration for the facility. *Id.* at 226–27.

Mrs. Nagra testified that there were no shortages of controlled substances during this period. *Id.* at 225. Mrs. Nagra also testified that she was looking for veterinarians for the Beaverton clinic and eventually hired Fredrick Zborowski, D.V.M., who, at some point in the year 2000, obtained a DEA registration for the Beaverton location. *Id.* at 229–30.

With respect to his sending controlled substances to the West Slope clinic, Respondent testified that while ''it might be a violation * * * the purpose was honorable'' because he did it ''to help someone in distress.'' *Id.* at 390. Respondent also testified that it would be ''unjust and unfair'' if the clinic had been closed down and Mrs. Nagra had lost her investment. *Id.* Respondent further testified that he did not regret violating the law and that he ''would do that again because [he] wasn't hurting anyone.'' *Id.*

Pamela Meyer, a DI from the DEA San Diego Field Division testified that on July 28, 2000, Respondent and his wife Ellen Koller met with her, another DI and their Group Supervisor, to discuss whether Respondent's practices complied with DEA regulations and to interview him regarding an application he had submitted for a registration at the Beaverton, Oregon clinic. *Id.* at 68–71. Respondent told the DIs that he worked as a relief veterinarian in California about two weeks per month, and that he also practiced law out of his home. *Id.* at 69. According to the DI, Respondent admitted that he was receiving drugs at his San Diego home and sending them to the Beaverton clinic. *Id.* at 71. The DI further testified that while Respondent had a registration for his California home, the Beaverton location was not registered. *Id.* at 72. One of the DIs then informed Respondent ''that he could only receive drugs at a registered location,'' and the DIs gave Respondent a copy of the Code of Federal Regulations. *Id.* at 73.

The DIs further advised Respondent that if he practiced as a relief veterinarian and took controlled drugs to another location, he had to document the use of the drugs. *Id.* Respondent was cooperative and admitted to the DIs that he knew what he was doing was wrong and that was why he was seeking the registration. *Id.* at 75. The DI also testified that Respondent said he would comply with the regulations and that there was no evidence that Respondent subsequently sent controlled substances to Oregon.[2] *Id.* at 74.

Respondent's Arrest and the California Veterinary Board Proceeding

The record establishes that on October 27, 2001, Respondent's daughter observed her mother, Mrs. Ellen Koller, faint in the doorway of the bedroom of their San Diego residence. Fearing that her mother had overdosed, Respondent's daughter called 911 and requested assistance. When the paramedics arrived, they found Mrs. Koller unconscious and lying on the floor; her right arm had a fresh puncture wound from which blood was oozing. When Mrs. Koller did not respond to first aid, including treatment with Narcan, a drug used to treat opiate overdoses, the paramedics took her to the hospital.[3] *See* ALJ at 15; Gov. Exh. 4, at 3 & 5.

The paramedics found Respondent lying on a bed in a semi-conscious state; his left arm also had a fresh puncture wound from which blood was oozing. The paramedics further observed that there were several hypodermic needles and syringes next to Respondent. *See* ALJ at 15; Gov. Exh. 4, at 5.

While the paramedics were attending Mrs. Koller, Respondent became belligerent and tried to prevent them from treating her. The paramedics called for assistance and the police arrived. Upon their arrival, one of the officers ordered Respondent to place his hands behind himself. Respondent refused. The officer then grabbed Respondent's hands but Respondent resisted, prompting the officer to use pepper spray to restrain him. The officer then arrested Respondent and conducted a search incident to arrest. Govt. Exh. 4, at 6.

During the search, the officer found a small vial containing a liquid in one of Respondent's pants pockets. The vial was labeled Tiletamine. The vial's rubber top had been punctured and three-quarters of the liquid was missing. Tiletamine (Telazol) is a veterinary anesthetic and a Schedule III controlled substance. *See* 21 CFR 1308.13(c). Moreover, the officer found that Respondent displayed several symptoms that are indicative of a person who is under the influence of a controlled substance. Gov. Exh. 4, at 6.

[1] Other members of the partnership were John Madigan and his wife, Sheri Morris, D.V.M., who owned Companion Pet Clinics in West Linn, Clackamas and Tigard, Oregon.

[2] At the hearing, the government did not pursue any potential violations arising out of Respondent's sending controlled substances to the Beaverton clinic.

[3] According to the testimony of Mrs. Koller, Respondent ''had taken some Telazol and gone to sleep, and I decided that I wanted to try it too, but I had been drinking earlier, and so I didn't know the dosage. And I took some* * *.'' Tr. 507.

The police subsequently obtained a warrant, and later that night conducted a search of Respondent's residence. During the search, the police found four uncapped needles and syringes on the headboard of the bed in the master bedroom; another needle and syringe was found under the mattress of this bed. In a bathroom drawer over which Respondent's wife exercised dominion and control, the police found twenty-one tablets of controlled substances that were ''mostly veterinarian narcotics.'' Gov. Exh. 4, at 7. The police also found Dexfenfluramine (a Schedule IV controlled substance, *see* 21 CFR 1308.14(d)), Diphenoxylate (a Schedule V controlled substance, *see* 21 CFR 1308.15(c)), and Diazepam (a Schedule IV controlled substance, *see* 21 CFR 1308.14(c)), in a bathroom vanity drawer over which Respondent's wife exercised dominion and control. Respondent's wife testified, however, that she had a prescription for the Diazepam and that she had purchased Phentermine in Mexico for a neighbor. She also testified that she had obtained the Diphenoxylate in Mexico to treat her dog's diarrhea. ALJ at 16.

The police also found five vials of Nandrolone, an anabolic steroid and Schedule III controlled substance, in Respondent's office. *See id.* at 8. Moreover, the police did not find any logbooks which recorded the purchase, use and storage of the controlled substances recovered from Respondent's residence. *Id.* at 8.

Respondent testified that at the time of this incident, he had undergone knee replacement surgery for his left knee in 2000 and his right knee in 2001, that his recovery from the latter procedure was painful, and he took the Tiletamine because it helped him sleep and the drug prescribed by his physician gave him a bad hangover. Tr. 373–74. Respondent explained that there was ''no excuse for what I did to myself.'' *Id.* at 374. Respondent added that: ''I had to have other reasons. It wasn't just the pain, or it wasn't just the sleep. It had to be other reasons.'' *Id.* at 374.

In his testimony, Respondent disputed the accuracy of the police reports. According to Respondent, when he awoke, he was ''confronted with about a half dozen people in my bedroom,'' and that as he regained his senses, the police ''tried to prevent'' him from checking out his wife and that ''[s]he was doing fine.'' [4] Tr. 375.

[4] The ALJ did not specifically credit the testimony that Respondent's wife ''was doing fine.'' As ultimate factfinder, I decline to credit it based on the record as whole including the police reports and Respondent's Exh. 8, in which Respondent admitted that his wife was ''unconscious'' and ''not breathing.'' *Id.* at 6.

Respondent also testified that while he was arrested, no charges were ever filed against him. *Id.*

The police did, however, report the incident to the California Veterinary Medical Board. ALJ at 17. According to the testimony of Susan Geranen, the Executive Officer of the California Board, on December 20, 2001, the California Office of Administrative Hearings issued an interim order suspending Respondent's veterinary license.

Subsequently, on August 29, 2002, Ms. Geranen filed an Accusation against Respondent. As relevant here, the Accusation alleged that Respondent had violated Section 4883 of the California Business and Professions Code (Veterinary Medical Practice Act) by illegally using and administering to himself and his wife a controlled substance. *See* Gov. Exh. 10, at 6. The Accusation further alleged that Respondent violated Cal. Health & Safety Code § 11158(a) by ''dispens[ing] a Schedule III controlled substance to himself and his wife without a valid prescription.'' *Id.* at 8. Next, the Accusation alleged that Respondent violated DEA regulations by failing to store in a securely locked and substantially constructed cabinet the various controlled substances that were found in his home by the police on October 27, 2001. *Id.* 8–9. The Accusation further alleged that during the search of Respondent's home, the police did not find any medical records or any of the records required to be maintained under the Controlled Substances Act's (CSA) implementing regulations. *See id.* at 9; *see also* 21 CFR 1304.22(c).

On January 28, 2003, a hearing was held before a state ALJ. The ALJ subsequently found that on October 27, 2001, Respondent had injected himself with Telazol, a drug containing Tiletamine and Zolazepam, a Schedule III controlled substance, and a drug which has been approved only for use in animals. *See* Gov. Exh. 16, at 2. The state ALJ further found that Respondent did not have a prescription for the drug. Moreover, the state ALJ found that Respondent had ''furnished the drug to his wife who injected herself with it.'' *Id.*

The state ALJ found that ''Respondent's daughter knew respondent used drugs and left drugs lying around the house,'' and that ''Respondent's wife knew respondent used Telazol.'' *Id.* at 2. The state ALJ further found that ''Respondent's handling of drugs in his home endangered the health, safety and welfare of his wife and daughter.'' *Id.* The state ALJ also made a finding that during the October 27, 2001 incident, the paramedics found Respondent's wife ''unconscious and not breathing. Her daughter found her in that condition and called paramedics because she was turning blue.'' *Id.* The state ALJ thus concluded that Respondent's conduct violated Cal. Bus. & Prof. Code § 4883(g)(2)(B), ''because he endangered the lives of himself, his wife and his daughter,'' as well as Cal. Healthy & Safety Code § 11171, ''by furnishing Telazol to his wife.'' *Id.* at 2.

The State ALJ further found that Respondent did not have any medical records in his home and also ''did not have any controlling logs indicating the purchase of, use of, or storage of the controlled substances that were recovered in his home.'' *Id.* at 3. The State ALJ found that ''[n]one of the controlled substances were locked in a secure cabinet'' as required by 21 CFR 1301.75(b), that Respondent was ''not authorized to have controlled substances * * * at his home * * * without meeting federal regulations,'' and that Respondent ''did not lawfully possess the controlled substances'' that were found by the San Diego police. *Id.*

Upon reviewing Respondent's evidence as to his rehabilitation, the State ALJ also found that Respondent had ''failed to establish that he no longer represents a threat to the public.'' Gov. Exh. 16, at 5. The state ALJ thus upheld the interim order and suspended Respondent's California veterinary license pending a further hearing. *See* Gov. Exh. 3.

Ms. Geranen testified that a further hearing had been scheduled for September 2003, but was canceled pending the negotiation of a settlement agreement. Respondent introduced into evidence a copy of the agreement. *See* Resp. Exh. 8. In this document, Respondent admitted that on October 27, 2001, he ''illegally used and administered to himself a controlled substance,'' that he ''appeared to be under the influence of a narcotic drug,'' and that the responding officials found that Respondent had ''pin point pupils and blood from a fresh injection site.'' *Id.* at 7. Respondent further admitted that the authorities found a used syringe next to him and a vial of Telazol with its top punctured and ¾ of its contents missing in his pant's pocket. *Id.* Moreover, ''[t]he vial was clearly labeled 'for animal use only' and 'not for human use.' '' *Id.* Respondent admitted that a blood sample that was taken from him by the San Diego Police Department

tested positive for Zolazepam, a Schedule III controlled substance that is used in Telazol. *Id.* Respondent also admitted that ''he dispensed a Schedule III controlled substance to himself without a valid prescription.'' *Id.* at 8.

Moreover, Respondent admitted that the paramedics found that his wife was ''not breathing,'' that she was ''lying unconscious on the floor in the doorway to the master bedroom'' with ''pin point pupils,'' and that she had a ''fresh injection site in her left arm, which was bleeding.'' *Id.* at 6. Respondent also admitted that his wife ''was under the influence of a narcotic or narcotic type drug and was experiencing a possible narcotic overdose.'' *Id.* at 7.

Respondent further admitted that he ''violated federal statutes regulating controlled substances'' by failing ''to store a controlled substance [Telazol] at his home in a securely locked, substantially constructed cabinet.'' *Id.* at 8. Moreover, Respondent admitted that he ''violated federal statutes regulating controlled substances'' by ''failing to maintain records regarding controlled substances in his possession'' such as medical records and controlling logs. *Id.* at 9.

The settlement agreement proposed to revoke Respondent's California Veterinary License but stay the revocation for a four-year probationary period. The agreement further proposed the suspension of Respondent's State license for a period of two years effective from December 20, 2001, the date of the original Interim Suspension Order. *See id.* at 10. The agreement also further required that Respondent undergo a psychological evaluation, that he participate in a drug rehabilitation program for the length of the probation, that he submit to random drug testing, that he abstain from the use of controlled substances unless lawfully prescribed, and that he surrender his DEA registration. *See id.* at 13–15. While the agreement was signed by Respondent, as well as a State Deputy Attorney General and state ALJ, the agreement apparently was not adopted by the California Board. *See* ALJ at 19. Moreover, the ALJ found that Respondent's California veterinary license expired on January 31, 2005.

Respondent's Application for Registration of the NE 82nd Ave. Clinic

The ALJ found that Respondent opened a new Companion Pet Clinic at 3150 NE 82nd Ave., Portland, Oregon (hereinafter 82nd Avenue), on January 2, 2002. ALJ at 19. Respondent testified that he went to Portland in December 2001 to open the clinic and took with him a bottle of Euthasol, a drug containing pentobarbital which is used to euthanize animals, and a bottle of ketamine, a drug used as an anesthetic. ALJ at 19–20. These drugs are Schedule III controlled substances. *See* 21 CFR 1308.13(c).

According to the testimony of Heidi Lang, D.V.M., who started working at the clinic in August 2002, a controlled substance (euthanasia solution) was then being stored at the facility. Tr. 495–96. Dr. Lang further testified that she obtained a DEA registration at the facility's location shortly after starting work at the clinic. *Id.* at 500. The record does not, however, specify on what date this occurred. *Id.* at 500.

On December 5, 2001, Respondent applied for a registration at the 82nd Avenue location. ALJ at 20. On his application, Respondent was asked whether he had ''ever had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?'' Gov. Exh. 2, at 2. Respondent answered ''yes.'' *Id.*[5] Respondent explained that his California veterinary license had been ''revoked in 1978 for non drug related conduct'' and ''was reinstated in 1982.'' *Id.*

Because Respondent had given an affirmative answer to two of the liability questions, his application was forwarded to the Portland DEA office for further investigation. Accordingly, on February 13, 2002, two DIs went to the 82nd Avenue clinic to interview Respondent and conduct a pre-registration investigation.

During the meeting, Respondent told the DIs that he was in the business of opening up new clinics to provide affordable veterinary care, getting the practice running, and then selling them off. Tr. 107. Respondent further stated that he worked as a relief veterinarian in California and also practiced law there. *Id.* at 111.

The DIs found that the 82nd Avenue facility provided adequate physical security. *Id.* at 108. During their inspection, however, the DIs found that two controlled substances (euthanasia solution and Ketamine) were being stored on the premises. *Id.* The facility was not a registered location under the CSA. *Id. See also* 21 U.S.C. 822(e).

The DIs discussed with Respondent the issue of who would have access to the controlled substances while he was in California. *Id.* at 113. Respondent told the DIs that he would staff the clinic with relief veterinarians. *Id.* One of the DIs testified that it was DEA's position that the relief veterinarians would have to be employees of Respondent (assuming he obtained a registration) and that if the relief veterinarians were not employees but rather independent contractors, they could not act under Respondent's registration for that facility unless Respondent ''was there to provide adequate security.'' *Id.* at 114. According to the DI, a relief veterinarian who was an independent contractor would have to have their own registration for the location either to dispense or to administer a controlled substance at the location. *Id.* at 114–15. The DI further testified that his investigation did not find any incidents of diversion at other Companion Pet Clinics. ALJ at 22.

On February 19, 2002, Respondent sent a letter to one of the DIs contending that they were misinterpreting 21 CFR 1301.12(a) and 1301.22. In the letter, Respondent wrote:

> The fact is that veterinarians take off one to two days a week and have relief veterinarians work in their hospital. Some owner veterinarians take off for more than a week at a time and either have their associate veterinarian work the hospital or a number of relief veterinarians work the hospital or clinic. In all these situations, there is but one DEA REGISTRATION used, though the other veterinarians use and log the use of the controlled substances. Your concept of having each relief veterinarian have their own registration and their own drugs is not practical nor does it exist in practice. Even the associate veterinarians generally do not have a DEA REGISTRATION for the office they work out of full time.

Govt. Exh. 6, at 1.[6]

In the letter, Respondent argued that the DIs were unwarranted in their ''concerns about tracking the scheduled drugs and having too many people [with] access to the scheduled drugs.'' *Id.* Respondent also maintained that ''the DEA Registrant is responsible for any diversion of the scheduled drugs in his hospital.'' *Id.* at 1–2. Respondent further contended that ''[t]he fact that I am a dual professional, with a law office in San Diego should not have an effect on the certification process either. I am a resident of this state while I am here. I own two homes in this state.'' *Id.* at 2.

[5] The application asked a similar question of applicants that are corporations, associations, and partnerships. Respondent also answered ''yes'' to this question. Gov. Exh. 2, at 2.

[6] The record contains extensive evidence regarding the practices of veterinary clinics with respect to the handling of controlled substances, as well as the need of practice owners to hire relief veterinarians who work under the DEA registration of the owner. *See* ALJ at 23–28. The record also contains extensive testimony on the issue of whether relief veterinarians are properly considered agents of the facility owner and what procedures are in place to protect against the diversion of controlled substances. *See id.*

Finally, Respondent sought to have DEA either give him a registration for his new facility or transfer his California registration to the 82nd Ave. facility. In the event DEA decided not to grant him a new registration, Respondent demanded a hearing.[7]

According to the ALJ's report, Respondent's wife ''testified that as of October 2001, Respondent was planning on opening the 82nd [Ave.] clinic and had been trying for two years to obtain a DEA registration for it.'' ALJ at 22. Moreover, Respondent's wife ''testified that as part of that effort, she and Respondent had met with DEA personnel at the agency's office in San Diego, and that DEA personnel had told them that Respondent could not ship drugs from California to Oregon and that he could not have registrations in both Oregon and California.'' *Id.* at 22–23. Respondent's wife further testified that ''the delay could not be attributed to the October 2001 incident because Respondent's efforts to change his registered address were 'way before that happened.' '' *Id.* at 23 (quoting Tr. 513).

The ALJ did not specifically credit this testimony. As ultimate factfinder, I expressly decline to credit the testimony that asserts that Respondent had been trying to obtain a registration for the 82nd Avenue clinic ''for two years,'' and that Respondent had attempted to obtain a registration at this address ''way before'' the October 27, 2001 incident. While it is clear that the testimony was offered in an attempt to show that DEA officials dragged their feet with respect to Respondent's application for the 82nd Avenue clinic and/or to justify his violations of the CSA, *see* Tr. at 367,[8] the record contains substantial evidence that refutes this claim.

Respondent's application for the 82nd Avenue clinic was dated December 5, 2001, and the date stamp indicates that DEA received the application on December 14, 2001. *See* Gov. Exh. 2, at 2. Furthermore, Respondent submitted a response to the Show Cause Order. In that document, Respondent asserted that he ''first requested'' a modification of his registration ''from California to the 82nd Avenue practice'' on ''December 12, 2001 and again on February 19, 2002.'' ALJ Exh. 2, at 5.; *see also id.* at 1 (''Daniel Koller requested this modification prior to opening this clinic [on] December 12, 2001.''); *id* at 2 (''Dr. Koller requested a registration at the 82nd Location on December 12, 2001.''). Thus, the documentary evidence establishes that Respondent did not apply for the registration until December 2001, shortly before he opened the clinic.

With respect to the opening of the 82nd Avenue facility, Respondent testified that ''I brought up Euthasol * * * because I had a bottle, and I brought up Ketamine.'' Tr. 378. Respondent also testified that ''you don't close down operations. You don't stop businesses and put 12 people on the unemployment line because of a registration that is being withheld at that time unreasonably.'' *Id.* at 379.

Respondent further testified that it was ''an absurdity'' to ''claim that I'm violating the law by taking drugs from California [by] carrying them to Oregon,'' and that ''I can take those drugs anywhere I want as long as I have a valid DEA registration, which I did'' when he transported the drugs to the 82nd Avenue clinic. *Id.* at 393. Respondent then maintained that ''the fact that I'm working out of a non-registered facility with my drugs that I pull from a registered facility and it's registered to me, there's no violation there. It just simply is not a violation of any act or any statute or any regulation.'' *Id.* at 394.

Respondent's Evidence as to His Rehabilitation

In support of his claim that he was no longer abusing controlled substances, Respondent introduced documentary evidence and called Dr. Standish McCleary, his psychologist, to testify. Dr. McCleary testified that he had been seeing Respondent since February 2002 and that he was still treating him at the time of the hearing.

Dr. McCleary testified that Respondent did not have a history of drug and alcohol abuse and had ''conscientiously addressed'' the problems that led to his abuse of controlled substances. Tr. 349. Dr. McCleary testified that Respondent had been ''very direct'' in admitting his abuse of controlled substances, *id.* at 348, and that he had ''no reason to believe that the behavior has repeated itself and will be at all likely to repeat itself.'' *Id.* at 347. Dr. McCleary further testified that ''he saw no danger in [Respondent's] full reinstatement to veterinary practice,'' and that ''there is an extraordinarily low probability that [Respondent] will ever'' re-abuse controlled substances. *Id.* at 349–50. Dr. McCleary further testified that he thought Respondent had been going to AA meetings but did not know whether he had received any other treatment. *Id.* at 352.

Respondent also introduced into evidence a letter from a psychiatrist, Dr. Mark Kalish, which apparently was prepared for the State hearing discussed above. The letter reports the result of a psychiatric examination of Respondent that was performed on January 27, 2003. According to the letter, Respondent reported that he had not used any controlled substances since a previous examination by Dr. Kalish a year earlier, ''and that he [had] submitted to random drug tests, which have confirmed his abstinence.'' Resp. Exh. 2, at 3. Dr. Kalish also conducted a clinical examination and reviewed available documents (although the letter does not state what documents were reviewed). *See id.* The letter concluded with Dr. Kalish's opinion that Respondent ''does not represent a danger to the public should he be allowed to practice veterinary medicine.'' *Id.*

Finally, Respondent submitted a letter documenting a May 7, 2002 examination that was conducted by Dr. Walton E. Byrd, a psychiatrist who examined him at the request of the Oregon Board of Veterinary Medicine. *See* Resp. 4, at 1. The assessment found that Respondent had ''dissociative anesthetic abuse—Telazol, in remission,'' and further noted that a urinalysis conducted that day was free of illicit substances. *Id.* at 4. The letter concluded with Dr. Byrd stating that he ''would support [Respondent's] continued licensure'' subject to his continuing therapy with his psychologist, his attendance at weekly twelve-step meetings, his meeting ''with a monitoring professional designated by the Veterinary Board,'' and his undergoing random urine testing ''over a two- to five-year period.'' *Id.*

Respondent also introduced into evidence ten reports of drug tests conducted at a Kaiser Permanente Facility in Portland, Oregon. *See* Resp. Exh. 5. While all the reports are negative, many of the tests occurred only days apart and there is no evidence in the record establishing how the dates were chosen and whether they were bona fide random tests.[9]

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a

[7] In a subsequent letter dated April 10, 2002, Respondent complained to one of the DIs that DEA's ''delay is causing me and my clients a great deal of inconvenience and harm'' and threatened ''to petition the courts to make [DEA] act one way or the other.'' Gov. Exh. 7.

[8] Respondent testified: ''I asked for that way before I abused drugs. I asked for it a year before.'' I likewise decline to credit this testimony.

[9] The Government did not, however, introduce any evidence rebutting Respondent's assertion of rehabilitation.

determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the Act requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

''[T]hese factors are * * * considered in the disjunctive.'' Robert A. Leslie, M.D., 68 FR 15227, 15230 (2003). I ''may rely on any one or combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * an application for registration [should be] denied.'' *Id.* Moreover, case law establishes that I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 483 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (DC Cir. 2005).

As an initial matter, I note that the ALJ found that Respondent's Registration, BK5633525, expired on December 31, 2003, and that Respondent did not file a renewal application, let alone a timely one, for this registration. *See* 21 CFR 1301.36(i). DEA precedents establish that where ''a registrant has not submitted a timely renewal application prior to the expiration date, then the registration expires and there is nothing to revoke.'' *Ronald J. Riegel, D.V.M.*, 63 FR 67132, 67133 (1998); *see also Cadiz Thrift-T Drug, Inc.*, 64 FR 15803, 15805 (1999). Therefore, the revocation portion of this proceeding is moot and only Respondent's application for a registration at the 82nd Avenue location remains a live controversy.

With respect to Respondent's application, I have carefully considered Respondent's evidence concerning his rehabilitation. But as explained below, even granting that Respondent has proved by a preponderance of the evidence that he is rehabilitated, the record establishes that granting his application would be inconsistent with the public interest. Most significantly, Respondent's record of compliance with the CSA and his testimony at the hearing regarding his past violations demonstrate convincingly that he cannot be entrusted with a new registration. I thus deny his application.

Factor One—The Recommendation of the State Licensing Board

The ALJ found that at the time of the hearing, Respondent's California veterinary license was suspended. It is undisputed, however, that Respondent has a valid veterinary license in Oregon. Therefore, I agree with the ALJ that this factor ''carries little weight,'' ALJ at 32, in the analysis of whether granting Respondent's application would be consistent with the public interest.

Factor Two—Respondent's Experience in Dispensing Controlled Substances

The record established that Respondent administered to himself, Tiletamine, (Telazol), a Schedule III controlled substance which is approved for use only as an anesthetic in animals. Respondent obviously did not have a prescription, let alone a valid one, for the drug. *See* 21 CFR 1306.04.

The ALJ found that Respondent misused this controlled substance because of ''a medical condition that has since ameliorated,'' and that Respondent had proved by a preponderance of the evidence that he was not likely to re-abuse the drug. ALJ at 32. I agree and note in particular the testimony of Respondent's psychologist, Dr. Standish McCleary, that in his opinion, Respondent was unlikely to re-abuse controlled substances. The Government's cross-examination of Dr. McCleary does not lead me to question his conclusion and the Government offered no evidence to rebut it.

The conduct at issue in this case is not, however, limited to Respondent's self-abuse of a controlled substance, and involves a variety of acts which have no nexus to his self-abuse. Therefore, I conclude that Respondent's rehabilitation is entitled to little weight in the public interest analysis.

Factor Three—Respondent's Record of Drug-Related Convictions

It is undisputed that Respondent has never been convicted of a federal or state criminal offense related to the manufacture, distribution, or dispensing of controlled substances. I therefore agree with the ALJ's conclusion that this factor weighs against a finding that granting Respondent application would be inconsistent with the public interest. As the ALJ further concluded, this factor is not dispositive. *See* ALJ at 32.

Factor Four—Respondent's Compliance with Applicable Federal, State and Local Laws

The record in this case establishes multiple instances of Respondent's non-compliance with the Controlled Substances Act. As explained below, Respondent committed serious violations of the Act, which, if tolerated would undermine the statute's carefully crafted scheme for regulating the distribution of controlled substances and preventing the diversion of controlled substances into illegitimate uses and drug abuse.

As the Supreme Court recently explained, the CSA creates ''a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the [Act].'' *Gonzales* v. *Raich*, 545 U.S. 1,—(2005) (citing 21 U.S.C. 841(a)(1) & 844(a)). As relevant here, ''[t]he CSA and its implementing regulations set forth strict requirements regarding registration, * * * drug security, and recordkeeping.'' *Id.*

Under the Act, a veterinarian falls within the definition of a ''practitioner,'' and upon obtaining a registration, a veterinarian has legal authority to prescribe, administer or distribute a controlled substance to an ''ultimate user,'' the latter being a person who has lawfully obtained a controlled substance ''for an animal owned by him or a member of his household.'' 21 U.S.C. 802(21); *id.* § 802(27). The Act provides that ''[p]ersons registered * * * to manufacture, distribute, or dispense controlled substances * * * are authorized to possess, manufacture, distribute, or dispense such substances * * * to the extent authorized by their registration and in conformity with the other provisions of the [Act].'' *Id.* § 822(b).

Under the CSA's implementing regulations, the various controlled substance activities recognized by the Act ''are deemed to be independent of each other.'' 21 CFR 1301.13(e). Moreover, ''[a]ny person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities'' unless the activity is a permitted coincident activity under a particular category of registration.[10] *Id.* Furthermore, the CSA requires that a registrant obtain ''a separate registration * * * at each principal place of

[10] The regulations impose different security requirements based on the activity. Thus, distributors are subject to more extensive requirements than practitioners. See generally 21 CFR 1301.71—1301.76.

business or professional practice where the applicant, manufactures, distributes, or dispenses controlled substances.'' *Id.* § 822(e). Having provided this background, I next address the various instances in which Respondent's conduct violated the CSA.

The record establishes that on October 27, 2001, paramedics found Respondent's wife unconscious and lying on the floor; her right arm had a fresh puncture wound with blood oozing from it. According to the police report, Respondent's daughter ''believed that her mother was dead from a drug overdose,'' Gov. Exh. 4, at 3, and Respondent's wife did not respond to first aid. At the hearing, Respondent's wife testified that she had taken Telazol. Tr. 507. Moreover, Respondent's own evidence (the proposed California stipulation) includes the admission that his wife ''was under the influence of a narcotic or narcotic type drug and was experiencing a possible narcotic overdose.'' Resp. Exh. 8, at 6–7.

I do not have to find that Respondent dispensed Telazol to his wife to conclude that Respondent violated the CSA. Even crediting the testimony of Respondent's wife that she decided to try the Telazol on her own initiative, it is clear that she would not have been able to do so if Respondent had complied with the requirement that the drug be ''stored in a securely locked, substantially constructed cabinet.'' 21 CFR 1301.75(b). Indeed, in the stipulated agreement which Respondent entered into evidence he admitted as much.

Moreover, notwithstanding that Respondent stored controlled substances at his San Diego residence/registered location, Respondent failed to maintain the required records. 21 CFR 1304.22(c). Specifically, Respondent was required to maintain a record of each substance received, the date of receipt, the number of units, and the name, address and registration number of the person that distributed the substance to him. *Id.* Respondent was also required to maintain a record naming the substance, indicating the number of units or volume dispensed, and the name and address to whom the substance was dispensed. *Id.* The record clearly establishes that none of these records were being maintained and thus Respondent violated these provisions of the CSA as well.

Respondent also violated the CSA when, at the request of Mrs. Nagra, he ordered controlled substances on her behalf, had them shipped to his registered location, and then redistributed them to the Nagras' clinic. According to Mrs. Nagra's testimony, this activity occurred over a five month period following her husband's death.

Under the CSA's regulations, Mr. Nagra's registration terminated with his death. 21 CFR 1301.52(a). Respondent's distribution of controlled substances to the clinic violated federal law for two reasons: 1) Respondent was not registered as a distributor, *See id.* 1301.13(e), and 2) the Nagras' facility was no longer registered. *Id.* 1307.11(a). (requiring separate registrations for independent activities). While DEA regulations allow a practitioner to distribute a limited amount of a controlled substance to another practitioner, the practitioner who receives the distribution must be ''registered under the Act to dispense that controlled substance.'' *Id.*[11] Respondent therefore cannot avail himself of this exemption.

The record establishes that Mrs. Nagra contacted Respondent because the clinic did not have a veterinarian with a registration at its location and no distributor would sell controlled substances to it. Tr. 221–22. Moreover, it is also clear that Respondent undertook to supply the clinic to circumvent the law.

To justify his violation of the CSA, Respondent asserted that his purpose in distributing the drugs was ''honorable,'' and that it would have been ''unjust and unfair'' if the clinic had closed down and Mrs. Nagra had lost her investment. Respondent's reasons are not a valid excuse for his violations of the Act.

Nationwide, there are thousands of solo practitioners who administer controlled substances in the course of their professional practices.[12] Unfortunately, some die while they are still actively practicing medicine. In enacting the CSA, Congress did not, however, recognize the prevention of economic loss to the heirs of a registrant as grounds for an exemption from the Act's requirements. *See* 21 U.S.C. 822(c); *Cf. United States* v. *Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 491 (2001) (rejecting medical necessity exception to the CSA and noting that a defense of legal necessity ''cannot succeed when the legislature itself had made a determination of values'') (citation omitted). Excusing Respondent's distribution to an unregistered location would undermine the closed system of distribution and the principle that at each registered location, there is an individual registrant who is accountable for the proper security, record keeping and use of controlled substances.

Respondent further violated the CSA when he took controlled substances from California to the 82nd Avenue Portland, Oregon facility, which was not registered, and stored them there. At the hearing, Respondent admitted that he brought two controlled substances, Euthasol and Ketamine, from San Diego to the 82nd Avenue clinic, in December 2001, prior to his opening of this clinic in January 2002, and that these substances were being administered to patients. A DI testified that during the February 13, 2002 on site inspection, both controlled substances were being stored at the 82nd Avenue clinic. Moreover, Dr. Heidi Lang testified that in August 2002, when she began working at the clinic, euthanasia solution was being stored there. The clinic did not become a registered location until Dr. Lang obtained a registration for it at some point after commencing her employment.

As to these events, Respondent testified that it was ''an absurdity'' to claim that he violated the law by taking controlled substances from California to Oregon, and that because he had a DEA registration for his San Diego residence he could ''take those drugs anywhere [he] want[ed].'' Tr. 393. Respondent further contended that ''the fact that I'm working out of a non-registered facility with my drugs that I pull from a registered facility and it's registered to me, there's no violation there. It just simply is not a violation of any * * * statute or regulation.'' *Id.* at 394.

Contrary to the understanding of Respondent, the CSA expressly prohibits this conduct. Section 302(e) provides that ''[a] separate registration shall be required at each principal place of business or professional practice where the applicant * * * distributes[] or dispenses controlled substances.'' 21 U.S.C. 822(e); *see also* 21 CFR 1301.12(a). Respondent's 82nd Avenue clinic was a ''principal place of business or professional practice'' where he ''dispensed controlled substances.'' Respondent clearly failed to comply with the Act by storing controlled substances at the clinic for approximately eight months without first obtaining a registration for the location. *See* 21 U.S.C. 841(a)(1).

[11] The security requirements applicable to non-practitioners expressly require that ''[b]efore distributing a controlled substance to any person who the registrant does not know to be registered to possess the controlled substance, the registrant shall make a good faith inquiry with [DEA] or with the appropriate State controlled substances registration agency, if any, to determine that the person is registered to possess the controlled substance.'' 21 CFR 1301.74(a). A practitioner who distributes under 21 CFR 1307.11(a), must comply with this regulation. *See id.* 1301.76(c).

[12] According to testimony in this case, there are 24,000 veterinary clinics in the United States and more than half of them are run by solo practitioners. *See* ALJ at 23.

Respondent's testimony regarding his various violations is especially disturbing. With respect to his conduct in distributing controlled substances to the Nagras' clinic, Respondent testified that he didn't ''have any regrets'' and that he ''would do that again because I wasn't hurting anyone.'' Tr. at 390. As for his conduct at the 82nd Avenue clinic, Respondent explained that ''you don't close down operations. You don't stop businesses and put 12 people on the unemployment line because of a registration that is being withheld at that time unreasonably.'' [13] *Id.* at 379.

Respondent's statements reflect a stunning disregard for the requirements of Federal law. The CSA's implementing regulations expressly provide that ''[n]o person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued * * * to such person.'' 21 CFR 1301.13(a). Contrary to Respondent's understanding, he was required to comply with the Act and its regulations even if it interfered with his business plan or violated his sense of fairness.

In sum, Respondent's repeated violations of the CSA provide ample grounds to deny his application. Moreover, Respondent's attitude leaves me with the firm impression that, if given the opportunity, he will violate the Act again. Moreover, Respondent's rehabilitation from drug abuse does not mitigate the violations of the Act he committed by distributing controlled substances to the Nagras' clinic, an unregistered location, and commencing operations at the 82nd Avenue clinic without obtaining a registration. I thus conclude that this factor is dispositive and compels a finding that granting Respondent a new registration would be inconsistent with the public interest.[14]

[13] As I have previously found, the evidence in the record establishes that Respondent did not apply for a registration for this location until December 2001, shortly before opening the clinic. Furthermore, Respondent indicated on his application that his state license had previously been suspended thus triggering a more detailed investigation. DEA personnel subsequently determined that Respondent had previously been investigated for distributing controlled substances to the Nagras' clinic, that he was storing controlled substances at the 82nd Ave. clinic, and became aware of the events surrounding Respondent's abuse of Telazol and the State of California's suspension of his license. As this proceeding has established, it was not unreasonable to withhold Respondent's registration. What was unreasonable was Respondent's commencement of operations without obtaining a registration in violation of Federal law.

[14] In light of Respondent's numerous violations of the CSA discussed above, it is unnecessary to decide whether Respondent's practice of employing relief veterinarians to run his clinic in Oregon while living in San Diego (more than 1,000 miles away) complied with the CSA. I note, however, that at the hearing, the Government asserted that if a relief veterinarian is an independent contractor, the relief vet. cannot act as an agent of the clinic owner/registrant under 21 CFR 1301.22. According to the Government, the relief vet. must be an employee of the clinic owner in order to comply with the regulation.

This position is incorrect. Neither the CSA nor the regulation precludes a relief veterinarian who is an independent contractor from acting as the agent of the registrant. In the CSA, Congress defined the term ''agent'' to mean ''an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.'' 21 U.S.C. 802(3). Moreover, the CSA further exempts from registration ''[a]n agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance * * * if such agent or employee is acting in the usual course of his business or employment.'' *Id.* § 822(c). The plain language of the statute thus demonstrates that Congress did not limit the exemption to the employees of a practitioner. Furthermore, in appropriate circumstances, an independent contractor may act as an agent. *See, e.g.*, I Restatement of the Law (Second) Agency § 14 N, at 80 (1958) (''One who contracts to act on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also an independent contractor.''). The status of the person acting under the registration as an employee or independent contractor is thus not determinative of compliance with the CSA.

What is relevant for purposes of compliance is that the registrant must exercise effective control of the agent. Doing so requires that a registrant properly supervise and monitor its agents to protect against the diversion of controlled substances; reliance solely on the CSA's existing recordkeeping requirements does not necessarily establish that a registrant is exercising effective control of its agents.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(f), and 28 CFR 0.100(b) and 0.104, I hereby order that the pending application of Respondent, Daniel Koller, D.V.M., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective December 18, 2006.

Dated: November 3, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–19400 Filed 11–16–06; 8:45 am]

BILLING CODE 4410–09–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 22, 2006 via conference call. The meeting will begin at 2 p.m. (EST), and continue until conclusion of the Board's agenda.

LOCATION: 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

STATUS OF MEETING: Open. Directors will participate by telephone conference in such a manner as to enable interested members of the public to hear and identify all persons participating in the meeting. Members of the public wishing to observe the meeting may do so by joining participating staff at the location indicated above. Members of the public wishing to listen to the meeting by telephone may obtain call-in information by calling LSC's FOIA Information line at (202) 295–1629.

MATTERS TO BE CONSIDERED:

1. Approval of the agenda.
2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of April 1, 2006 through September 30, 2006.
3. Consider and act on other business.
4. Public comment.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: November 15, 2006.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 06–9283 Filed 11–15–06; 3:31 pm]

BILLING CODE 7050–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 06–19]

Report on the Selection of Eligible Countries for Fiscal Year 2007

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with Section 608(d)(2) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D, (the ''Act''), Report on the Selection of Eligible Countries for Fiscal Year 2007.

Summary

This report is provided in accordance with Section 608(d)(2) of the Millennium Challenge Act of 2003, Pub. L. 108–199, Division D, (the ''Act'').

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance under Section 605 of the Act to countries that enter into Compacts with the United States to support

policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps to determine the countries that, based to the maximum extent possible upon objective and quantifiable indicators of a country's demonstrated commitment to just and democratic governance, economic freedom and investing in their people, will be eligible to receive MCA assistance for a fiscal year. These steps include the submission of reports to appropriate Congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The ''candidate countries'' for MCA assistance for a fiscal year and all countries that would be candidate countries if they met the requirement of Section 606(a)(1)(B) (Section 608(a) of the Act);

2. the eligibility criteria and methodology that the MCC Board of Directors (the ''Board'') will use to select ''eligible countries'' from among the ''candidate countries'' (Section 608(b) of the Act); and

3. the countries determined by the Board to be ''eligible countries'' for a fiscal year, the countries on the list of eligible countries with which the Board will seek to enter into a Compact and a justification for the decisions regarding eligibility and selection for negotiation (Section 608(d)(1) of the Act).

This is the third of the above-described reports by MCC for fiscal year 2007 (FY07). It identifies countries determined by the Board to be eligible under Section 607 of the Act for FY07 and those that the Board will seek to enter into Compacts under Section 609 of the Act, and the justification for such decisions.

Eligible Countries

The Board met on November 8, 2006, to select countries that will be eligible for MCA Compact assistance under Section 607 of the Act for FY07. The Board determined the following countries eligible for such assistance for FY07 and with which MCC may seek to enter into a Compact: Armenia; Benin; Bolivia; Burkina Faso; Cape Verde; East Timor; El Salvador; Georgia; Ghana; Honduras; Jordan; Lesotho; Madagascar; Mali; Moldova; Mongolia; Mozambique; Namibia; Nicaragua; Senegal; Sri Lanka; Tanzania; Ukraine; and Vanuatu.

In accordance with the Act and with the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2007'' submitted to the Congress on, September 8, 2006, selection was based primarily on a country's overall performance in relation to three broad policy categories: (1) ''Ruling Justly''; (2) ''Encouraging Economic Freedom''; and (3) ''Investing in People.'' The Board relied upon 16 publicly available and independent indicators to assess policy performance and demonstrated commitment in these three areas, to the maximum extent possible, for determining which countries would be eligible for MCA Compact assistance. In determining eligibility, the Board considered if a country performed above the median in relation to its peers on at least half of the indicators in each of the three policy categories and above the median on ''Control of Corruption'' and, if the country performed substantially below the median on any indictor, whether it is taking appropriate action to address the shortcomings. Scorecards reflecting each country's performance on the indicators are available on MCC's Web site at *http://www.mcc.gov*.

The Board also considered whether any adjustments should be made for data gaps, lags, trends, or recent events since the indicators were published and strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information such as evidence of a country's commitment to fighting corruption and promoting democratic governance, its economic policies to promote the sustainable management of natural resources, human rights, and the rights of people with disabilities. In addition, the Board considered the opportunity to reduce poverty, promote economic growth and have a transformational impact in a country in light of the overall context of the information available to it as well as the availability of appropriated funds.

Eighteen of the countries selected eligible for MCA assistance for FY07 were in the ''low income'' category and were previously selected as eligible in at least one previous fiscal year—Armenia, Benin, Bolivia, Burkina Faso, East Timor, Ghana, Georgia, Honduras, Lesotho, Madagascar, Mali, Mongolia, Mozambique, Nicaragua, Senegal, Sri Lanka, Tanzania, and Vanuatu. Three of the countries selected as eligible for MCA assistance for FY07 were in the ''lower middle income'' category and were previously selected as eligible in at least one previous fiscal year—Cape Verde, El Salvador, and Namibia. On November 8, 2006, the Board re-selected these countries based on their continued performance since their prior selection. The Board also determined that no material change has occurred in the performance of these countries on the selection criteria since the FY06 selection that would justify not including them in the FY07 eligible country list. Six of these countries—Benin, Cape Verde, Ghana, Madagascar, Senegal, and Sri Lanka—either did not perform above the median on Control of Corruption or did not perform above the median in relation to their peers on at least half of the indicators in each of the three policy categories. However, at this time, MCC does not believe that a serious erosion of policy performance has occurred in any of these countries. MCC will ask each of these countries to commit to specific actions by their respective governments to address indicator performance weaknesses and to strive to maintain or improve upon their performance overall.

Three additional countries were selected for the first time in FY07: (1) Two in the ''low income'' category under Section 606(a) of the Act—Moldova and Ukraine; and (2) one in the ''lower middle income'' category under Section 606(b) of the Act—Jordan. Each of these countries: (1) Performed above the median in relation to their peers on at least half of the indicators in each of the three policy categories; (2) performed above the median on corruption; and (3) in cases where they performed substantially below the median on an indicator, there was either evidence that the data did not adequately reflect their policy performance or that the government is taking corrective action to address the problem.

All three of these countries are currently participating in the Threshold Program. Each country now meets the MCA eligibility criteria for Compact assistance but successful implementation of their respective Threshold Program—and of the corresponding reform commitments—remains critical. The governments will be required to demonstrate successful implementation of the Threshold Program during the Compact development process in order to reach a Compact and then to continue to receive MCA funding under a Compact.

- *Moldova:* Moldova presents an excellent opportunity for MCC to use its Compact funding in a transformational way. Moldova is the poorest country in Europe with half of its population living on less than $2 per day. It now passes 15 of the 16 indicators, as well as both of the two new Natural Resource Management indices. The Government of Moldova has adopted a series of

significant policy and institutional reforms over the last several years. After being selected as a Threshold Program Country in FY06, the Government of Moldova proposed an ambitious anti-corruption Threshold Program and improved its performance on the ''Control of Corruption'' indicator from the 46th percentile to the 55th percentile.

• *Ukraine:* For the first time, Ukraine also passes the MCA selection eligibility criteria and has made significant improvements on all of the indictors in the ''Ruling Justly'' category. In addition, Ukraine passes one of the new supplementary Natural Resources Management indices. Ukraine was selected as a Threshold country in FY06, and in June 2006, the Board approved its Threshold program which is focused on accelerating anti-corruption efforts. MCC expects that implementation of Ukraine's Threshold Program will begin soon and will bolster the Government of Ukraine's reform efforts.

• *Jordan:* Jordan passes the MCA selection eligibility criteria, including ''Control of Corruption,'' and has demonstrated its commitment to MCC principles through home-grown democratic reform initiatives, which MCC is currently supporting through the implementation of the Threshold Program agreement signed in October, 2006. Jordan has made significant reform commitments in its Threshold Program and MCC will require successful implementation of the Threshold Program as the Government of Jordan works to develop and implement a Compact. A Compact in Jordan could have a transformation impact as structural reforms over the last decade have liberalized the private investment regime, opened the trade environment, and established modern regulation and institutions for private sector development.

Finally, a number of countries that performed well on the quantitative elements of the selection criteria (i.e., on the policy indicators) were not chosen as eligible countries for FY07. As discussed above, the Board considered a variety of factors in addition to the country's performance on the policy indicators in determining whether they were appropriate candidates for assistance (e.g., the country's commitment to fighting corruption and promoting democratic governance; the availability of appropriated funds; and in which countries MCC would likely have the best opportunity to reduce poverty, generate economic growth and have a transformational impact).

Selection for Compact Negotiation

The Board also authorized MCC to seek to negotiate a Compact, as described in Section 609 of the Act, with each of the eligible countries identified above that develops a proposal that justifies beginning such negotiations. MCC will initiate the process by inviting newly eligible countries to submit program proposals to MCC (previously eligible countries will not be asked to submit another proposal for FY07 assistance). MCC has posted guidance on the MCC Web site (*http://www.mcc.gov*) regarding the development and submission of MCA program proposals. Submission of a proposal is not a guarantee that MCC will finalize a Compact with an eligible country. Any MCA assistance provided under Section 605 of the Act will be contingent on the successful negotiation of a mutually agreeable Compact between the eligible country and MCC, approval of the Compact by the Board, and availability of funds.

Dated: November 14, 2006.

William G. Anderson, Jr.,

Vice President and General Counsel (Acting), Millennium Challenge Corporation.

[FR Doc. E6–19488 Filed 11–16–06; 8:45 am]

BILLING CODE 9210–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Dance (application review): December 4–6, 2006 in Room 730. This meeting, from 9 a.m. to 6 p.m. on December 4th and 5th, and from 9 a.m. to 4:30 p.m. on December 6th, will be closed.

Folk & Traditional Arts (application review): December 6–8, 2006 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on December 6th, from 9 a.m. to 6 p.m. on December 7th, and from 9 a.m. to 5:30 p.m. on December 8th, will be closed.

Music (application review): December 6–8, 2006 in Room 714. A portion of this meeting, from 2 p.m. to 3 p.m. on December 8th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 6th, from 9 a.m. to 6 p.m. on December 7th, and from 9 a.m. to 2 p.m. and from 3 p.m. to 3:30 p.m. on December 8th, will be closed.

Museums (application review): December 12–15, 2006 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on December 12th—14th and from 9 a.m. to 1 p.m. on December 15th, will be closed.

Literature (application review): December 13–15, 2006 in Room 714. A portion of this meeting, from 2 p.m. to 3 p.m. on December 15th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on December 13th and 14th and from 9 a.m. to 2 p.m. and from 3 p.m. to 4:30 p.m. on December 15th, will be closed.

Summer Schools in the Arts (application review): December 14–15, 2006 in Room 730. A portion of this meeting, from 3:15 p.m. to 3:45 p.m. on December 15th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on December 14th and from 9 a.m. to 3:15 p.m. and from 3:45 p.m. to 4:15 p.m. on December 15th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

November 13, 2006.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E6–19410 Filed 11–16–06; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7102]

Notice of Consideration of Amendment Request for Decommissioning for Shieldalloy Metallurgical Corporation, Newfield, NJ and Opportunity to Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Ken Kalman, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852. Telephone: (301) 415–6664 fax number: (301) 415–5398; or e-mail: *klk@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMB–743 issued to Shieldalloy Metallurgical Corporation (SMC or the licensee), to authorize the decommissioning of its Newfield Facility in Newfield, New Jersey. SMC submitted its revised Decommissioning Plan (DP) to NRC on June 30, 2006, and by letter to SMC dated October 18, 2006, the NRC found the DP acceptable to begin a detailed technical review of its adequacy.

II. Background

SMC has been conducting smelting and alloy production at its Newfield site since 1940, including past production of chromium metal, ferrovanadium and columbium nickel. Ferroalloy production began in 1955 and ended in June 1998. The SMC facility processed pyrochlore, a concentrated ore containing columbium (niobium), to produce ferrocolumbium, an additive/conditioner used in the production of speciality steel and super alloy additives. Pyrochlore contains more than 0.05 percent by weight thorium and uranium, and this material is therefore regulated by the NRC as source material. SMC was licensed by the NRC to ship, receive, possess, use and store source material under license SMB–743. In August 2001, SMC notified the NRC that it had ceased production activities using source material. On August 27, 2001, the licensee provided notification of its intent to decommission the facility. The license is in timely renewal, and was amended on November 4, 2002 to authorize only decommissioning activities.

SMC submitted its initial DP to the NRC on October 21, 2005. The DP proposed the use of a possession only license for long term control of the site. The NRC staff rejected the initial DP by letter dated January 26, 2006. The staff met with SMC (in a meeting open to the public) on March 9, 2006, to discuss the initial DP's deficiencies and a path forward for development of an acceptable DP. Pursuant to comments received at the March 2006 meeting, SMC submitted its revised DP by letter dated June 30, 2006.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. SMB–743. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Impact Statement.

III. Opportunity to Request a Hearing

The NRC hereby provides notice that this is a proceeding on a proposed license amendment which would approve SMC's revised DP. In accordance with the general requirements in Subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Shieldalloy Metallurgical Corporation, 12 West Boulevard, PO Box 768, Newfield, New Jersey 08344–0768. Attention: David R. Smith, Radiation Safety Officer;

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by January 16, 2007.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of SMC's revised DP (including the applicant's environmental report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the revised DP fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the revised DP, supporting safety analysis report, environmental report or other supporting document filed by the licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the licensee's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, or any supplements relating thereto, that differ significantly from the data or conclusions in the licensee's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

IV. Further Information

Documents related to this action, including the revised DP and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

—Decommissioning Plan dated October 21, 2005: Volume 1 (ML053190220), Volume 2 (ML053340210) and Volume 3 (ML053330384).

—U.S. Nuclear Regulatory Commission's letter rejecting the Decommissioning Plan dated January 26, 2006 (ML060180551)

—Summary of March 9, 2006 Nuclear Regulatory Commission Meeting with Shieldalloy Metallurgical Corporation (ML061070401)

—Shieldalloy Metallurgical Corporation Supplement to Decommissioning Plan dated June 30, 2006 (ML061980092)

—U.S. Nuclear Regulatory Commission's letter accepting the Decommissioning Plan for technical review dated October 18, 2006 (ML062580126)

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 9th day of November 2006.

For the Nuclear Regulatory Commission.

Rebecca Tadesse,

Branch Chief, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E6–19433 Filed 11–16–06; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

No FEAR Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) is publishing this notice under the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is known as the No FEAR Act, to inform current employees, former employees, and applicants for OSHRC employment of the rights and protections available to them under Federal antidiscrimination, whistleblower protection, and retaliation laws.

DATES: November 17, 2006.

FOR FURTHER INFORMATION CONTACT: Angela Roach, EEO Officer,

Occupational Safety and Health Review Commission, 1120—20th Street, NW., 9th Floor, Washington, DC 20036–3457. Telephone: (202) 606–5390.

SUPPLEMENTARY INFORMATION: The ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' commonly known as the No FEAR Act, was passed to require that Federal agencies be accountable for violations of discrimination and whistleblower protection laws. The Act recognized that agencies cannot be run effectively if those agencies practice or tolerate discrimination. The Act and regulations promulgated by Office of Personnel Management at 5 CFR 724.102 require that Federal employees, former employees, and applicants be notified in paper and/or electronic form of the rights and protections available to them under Antidiscrimination and Whistleblower Protection laws. OSHRC's notice will raise the awareness of its employees, former employees, and applicants for employment of the procedures to follow if they believe they have been subject to a violation of these laws.

For these reasons, OSHRC is publishing this No FEAR Act Notice (also published on the agency's Web site at *http://www.oshrc.gov*):

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as 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.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, sec. 101(1).

The Act also requires this agency 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, or, in the case of a personnel action, 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 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). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee 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, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual 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 disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order 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 U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov*.

Retaliation for Engaging in Protected Activity

A Federal agency 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 that 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 above or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency 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 an agency 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 your agency (*e.g.*, EEO/civil rights office, human resources office or legal office). 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

Pursuant to section 205 of the No FEAR Act, neither the 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 provisions of law specified in 5 U.S.C. 2302(d).

Dated: November 15, 2006.

W. Scott Railton,

Chairman.

[FR Doc. 06–9273 Filed 11–15–06; 12:14 pm]

BILLING CODE 7600–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement; Invitation for Applications for Inclusion on the Chapter 19 Roster

AGENCY: Office of the United States Trade Representative.

ACTION: Invitation for applications.

SUMMARY: Chapter 19 of the North American Free Trade Agreement (''NAFTA'') provides for the establishment of a roster of individuals to serve on binational panels convened to review final determinations in antidumping or countervailing duty (''AD/CVD'') proceedings and amendments to AD/CVD statutes of a NAFTA Party. The United States annually renews its selections for the Chapter 19 roster. Applications are invited from eligible individuals wishing to be included on the roster for the period April 1, 2007 through March 31, 2008.

DATES: Applications should be received no later than December 6, 2006.

ADDRESSES: Applications should be submitted (i) electronically, to *FR0501@ustr.eop.gov,* Attn: ''Chapter 19 Roster Applications'' in the subject line, or (ii) by fax to Sandy McKinzy at 202–395–3640.

FOR FURTHER INFORMATION CONTACT: Jeffrey G. Weiss, Assistant General Counsel, Office of the United States Trade Representative, (202) 395–4498.

SUPPLEMENTARY INFORMATION:

Binational Panel Reviews Under NAFTA Chapter 19

Article 1904 of the NAFTA provides that a party involved in an AD/CVD proceeding may obtain review by a binational panel of a final AD/CVD determination of one NAFTA Party with respect to the products of another NAFTA Party. Binational panels decide whether such AD/CVD determinations are in accordance with the domestic laws of the importing NAFTA Party, and must use the standard of review that would have been applied by a domestic court of the importing NAFTA Party. A panel may uphold the AD/CVD determination, or may remand it to the national administering authority for action not inconsistent with the panel's decision. Panel decisions may be reviewed in specific circumstances by a three-member extraordinary challenge committee, selected from a separate roster composed of fifteen current or former judges.

Article 1903 of the NAFTA provides that a NAFTA Party may refer an amendment to the AD/CVD statutes of another NAFTA Party to a binational panel for a declaratory opinion as to whether the amendment is inconsistent with the General Agreement on Tariffs and Trade (''GATT''), the GATT Antidumping or Subsidies Codes, successor agreements, or the object and purpose of the NAFTA with regard to the establishment of fair and predictable conditions for the liberalization of trade. If the panel finds that the amendment is inconsistent, the two NAFTA Parties shall consult and seek to achieve a mutually satisfactory solution.

Chapter 19 Roster and Composition of Binational Panels

Annex 1901.2 of the NAFTA provides for the maintenance of a roster of at least 75 individuals for service on Chapter 19 binational panels, with each NAFTA Party selecting at least 25 individuals. A separate five-person panel is formed for each review of a final AD/CVD determination or statutory amendment. To form a panel, the two NAFTA Parties involved each appoint two panelists, normally by drawing upon individuals from the roster. If the Parties cannot agree upon the fifth panelist, one of the Parties, decided by lot, selects the fifth panelist from the roster. The majority of individuals on each panel must consist of lawyers in good standing, and the chair of the panel must be a lawyer.

Upon each request for establishment of a panel, roster members from the two involved NAFTA Parties will be requested to complete a disclosure form, which will be used to identify possible conflicts of interest or appearances thereof. The disclosure form requests information regarding financial interests and affiliations, including information regarding the identity of clients of the roster member and, if applicable, clients of the roster member's firm.

Criteria for Eligibility for Inclusion on Chapter 19 Roster

Section 402 of the NAFTA Implementation Act (Pub. L. 103–182, as amended (19 U.S.C. 3432)) (''Section 402'') provides that selections by the United States of individuals for inclusion on the Chapter 19 roster are to be based on the eligibility criteria set out in Annex 1901.2 of the NAFTA, and without regard to political affiliation. Annex 1901.2 provides that Chapter 19 roster members must be citizens of a NAFTA Party, must be of good character and of high standing and repute, and are to be chosen strictly on the basis of their objectivity, reliability, sound judgment, and general familiarity with international trade law. Aside from judges, roster members may not be affiliated with any of the three NAFTA Parties. Section 402 also provides that, to the fullest extent practicable, judges and former judges who meet the eligibility requirements should be selected.

Adherence to the NAFTA Code of Conduct for Binational Panelists

The ''Code of Conduct for Dispute Settlement Procedures Under Chapters 19 and 20'' (see *http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?CategoryId=75*), which was established pursuant to Article 1909 of the NAFTA, provides that current and former Chapter 19 roster members ''shall avoid impropriety and the appearance of impropriety and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.'' The Code also provides that candidates to serve on chapter 19 panels, as well as those who are ultimately selected to serve as panelists, have an obligation to ''disclose any interest, relationship or matter that is likely to affect [their] impartiality or independence, or that might reasonably create an appearance of impropriety or an apprehension of bias.'' Annex 1901.2 of the NAFTA provides that roster members may engage in other business while serving as panelists, subject to the Code of Conduct and provided that such business does not interfere with the performance of the panelist's duties. In particular, Annex 1901.2 states that ''[w]hile acting as a panelist, a panelist may not appear as counsel before another panel.''

Procedures for Selection of Chapter 19 Roster Members

Section 402 establishes procedures for the selection by the Office of the United States Trade Representative (''USTR'') of the individuals chosen by the United States for inclusion on the Chapter 19 roster. The roster is renewed annually, and applies during the one-year period beginning April 1 of each calendar year.

Under Section 402, an interagency committee chaired by USTR prepares a preliminary list of candidates eligible for inclusion on the Chapter 19 Roster. After consultation with the Senate Committee on Finance and the House Committee on Ways and Means, USTR selects the final list of individuals

chosen by the United States for inclusion on the Chapter 19 roster.

Remuneration

Roster members selected for service on a Chapter 19 binational panel will be remunerated at the rate of 800 Canadian dollars per day.

Applications

Eligible individuals who wish to be included on the Chapter 19 roster for the period April 1, 2007 through March 31, 2008 are invited to submit applications. Persons submitting applications may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *FR0501@ustr.eop.gov,* with ''Chapter 19 Roster Applications'' in the subject line. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Applications must be typewritten, and should be headed ''Application for Inclusion on NAFTA Chapter 19 Roster.'' Applications should include the following information, and each section of the application should be numbered as indicated:

1. Name of the applicant.
2. Business address, telephone number, fax number, and e-mail address.
3. Citizenship(s).
4. Current employment, including title, description of responsibility, and name and address of employer.
5. Relevant education and professional training.
6. Spanish language fluency, written and spoken.
7. Post-education employment history, including the dates and addresses of each prior position and a summary of responsibilities.
8. Relevant professional affiliations and certifications, including, if any, current bar memberships in good standing.
9. A list and copies of publications, testimony, and speeches, if any, concerning AD/CVD law. Judges or former judges should list relevant judicial decisions. Only one copy of publications, testimony, speeches, and decisions need be submitted.
10. Summary of any current and past employment by, or consulting or other work for, the Governments of the United States, Canada, or Mexico.
11. The names and nationalities of all foreign principals for whom the applicant is currently or has previously been registered pursuant to the Foreign Agents Registration Act, 22 U.S.C. 611 *et seq.*, and the dates of all registration periods.
12. List of proceedings brought under U.S., Canadian, or Mexican AD/CVD law regarding imports of U.S., Canadian, or Mexican products in which the applicant advised or represented (for example, as consultant or attorney) any U.S., Canadian, or Mexican party to such proceeding and, for each such proceeding listed, the name and country of incorporation of such party.
13. A short statement of qualifications and availability for service on Chapter 19 panels, including information relevant to the applicant's familiarity with international trade law and willingness and ability to make time commitments necessary for service on panels.
14. On a separate page, the names, addresses, telephone and fax numbers of three individuals willing to provide information concerning the applicant's qualifications for service, including the applicant's character, reputation, reliability, judgment, and familiarity with international trade law.

Current Roster Members and Prior Applicants

Current members of the Chapter 19 roster who remain interested in inclusion on the Chapter 19 roster must submit updated applications. Individuals who have previously applied but have not been selected may reapply. If an applicant, including a current or former roster member, has previously submitted materials referred to in item 9, such materials need not be resubmitted.

Public Disclosure

Applications normally will not be subject to public disclosure. They may be referred to other federal agencies in the course of determining eligibility for the roster, and shared with foreign governments and the NAFTA Secretariat in the course of panel selection.

False Statements

Pursuant to section 402(c)(5) of the NAFTA Implementation Act, false statements by applicants regarding their personal or professional qualifications, or financial or other relevant interests that bear on the applicants' suitability for placement on the Chapter 19 roster or for appointment to binational panels, are subject to criminal sanctions under 18 U.S.C. 1001.

Paperwork Reduction Act

This notice contains a collection of information provision subject to the Paperwork Reduction Act (''PRA'') that has been approved by the Office of Management and Budget (''OMB''). Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB number. This notice's collection of information burden is only for those persons who wish voluntarily to apply for nomination to the NAFTA Chapter 19 roster. It is expected that the collection of information burden will be under 3 hours. This collection of information contains no annual reporting or record keeping burden. This collection of information was approved by OMB under OMB Control Number 0350–0014. Please send comments regarding the collection of information burden or any other aspect of the information collection to USTR at the above e-mail address or fax number.

Privacy Act

The following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). The authority for requesting information to be furnished is section 402 of the NAFTA Implementation Act. Provision of the information requested above is voluntary; however, failure to provide the information will preclude your consideration as a candidate for the NAFTA Chapter 19 roster. This information is maintained in a system of records entitled ''Dispute Settlement Panelists Roster.'' Notice regarding this system of records was published in the **Federal Register** on November 30, 2001. The information provided is needed, and will be used by USTR, other federal government trade policy officials concerned with NAFTA dispute settlement, and officials of the other NAFTA Parties to select well-qualified individuals for inclusion on the Chapter 19 roster and for service on Chapter 19 binational panels.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E6–19461 Filed 11–16–06; 8:45 am]

BILLING CODE 3190–W7–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: RUIA Investigations and Continuing Entitlement; OMB 3220–0025.

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accrues to the claimant. Also Section 4(a-1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following four forms to obtain information from railroad employers, nonrailroad employers and claimants, that are needed to determine whether a claimed days or days of unemployment or sickness were improperly or fraudulently claimed: Form ID–5I, Letter to Non-Railroad Employers on Employment and Earnings of a Claimant; Form ID–5R(SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; Form ID–49R, Letter to Railroad Employer for Payroll Information; and Form UI–48, Claimant's Statement Regarding Benefit Claim for Days of Employment. Completion is voluntary. One response is requested of each respondent. The RRB proposes no changes to these forms.

To qualify for unemployment or sickness benefits payable under Section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following form(s) to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, Applicant's Statement of Employment and Wages, Form UI–23, Claimant's Statement of Service for Railroad Unemployment Insurance Benefits, Form UI–44, Claim for Credit for Military Service (RUIA), Form ID–4F, Advising of Ineligibility for RUIA Benefits, Form ID–4U, Advising of Service/Earnings Requirements for RUIA Benefits, Form ID–4X, Advising of Service/Earnings Requirements for Sickness Benefits, Form ID–4Y, Advising of Ineligibility for Sickness Benefits, Form ID–20–1, Advising that Normal Unemployment Benefits Are About to Be Exhausted, Form ID–20–2, Advising the Normal Sickness Benefits Are About to Be Exhausted, and Form ID–20–4, Advising That Normal Sickness Benefits Are About to Be Exhausted/Non-Entitlement. Completion of these forms is required to obtain or retain a benefit. One response is required of each respondent. The RRB proposes a change to Forms ID–4F, ID–4U, ID–4X, ID–4Y, ID–20–1, ID–20–2, ID–20–4 to request information regarding an employee's military service entry and discharge dates. The information will be requested because the inclusion of the employee's military service, may give the employee enough creditable service months for additional benefits. No other changes are proposed.

The burden associated with the information collection is estimated as follows:

Form No.	Annual responses	Completion time (minutes)	Burden hours
ID–5I	4,500	15	1,125
ID–5R(SUP)	900	10	150
ID–49R	250	15	63
UI–48	250	12	50
UI–9	800	10	133
UI–23	600	5	50
UI–44	150	5	13
ID–4F	25	5	2
ID–4U	150	5	13
ID–4X	100	5	8
ID–4Y	25	5	2
ID–20–1	50	5	4
ID–20–2	100	5	8

Form No.	Annual responses	Completion time (minutes)	Burden hours
ID–20–4	5	5	1
Total	7,905		1,622

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.gov.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.gov.* To ensure proper consideration, comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E6–19426 Filed 11–16–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27551; 812–13227]

Allegiant Funds, et al.; Notice of Application

November 13, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: The requested order would permit certain registered open-end management investment companies to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Allegiant Funds and Allegiant Advantage Fund (the ''Trusts') and Allegiant Asset Management Company (the ''Adviser'').

Filing Dates: The application was filed on August 25, 2005 and amended on June 28, 2006 and November 8, 2006.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 8, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Audrey C. Talley, Drinker Biddle & Reath, LLP, One Logan Square, 18th & Cherry Streets, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Stacy L. Fuller, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations:

1. The Trusts, Massachusetts business trusts, are registered under the Act as open-end management investment companies. Each Trust currently offers one or more series (''Funds''), each of which has its own investment objectives, policies and restrictions.[1]

2. The Adviser is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as investment adviser to each Fund pursuant to an investment advisory agreement with the respective Trust (''Advisory Agreement'') that was approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the shareholders of each Fund. Under the Advisory Agreement, the Adviser receives a fee from each Fund payable monthly at an annual rate based on the average daily net assets of the Fund. Under the Advisory Agreement, the Adviser may delegate investment advisory responsibilities to one or more subadvisers (''Subadvisers'') who have discretionary authority to invest all or a portion of the Fund's assets pursuant to a separate subadvisory agreement (''Subadvisory Agreement''). The Adviser selects Subadvisers based on the Adviser's continuing evaluation of their skills in managing assets pursuant to particular investment styles. Each Subadviser is and will be an investment adviser registered under the Advisers Act. For its services to a Fund, the Adviser pays each Subadviser out of the investment advisory fee the Adviser receives from the Fund.

3. Applicants request relief to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

Applicants' Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

[1] Applicants also request relief with respect to future series of each Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Adviser or a person controlling, controlled by or under common control with the Adviser; (b) uses the management structure described in the application; and (c) complies with the terms and conditions of the application (included in the term ''Funds''). The only existing registered open-end management investment companies that currently intend to rely on the requested order are named as applicants. If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser or the name of the entity controlling, controlled by, or under common control with the Adviser that serves as the primary adviser to the Fund will precede the name of the Subadviser.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard.

3. Applicants state that the Funds' shareholders rely on the Adviser, subject to oversight by the Board, to select the Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose costs and unnecessary delays on the Funds and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to the shareholder approval requirements in section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination and replacement.

3. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of a new Subadviser, the Adviser will furnish shareholders of the affected Fund with all information about the new Subadviser that would be included in a proxy statement. The Adviser will meet this condition by providing shareholders of the applicable Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject to review and approval by the Board, will (i) set the Fund's overall investment strategies, (ii) evaluate, select and recommend Subadvisers to manage all or a part of the Fund's assets, (iii) allocate and, when appropriate, reallocate the Fund's assets among multiple Subadvisers, (iv) monitor and evaluate the performance of the Subadvisers, and (v) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Funds, or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

9. The requested order will expire on the effective date of rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–19441 Filed 11–16–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [71 FR 66352, November 14, 2006].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Monday, November 20, 2006 at 2 p.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Monday, November 20, 2006 at 2 p.m. has been changed to Monday, November 20, 2006 at 10 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 15, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–9269 Filed 11–15–06; 11:00 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54739; File No. SR–Amex–2006–78]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on International or Global Indexes

November 9, 2006.

I. Introduction

On August 18, 2006, the American Stock Exchange LLC (''Amex'' or

''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt generic listing standards pursuant to Rule 19b–4(e)[3] for series of portfolio deposit receipts (''PDRs'') and index fund shares (''IFSs'') based on international or global indexes. On October 12, 2006, Amex submitted Amendment No. 1 to the proposal.[4] The proposed rule change and Amendment No. 1 thereto were published for comment in the **Federal Register** on October 19, 2006 for a 15-day comment period.[5] The Commission received one comment letter.[6] On November 6, 2006, Amex submitted Amendment No. 2 to the proposal.[7] This order approves the proposed rule change, as amended, on an accelerated basis.

II. Description of Proposal

As explained more fully in the notice of the proposed rule change, the Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for series of PDRs and IFSs that are based on international or global indexes.[8] Additionally, the Exchange proposes to revise Amex Rules 1000 and 1000A to include generic listing standards for PDRs and IFSs (PDRs and IFSs together referred to as ''exchange-traded funds'' or ''ETFs'') that are based on indexes or portfolios previously approved by the Commission as an underlying benchmark for the trading of PDRs, IFSs, options or other specified index-based securities. Finally, Amex proposes other minor clarifying changes to Amex Rules 1000, 1002, 1000A and 1002A.[9]

Specifically, the Exchange proposes to revise Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A to include generic listing standards for series of ETFs that are based on international or global indexes, or on indexes previously approved by the Commission under Section 19(b)(2) of the Exchange Act for the trading of ETFs, options or other index-based securities. This proposal will enable the Exchange to list and trade ETFs pursuant to Rule 19b–4(e)[10] of the Exchange Act if each of the conditions set forth in Commentary .03 to Rule 1000 or Commentary .02 to Rule 1000A is satisfied. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.[11]

To list a PDR or an IFS pursuant to the proposed generic listing standards for international or global indexes, the index underlying the PDR or IFS must satisfy all the conditions in Commentary .03 to Rule 1000 (for PDRs) or proposed Commentary .02 to Rule 1000A (for IFSs). As with the existing generic listing standards for ETFs based on domestic indexes, the Exchange states that these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio.

As proposed, the definition section of each of Rule 1000 and Rule 1000A would be revised to include definitions of U.S. Component Stock and Non-US Component Stock. These new definitions would provide the basis for the standards for indexes with either domestic or international stocks, or a combination of both. A ''Non-US Component Stock'' would mean an equity security issued by an entity that: (a) Is not organized, domiciled or incorporated in the United States; (b) is not registered under Section 12(b) or 12(g) of the Exchange Act; and (c) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). This definition is designed to create a category of component stocks that are issued by companies that are not based in the U.S., but that also are not subject to oversight through Commission registration, and would include sponsored Global Depositary Receipts (''GDRs'') and European Depositary Receipts (''EDRs''). A ''US Component Stock'' would mean an equity security that is registered under Section 12(b) or 12(g) of the Exchange Act.

The Exchange proposes that to list an ETF based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value[12] of at least $100 million (Rule 1000, Commentary .03(a)(B)(1) and Rule 1000A, Commentary .02(a)(B)(1));[13]
- Component stocks representing at least 90% of the weight of the index or portfolio shall have a minimum worldwide monthly trading volume[14]

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240. 19b–4.

[3] 17 CFR 240.19b–4(e).

[4] In Amendment No. 1, Amex revised the proposed rule text and clarified certain aspects of its proposal.

[5] *See* Securities Exchange Act Release No. 54595 (October 12, 2006), 71 FR 61811.

[6] *See* letter from Ira P. Shapiro, Principal and Associate General Counsel, Barclays Global Investors (''BGI''), dated October 29, 2006 (''BGI Comment Letter'').

[7] In Amendment No. 2, Amex clarified the nature of its surveillance procedures applicable to ETFs that may be listed and traded pursuant to the proposed rule change.

[8] 8 Amex Rules 1000 *et seq.* allow for the listing and trading on the Exchange of PDRs, which represent interests in a unit investment trust registered under the Investment Company Act of 1940 (''1940 Act'') that operates on an open-end basis and that holds the securities that comprise an index or portfolio. Amex Rules 1000A *et seq.* provide standards for the listing and trading of IFSs, which are securities issued by an open-end management investment company based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index.

[9] The standards set out in Commentary .03(a)(A) to Rule 1000 and Commentary .02(a)(A) to Rule 1000A are being modified to make the wording of each requirement consistent; in addition, standard (5) of these Commentaries has been modified to reflect the Commission's adoption of Regulation NMS, 17 CFR 242.600 *et seq.* Proposed Commentary .03(b)(iv) to Rule 1000 and Commentary .02(b)(iv) to Rule 1000A have been added to require that entities that advise index providers or calculators and related entities have in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

[10] 17 CFR 240.19b–4(e).

[11] When relying on Rule 19b–4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the SRO begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[12] The Exchange stated for purposes of this filing that ''market value'' is calculated by multiplying the total shares outstanding by the price per share of the component stock.

[13] The BGI Comment Letter notes that certain no-action relief provided by Commission staff under the Exchange Act (the ''ETF No-Action Letters'') uses a public float standard, rather than this market value standard, and suggests consistency. The Exchange notes that the ETF No-Action Letters address separate regulatory objectives but is willing to examine modifications to its listing standards in the future. Telephone conference among Marija Willen, Vice President and Associate General Counsel, Amex, Scott Ebner, Vice President, Amex, Florence Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and Brian Trackman, Special Counsel, Division, Commission, on November 6, 2006 (''November 6 Telephone Conference'').

[14] The BGI Comment Letter requested clarification that ''worldwide monthly trading volume'' includes any shares underlying American

during each of the last six months of at least 250,000 shares [15] (Rule 1000, Commentary .03(a)(B)(2) and Rule 1000A, Commentary .02(a)(B)(2)); [16]

- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (Rule 1000, Commentary .03(a)(B)(3) and Rule 1000A, Commentary .02(a)(B)(3));
- The index or portfolio shall include a minimum of 20 component stocks (Rule 1000, Commentary .03(a)(B)(4) and Rule 1000A, Commentary .02(a)(B)(4)); and
- Each US Component Stock in the index or portfolio shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Exchange Act, and each Non-US Component Stock in the index or portfolio shall be listed on an exchange that has last-sale reporting (Rule 1000, Commentary .03(a)(B)(5) and Rule 1000A, Commentary .02(a)(B)(5)).[17]

The Exchange also proposes to include in the generic listing standards for the listing of ETFs, in new Commentary .03(a)(C) to Rule 1000 and Commentary .02(a)(C) to Rule 1000A, indexes that have been approved by the Commission as underlying benchmarks in connection with the listing of options, PDRs, IFSs, Index-Linked Exchangeable Notes, or Index-Linked Securities.[18]

The Exchange also proposes to modify Commentary .03(b)(iii) to Rule 1000 and Commentary .02(b)(iii) to Rule 1000A to require that the index value for all ETFs listed pursuant to the proposed standards for international and global indexes (or otherwise approved by the Commission) be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF trades on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. Index values for ETFs listed pursuant to the standards for domestic indexes (or otherwise approved by the Commission) must be disseminated at least every 15 seconds during the trading day. The proposed modification to this requirement for ETFs based on international or global indexes reflects that, in some instances, the frequency of intra-day trading information is limited with respect to Non-US Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours.

In addition, Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A are being modified to define the term ''Intraday Indicative Value'' as the estimate that is updated at least every 15 seconds of the value of a share of each ETF, for ease of reference in these rules. A similar change is also proposed in Rules 1002 and 1002A, which are the continued listing standards for these and other ETFs. The Exchange also proposes to clarify in Commentary .03(c) to Rule 1000 and Commentary .02(c) to Rule 1000A that the Intraday Indicative Value will be updated during the hours the ETF shares trade on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated for all ETFs based on global or international indexes.

The Exchange is also proposing to add a subsection (i) to Commentary .03 to Rule 1000 and a subsection (j) to Commentary .02 to Rule 1000A regarding the creation and redemption process for ETFs and compliance with Federal securities laws for ETFs listed pursuant to the generic listing standards for international and global indexes. These new subsections will apply to PDRs listed pursuant to Commentary .03(a)(B) or (C) and for IFSs listed pursuant to Commentary .02(a)(B) or (C).

For the listing and trading of all ETFs, whether or not by generic listing standards, the Exchange is also proposing to include additional, continued listing standards relating to ETFs that substitute new indexes, either in the instance where the value of the index or portfolio of securities on which the ETF is based is no longer calculated or available, or in the event that the ETF chooses to substitute a new index or portfolio for the existing index or portfolio. In both instances, the Exchange would commence delisting proceedings if the new index or portfolio does not meet the standards set forth in Rules 1000 *et seq.* or Rules 1000A *et seq.*, as applicable.[19] If, for example, an ETF chose to substitute an index that did not meet any of the generic listing standards for listing of

Depositary Receipts (''ADRs'') traded in the U.S. In response, the Exchange states that any trading of shares represented by ADRs, GDRs, or EDRs, which are traded on a market with last sale reporting, would be included in the calculation of worldwide monthly trading volume. *See* November 6 Telephone Conference, *supra* note 13.

[15] The BGI Comment Letter asserts that it would be less arbitrary to measure trading volume in terms of dollars rather than shares. The Exchange notes that the share trading volume criteria is consistent with the existing generic listing standards for ETFs based on domestic indexes and other listing standards for derivative products, and the Commission believes the Exchange's choice is consistent with the Act. Nevertheless, the Exchange is willing to examine the dollar volume criteria in the future. *See* November 6 Telephone Conference, *supra* note 13.

[16] 16 The BGI Comment Letter notes that the ETF No-Action Letters measure liquidity of components in the index or portfolio differently than Amex's proposed rules measure liquidity. The Exchange notes that the ETF No-Action Letters address separate regulatory objectives but is willing to examine modifications to its listing standards in the future. *See* November 6 Telephone Conference, *supra* note 13.

[17] The BGI Comment Letter questioned which non-U.S. exchanges have systems for ''last-sale reporting.'' In this regard, the Exchange states, when considering whether an ETF meets its listing standards, that it will use several methods to determine whether a non-U.S. exchange has last-sale reporting. For example, the Exchange states that it will evaluate whether execution prices are available for transactions in securities listed and traded on such exchange. The Exchange further states that last-sale reporting is easily verified through major market data vendors and other entities. In addition, the Exchange states that many index providers have policies to include index components only from foreign exchanges where pricing, transaction reporting, and corporate news are sufficiently transparent and widely disseminated. *See* November 6 Telephone Conference, *supra* note 13.

[18] BGI questions requiring comprehensive surveillance sharing agreements (''CSSAs'') with the home country market for the underlying index components in proposed Commentary .03(a)(C) to Amex Rule 1000 and Commentary .02(a)(C) to Amex Rule 1000A. The standards set out in paragraph (B) of both Commentaries do not require a CSSA with the home country market because they provide for minimum levels of liquidity, concentration and pricing transparency for index components. If an ETF is based on an index whose components do not satisfy these composition criteria, it may be listed pursuant to paragraph (C) of both Commentaries if the Commission has previously approved the index or portfolio in connection with the listing and trading of another derivative product. To the extent that the Commission's approval of that index or portfolio required CSSAs, that requirement must also be satisfied. *See* November 6 Telephone Conference, *supra* note 13.

[19] The BGI Comment Letter requested clarification of when an index is ''no longer calculated or available'' and in such event, why a ''substantially similar'' substituted index could not satisfy the dissemination requirements of the listing standards. In response, the Exchange notes that many indexes change components periodically based on a specified methodology. Index turnover, consistent with such an index methodology, may not constitute an index substitution triggering possible delisting of the ETF. However, if the index underlying the ETF is substituted with a new index or the specified index methodology is substantially changed from the announced methodology under which the product was listed, the Exchange acknowledges that it must either file a new Form 19b–4(e) or the listing and trading of the derivative product is a proposed rule change pursuant to Section 19(b)(2) of the Exchange Act, 15 U.S.C. 78s(b)(2). *See* November 6 Telephone Conference, *supra* note 13.

ETFs pursuant to Rule 19b–4(e),[20] then for continued listing, approval by the Commission of a separate filing pursuant to Section 19(b)(2)[21] to list and trade that ETF would be required.[22]

The Exchange proposes to modify the initial and continued listing standards for all ETFs relating to disseminated information to formalize in the rules existing best practices for providing equal access to material information about the value of ETFs. Pursuant to Rules 1002(a)(ii) and 1002A(a)(ii), prior to approving an ETF for listing, the Exchange will obtain a representation from the ETF issuer that the net asset value (''NAV'') per share will be calculated daily and made available to all market participants at the same time.

In addition, proposed Rules 1002(b)(ii) and 1002A(b)(ii) establish that if the Intraday Indicative Value (as defined in Commentary .03 to Rule 1000 and Commentary .02 to Rule 1000A) or the index value applicable to that series of ETFs is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

With regard to trading, ETFs listed under the proposed standards will be subject to Amex rules and procedures that govern the trading of ETFs and the trading of equity securities on the Amex, including among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.[23]

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the PDRs and IFSs listed pursuant to the proposed new listing standards. Specifically, the Amex will rely on its existing surveillance procedures governing PDRs and IFSs. In addition, the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

III. Discussion and Commission Findings

After careful review, including consideration of the BGI Comment Letter, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act, in general, and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Exchange Act,[25] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Generic Listing Standards for Exchange-Traded Funds

To list ETFs based on international or global indexes, or on indexes or portfolios previously approved by the Commission as an underlying benchmark for a derivative security, the Amex currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a SRO will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of ETFs based on international or global indexes pursuant to Rule 19b–4(e) fulfills these requirements.

The Amex's ability to rely on Rule 19b–4(e) to list ETFs that meet the requirements of Commentary .03 to Amex Rule 1000 or Commentary .02 to Amex Rule 1000A potentially reduces the time frame for bringing these securities to the market, thereby reducing the burdens on issuers and other market participants and promoting competition and making ETFs based on global or international indexes available to investors more quickly.

The Commission has previously approved generic listing standards pursuant to Rule 19b–4(e)[26] of the Exchange Act for ETFs based on indexes that consist of stocks listed and traded on U.S. exchanges.[27] The Commission has also previously approved the listing and trading by the Exchange of several ETFs based on a variety of international and global market indexes.[28] In approving these securities for Exchange trading, the Commission considered applicable Amex rules that govern their trading. The Commission believes that generic listing standards for these securities should fulfill the intended objective of Rule 19b-4(e) under the Act[29] and allow those ETFs that satisfy the generic listing standards to commence trading without the need for public comment and Commission approval.[30]

ETF Listing and Trading

The Commission finds that the Amex proposal contains adequate rules and procedures to govern the listing of ETFs based on international or global indexes listed pursuant to Rule 19b-4(e) on the Exchange or trading pursuant to unlisted trading privileges (''UTP'').[31]

As proposed, Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A establish standards

[20] 17 CFR 240.19b–4(e).

[21] 15 U.S.C. 78s(b)(2).

[22] The Exchange notes that this is not a new requirement under the Exchange Act. The Exchange acknowledges that transparency of the index methodology is necessary for effective pricing of the derivative product and investor protection. *See* November 6 Telephone Conference, *supra* note 13.

[23] *See* Amex Rules 1000 through 1006 and 1000A through 1005A.

[24] 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).

[25] 15 U.S.C. 78f(b)(5).

[26] 17 CFR 240.19b–4(e).

[27] *See* Commentary .03 to Amex Rule 1000 and Commentary .02 to Amex Rule 1000A. *See also* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000).

[28] *See, e.g.*, Securities Exchange Act Release Nos. 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (approving the listing and trading of certain Vanguard International Equity Index Funds); 44700 (August 14, 2001), 66 FR 43927 (August 21, 2001) (approving the listing and trading of series of the iShares Trust based on certain S&P global indexes). Likewise, the Commission has approved listing standards that permit the listing and trading of index-based derivative securities where the same index had been considered in connection with the Commission's approval of another derivative security. *See, e.g.*, Amex *Company Guide* Section 107D (Index-Linked Securities), Securities Exchange Act Release No. 51563 (April 15, 2005), 70 FR 21257 (April 25, 2005).

[29] 17 CFR 240.19b–4(e).

[30] The Commission notes that the failure of a particular index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

[31] An exchange trading ETFs pursuant to UTP must comply with applicable trading rules and surveillance requirements for the derivative product. *See* Securities Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 (April 28, 1995).

for the composition of an index or portfolio underlying an ETF. These requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index.

Taken together, the Commission finds that these standards are reasonably designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements, will permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation. Similarly, the Commission finds that the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities. The Commission further believes that the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs.

The proposed generic listing standards will, alternatively, permit listing of an ETF if the Commission has previously approved the underlying index for trading in connection with another derivative product and the underlying index or portfolio constituents are all either U.S. Component Stocks, which must be listed on a national securities exchange and be an NMS stock as defined in Rule 600(b)(47) of Regulation NMS under the Act,[32] or Non-US Component Stocks listed on an exchange that has last-sale reporting.[33] The Commission believes that if it has previously determined that such index and its components were sufficiently transparent, then the Exchange may rely on this finding, provided that the Exchange complies with the rules and conditions set forth by the Commission in its prior approval order, including surveillance sharing arrangements with the foreign market, if any.[34]

Regardless of whether the ETF is listed and/or traded pursuant to these generic listing standards, the Exchange's proposal also requires the value of an index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds.[35] In addition, an Intraday Indicative Value, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during the time an ETF trades on the Exchange.[36] The Commission believes that by requiring pricing information for both the relevant underlying index [37] and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs listed and traded pursuant to Amex Rules 1000 and 1000A.

The Exchange proposes continued listing standards for all ETFs, whether listed pursuant to generic listing standards or by Commission approval of the specific product. In the event that an underlying index or portfolio value is no longer calculated on at least a 15 second basis or is substituted with an index that does not meet the applicable requirements, the Exchange will commence delisting proceedings. The Commission believes that this is an important safeguard to help assure that ETFs listed and traded on the Exchange meet applicable listing standards on an ongoing basis and do not, for example, trade without key pricing information available.

The Commission notes that each ETF will be required to represent that it will calculate and make available daily the NAV to all market participants at the same time. Furthermore, proposed Amex Rules 1002(b)(ii) and 1000A(b)(ii) require that, if the Intraday Indicative Value or index value applicable to an ETF is not disseminated as required, the Exchange may halt trading during the day in which the interruption occurs. If the interruption continues, then the Exchange will halt trading no later than the beginning of the next trading day. Similarly, if the Exchange deems further dealings in the product inadvisable, trading will be halted. The Commission believes that the delisting criteria, NAV dissemination requirements, and trading halt rules will help ensure an appropriate level of transparency exists with respect to each foreign ETF to allow for the maintenance of fair and orderly markets.

Surveillance

The Commission notes that any foreign ETFs approved for listing and trading would be subject to Amex's existing surveillance program for ETFs, which the Exchange has represented are adequate to properly monitor the trading of ETFs listed pursuant to these proposed generic listing standards.

Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Exchange has requested accelerated approval of the proposal to facilitate the prompt listing and trading of ETFs based on global or international indexes or portfolios meeting the specified criteria and ETFs based on indexes or portfolios underlying derivative securities that were previously approved by the Commission. The Commission notes that the Exchange's listing standards are based, in part, on previously approved ETF listing standards relating to indexes or portfolios made up of U.S. Component Stocks or on Commission orders approving the listing and trading of ETFs based on global or international indexes. The Commission believes that accelerated approval of the proposal should expedite the listing and trading of additional ETFs, subject to consistent and reasonable standards, to the benefit of the investing public. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[38] to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

[32] 17 CFR 242.600(b)(47).

[33] *See* proposed Commentary .03(a)(C) to Amex Rule 1000 and Commentary .02(a)(C) to Amex Rule 1000A.

[34] The Commission notes that it has taken this position connection with listing standards for ILSs. *See supra* note 28.

[35] *See* proposed Commentary .03(b)(iii) to Amex Rule 1000 and Commentary .02(b)(iii) to Amex Rule 1000A. To the extent an index or portfolio value does not change during some of the time that a foreign ETF trades on the Exchange, the last official calculated value must remain available throughout Exchange trading hours.

[36] *See* Commentary .03(c) to Amex Rule 1000 and Commentary .02(c) to Amex Rule 1000A. The Intraday Indicative Value will be updated to reflect changes in the exchange rate between the U.S. dollar and the currency in which any index or portfolio component stock is denominated.

[37] The requirement contemplates that one composite index value would be disseminated in accordance with this rule for any ETF based on several indexes.

[38] 15 U.S.C. 78s(b)(2).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–78. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. 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–Amex–2006–78 and should be submitted on or before December 8, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–Amex–2006–78), as modified by Amendments No. 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19415 Filed 11–16–06; 8:45 am]

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[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54732; File No. SR–NASDAQ–2006–044]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Modify the Rules of the Nasdaq Global Select Market

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 October 10, 2006, The NASDAQ Stock Market LLC (''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 has filed this 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. On November 2, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the rules related to closed-end funds listed on the Nasdaq Global Select Market to clarify the treatment of business development companies. The text of the proposed rule change, as amended, is below. Proposed new language is *italicized*.[6]

* * * * *

4426. Nasdaq Global Select Market Listing Requirements

(a) No change.

(b) Liquidity Requirements

(1)–(2) No change.

(3) The publicly held shares must have either:

(A)–(B) No change.

(C) a market value of at least $70 million in the case of: (i) An issuer listing in connection with its initial public offering; (ii) an issuer that is affiliated with, or a spin-off from, another company listed on the Global Select Market; and (iii) a closed end management investment company registered under the Investment Company Act of 1940 *or exempt from registration as a business development company as defined in Section 2 of the Investment Company Act of 1940.*

(c)–(d) No change.

(e) Closed End Management Investment Companies.

(1)–(2) No change.

(3) A closed end management investment company that is exempt from registration as a business development company as defined in Section 2 of the Investment Company Act of 1940 shall not be required to meet paragraph (c) of this Rule 4426 but must have a market value of listed securities of at least $80 million.

* * * * *

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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 recently amended the listing standards for the Nasdaq Global Select Market, in part, to clarify the treatment of closed-end management investment companies.[7] In that filing, Nasdaq inadvertently failed to describe the rules applicable to closed end management investment companies that elect to be treated as business development companies. This filing clarifies that, like other closed-end funds, business development companies do not have to meet the financial requirements of Nasdaq Rule 4426(c). However, such companies must have a market value of

[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] In Amendment No. 1, Nasdaq, among other things, added the requirement of $80 million market value of listed securities for business development companies exempt from registration pursuant to the Investment Company Act of 1940.

[6] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://www.complinet.com/nasdaq.*

[7] *See* Securities Exchange Act Release No. 54274 (August 3, 2006), 71 FR 45878 (August 10, 2006) (SR–NASDAQ–2006–020).

listed securities of at least $80 million to be eligible for initial listing.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that the proposal is 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change, as amended, clarifies Nasdaq's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposal 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 after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

Nasdaq requests that the Commission waive the 30-day operative period under Rule 19b–4(f)(6)(iii).[12] The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay,[13] because the proposal is consistent with the treatment afforded business development companies by other markets.[14]

At any time within 60 days of the filing of such proposed rule change, as amended, 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.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–044 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–NASDAQ–2006–044. 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 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–NASDAQ–2006–044 and should be submitted on or before December 8, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19424 Filed 11–16–06; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) of the Act, Nasdaq provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Section 102.04 of the New York Stock Exchange Listed Company Manual.

[15] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 2, 2006, the date Nasdaq filed Amendment No. 1 to the proposed rule change. *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54730; File No. SR–NYSEArca–2006–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendments No. 1, 2 and 3 Thereto Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

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 April 11, 2006, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE Arca filed Amendment No. 1 to the proposed rule change on August 18, 2006.[3] NYSE Arca filed Amendment No. 2 to the proposed

[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.

rule change on October 17, 2006.[4] NYSE Arca filed Amendment No. 3 to the proposed rule change on November 6, 2006.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rules 5.3(g), 5.6(k) and 6.39(a), as well as the Commentary to NYSE Arca Rules 11.3 and 11.16, to enable the initial and continued listing and trading on the Exchange of options on shares or other securities (''Exchange-Traded Fund Shares'' or ''Fund Shares'') that represent an interest in a specified non-U.S. currency. The text of the proposed rule change is below. Additions are *italicized,* deletions are [bracketed].

Rules of the NYSE Arca, Inc.

RULE 5 OPTION CONTRACTS TRADED ON THE EXCHANGE

Section 2. Underlying Securities

* * * * *

Rule 5.3—Criteria for Underlying Securities

(a)–(f)—No change.

(g) Exchange-Traded Fund Shares. Securities deemed appropriate for options trading shall include shares or other securities (''Exchange-Traded Fund Shares'' *or ''Fund Shares''*) that are [principally] traded on a national securities exchange [or through the facilities of a national securities association] and *are defined as an ''NMS stock'' in Rule 600(b)(47) of Regulation NMS* [reported as a national market security], and that *(i)* represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities, *or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust (''Funds'');* provided:

(1)

(A) the Exchange-Traded Fund Shares meet the criteria and guidelines for underlying securities set forth in Rule 5.3(a) *and (b);* or

(B) the Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from *or through the issuing trust, investment company or other entity* [the investment company] at a price related to the net asset value. In addition, the *issuer* [investment company] *is obligated* [shall provide that] *to issue Fund Shares in a specified aggregate number* [fund shares may be created] even though some or all of the *investment assets* [securities] needed to be deposited have not been received by the *issuer* [unit investment trust or the management investment company], provided the authorized creation participant has undertaken to deliver the *investment assets* [shares] as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the *issuer of Fund Shares* [fund] which underlie[s] the option as described in the *Fund Shares'* [fund or unit trust] prospectus; and

(2)

(A) any non-U.S. component securities (including fixed-income) in *an* [the] index or portfolio *of securities* on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(B) *component* securities (including fixed-income) *of an index or portfolio of securities on which Fund Shares are based* for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; [and]

(C) *component* securities (including fixed-income) *of an index or portfolio of securities on which Fund Shares are based* for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index*; and*[.]

(D) for Funds that hold a specified non-U.S. currency deposited with the trust, the Exchange has entered into an appropriate comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency, which are utilized by the national securities exchange where the underlying Funds are listed and traded.

(h)—No change.

* * * * *

Rule 5.6—Withdrawal of Approval of Underlying Securities

(a)–(j)—No change.

(k) Absent exceptional circumstances, securities initially approved for options trading pursuant to Rule 5.3(g) (such securities are defined and referred to in that [Commentary] *rule* as ''Exchange-Traded Fund *S*[s]hares'' *or ''Fund Shares''*) shall not be deemed to meet the Exchange's requirements for continued approval, and the exchange shall not open for trading any additional series of option contracts of the class covering such Exchange-Traded Fund Shares, whenever the Exchange-Traded Fund Shares are delisted *as provided in subparagraph (b)(5) or* [and] trading in the *Fund* Shares is [suspended] *halted* on *their primary market* [a national securities exchange, or the Exchange-Traded Fund Shares are no longer traded as national market securities through the facilities of a national securities association]. In addition, the Exchange shall consider the suspension of opening transactions in any series of options of the class covering Exchange-Traded Fund Shares in any of the following circumstances:

(1) In accordance with the terms of paragraphs 1 through [7]*4* of Rule 5.6(b) in the case of options covering Exchange-Traded Fund Shares when such options were approved pursuant to Rule 5.3(g)*(1)(A).*

(2) *In the case of options covering Exchange-Traded Fund Shares approved pursuant to Rule 5.3(g)(1)(B),* [F]*f*ollowing the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares on a national securities exchange [or as national market securities through the facilities of a national market association] *and are defined as an ''NMS stock'' in Rule 600(b)(47) of Regulation NMS,* there are fewer than 50 record and/or beneficial holders of *such* Exchange-Traded Fund Shares for 30 *or* more consecutive trading days;

(3) The value of the index or portfolio of securities *or non-U.S. currency* on which the Exchange-Traded Fund Shares are based is no longer calculated or available; or

[4] Amendment No. 2 corrected certain minor, inadvertent omissions to the changes proposed in Amendment No. 1. In Amendment No. 2, NYSE Arca also clarified that Fund Shares must be traded on a national securities exchange pursuant to NYSE Arca Rule 5.3(g).

[5] Amendment No. 3 clarified the proposal, as earlier amended, and corrected certain minor, inadvertent omissions to the changes proposed in Amendments No. 1 and 2.

(4) Such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

(l)—No change.

Commentary:

.01—No change.

* * * * *

RULE 6 OPTIONS TRADING

Rule 6.39—Securities Accounts and Orders of Market Makers

(a) Identification of Accounts [Upon Request]. *A Lead Market Maker in the Fund Shares, as defined in Rule 5.3(g), is obligated to conduct all trading in the Fund Shares in account(s) that have been reported to the Exchange. In addition,* [I]*i*n a manner prescribed by the Exchange, each Market Maker shall [upon request] file with the Exchange a list identifying all accounts for stock, option*s, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* and related securities trading in which the Market Maker may directly or indirectly engage in trading activities or over which the Market Maker exercises investment discretion. *No Market Maker shall engage in stock, options, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency or related securities trading in an account that has not been reported pursuant to this Rule.*

(b)—No change.

Commentary:

.01—No change.

* * * * *

RULE 11 BUSINESS CONDUCT

Rule 11.3—Prevention of the Misuse of Material, Nonpublic Information

(a)–(b)—No change.

Commentary:

.01 For purposes of Rule 11.3, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

A. Trading in any securities issued by a corporation *or Funds, as defined in Rule 5.3(g), or a trust or similar entities,* or in any related securities or related options or other derivative securities, *or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* while in possession of material, non-public information concerning that issuer; or

B. Trading in a security or related options or other derivative securities, *or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* while in possession of material non-public information concerning imminent transactions in the *above* [security or related securities]; or

C. Disclosing to another person or entity any material, non-public information involving a corporation *or Funds or a trust or similar entities* whose shares are publicly traded or an imminent transaction in an underlying security or related securities *or in the underlying non-U.S. currency, or any related non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency* for the purpose of facilitating the possible misuse of such material, non-public information.

.02–.03—No change.

* * * * *

Rule 11.16—Books and Records

(a)—No change.

Commentary:

.01—No change.

.02 In addition to the existing obligations under Exchange rules regarding the production of books and records, a Lead Market Maker in non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, shall make available to the Exchange such books, records or other information pertaining to transactions in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives on such currency, as may be requested by the Exchange.

(b)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend NYSE Arca Rules 5.3(g), 5.6(k) and 6.39(a), as well as the Commentary to NYSE Arca Rules 11.3 and 11.16, to enable the initial and continued listing and trading on the Exchange of options on shares of exchange-traded funds (''ETFs'') that hold a specified non-U.S. currency. The proposed rule change is based on the rule proposal of the International Securities Exchange (''ISE''), which was approved by the Commission.[6]

Currently, the term ''Exchange-Traded Fund Shares,'' as defined under NYSE Arca Rule 5.3(g), requires that the investment assets held by a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity consist of securities constituting or otherwise based on or representing an investment in an index or portfolio of securities. As proposed, amended NYSE Arca Rule 5.3(g) would also permit the investment assets to consist of a trust that holds a specified non-U.S. currency deposited with the trust.

In particular, the proposed amendment to NYSE Arca Rule 5.3(g) would permit the Exchange to list options on the euro shares (''Shares'' or ''Euro Shares'')[7] issued by the Euro Currency Trust (''Trust'')[8] and other similarly structured currency-based products, which function as an ETF, whose Shares reflect the price of a particular foreign currency and whose assets are limited to a particular foreign currency. The Shares may be purchased from the Trust only in one or more blocks of 50,000 Shares, as described in the prospectus under ''Creation and Redemption of Shares.'' A block of 50,000 shares is called a Basket. The Trust issues Shares in Baskets on a continuous basis to certain authorized participants (''Authorized Participants'') as described in the prospectus under ''Plan of Distribution.'' Each Basket, when created, is offered and sold to an Authorized Participant at a price in euro

[6] *See* Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR–ISE–2005–60).

[7] The Shares trade on the New York Stock Exchange (''NYSE'') under the symbol ''FXE.'' The Shares may also trade in other markets.

[8] The Exchange notes that the Trust is not a registered investment company under the Investment Company Act of 1940 (the ''1940 Act'') and is not required to register under the 1940 Act.

equal to the net asset value (''NAV'') for 50,000 Shares on the day that the order to create the Basket is accepted by the Trustee.

The Exchange believes that permitting options on foreign currency-based Fund Shares to be traded on the Exchange is consistent with the Commission's recent approval order of a rule change filed by the NYSE to list and trade the Shares.[9] This rule change to NYSE Arca's listing criteria for Fund Shares is intended to provide appropriate listing standards for options on the Shares and similar types of foreign currency-based Fund Shares that may be listed in the future.

For options trading, the underlying Fund Shares will continue to need to satisfy the listing standards in NYSE Arca Rule 5.3(g). Specifically, the Fund Shares must be traded on a national securities exchange and must be an ''NMS stock'' as defined in Rule 600(b)(47) of Regulation NMS.[10] The Fund Shares must also either: (1) Meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a) and (b); or (2) be available for creation or redemption each business day in cash or in kind from or through the issuer at a price related to NAV, and the issuer is obligated to issue Fund Shares in a specified aggregate number even though some or all of the investment assets needed to be deposited have not been received by the issuer, subject to the condition that the authorized creation participant has undertaken to deliver the investment assets as soon as possible, and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as described in the prospectus. Proposed NYSE Arca Rule 5.3(g)(2)(D) provides that ''for Funds that hold a specified non-U.S. currency deposited with the trust, the Exchange has entered into an appropriate comprehensive surveillance sharing agreement with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency, which are utilized by the national securities exchange where the underlying Funds are listed and traded.'' The Exchange is also proposing to make other conforming changes to the text of NYSE Arca Rule 5.3(g) to reflect the proposed broadened definition of Fund Shares.

Under NYSE Arca Rule 5.6(k), the Exchange will not open for trading any additional series of option contracts of a class covering Fund Shares whenever the Fund Shares are delisted or trading in the Fund Shares is halted on the primary market. In addition, the Exchange will consider the suspension of opening transactions in any series of options of the class covering Fund Shares as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days; (2) the value of the non-U.S. currency is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

The Exchange represents that the expansion of the types of investments that may be held by a Fund Share under NYSE Arca Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits[11] or margin.[12]

The Exchange is also proposing to amend Commentary .01 to NYSE Arca Rule 11.3 to require an OTP Holder or OTP Firm to establish, maintain, and enforce written policies and procedures designed to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. Finally, the Exchange is proposing to amend NYSE Arca Rule 6.39(a) and to add Commentary .02 to NYSE Arca Rule 11.16 to require that market makers handling options on Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, proposed NYSE Arca Rule 6.39(a) would prohibit market makers from engaging in stock, options, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency or related securities trading in an account which has not been reported in a manner prescribed by the Exchange.

The Exchange represents that it has an adequate surveillance program in place for options on the Fund Shares, and intends to apply those same program procedures that it applies to options on Fund Shares currently traded on the Exchange. To comply with proposed NYSE Arca Rule 5.3(g)(2)(D), the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Specifically, NYSE Arca can obtain such information from the Philadelphia Stock Exchange (''Phlx'') in connection with euro options trading on the Phlx and from the Chicago Mercantile Exchange (''CME'') and the London International Financial Futures Exchange (''LIFFE'') in connection with euro futures trading on those exchanges.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[14] of the Act in general and furthers the objectives of Section 6(b)(5)[15] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In addition, the Exchange believes that, with the commencement of trading of a currency-based ETF of the NYSE, amending its rule to accommodate the listing and trading of options on publicly traded shares or other securities that hold investment assets consisting of foreign currency will benefit investors by providing them with the same valuable risk management tool that is currently available with respect to other publicly traded ETFs whose investment assets consist of securities.

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.

[9] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65).

[10] In light of the implementation of certain aspects of Regulation NMS, the Exchange hereby seeks to amend NYSE Arca Rule 5.3(g) to reflect that Exchange-Traded Fund Shares must be NMS stocks as defined in Rule 600(b)(47) of Regulation NMS instead of ''national market'' securities. The Exchange also seeks to amend NYSE Arca Rule 5.6(k), the maintenance rule for Exchange-Traded Fund Shares, to delete obsolete references contained therein.

[11] *See* NYSE Arca Rules 6.8 and 6.9.

[12] *See* NYSE Arca Rule 4.16.

[13] Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2006–04 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2006–04. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2006–04 and should be submitted on or before December 8, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Currently, the Exchange can list options on Fund Shares that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity that holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities.[18] The Exchange's proposal would allow it to list and trade options on Fund Shares whose investment assets consist of a specified non-U.S. currency deposited with a trust.[19]

The underlying Fund Shares would continue to need to satisfy the listing standards in NYSE Arca Rule 5.3(g). Specifically, the Fund Shares must be traded on a national securities exchange[20] and must be an ''NMS stock'' as defined in Rule 600(b)(47) of Regulation NMS.[21] The Fund Shares must also either: (1) meet the criteria and guidelines for underlying securities set forth in NYSE Arca Rule 5.3(a) and (b); or (2) be available for creation or redemption each business day in cash or in kind from or through the issuer at a price related to NAV, and the issuer is obligated to issue Fund Shares in a specified aggregate number. The Commission notes that the Exchange has represented that the expansion of the types of investments that may be held by a Fund Share under NYSE Arca Rule 5.3(g) will not have any effect on the rules pertaining to position and exercise limits or margin.[22]

To accommodate the listing and trading of options on Fund Shares investing in non-U.S. currency, the Exchange proposes to amend Commentary .01 to NYSE Arca Rule 11.3 to require an OTP Holder or OTP Firm to establish, maintain, and enforce written policies and procedures designed to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. Further, the Exchange proposes to amend NYSE Arca Rule 6.39(a) and to add Commentary .02 to NYSE Arca Rule 11.16 to require that market makers handling options on Fund Shares provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. The Commission believes that these requirements should minimize potential manipulation concerns.

Finally, under the proposed change to NYSE Arca Rule 5.6(k), absent exceptional circumstances, Fund Shares would not be deemed to meet the requirements for continued approval, and the Exchange would not open for trading any additional series of option contracts of the class covering such Fund Shares, if the Fund Shares are delisted or, pursuant to the proposed rule change, trading in the Fund Shares is halted on their primary market. The Commission believes that the Exchange's proposal to amend NYSE Arca Rule 5.6(k) addressing trading halts in the Fund Shares on their primary market is consistent with the protection of investors and the public interest. NYSE Arca Rule 5.6(k) also provides that the Exchange will consider the suspension of opening transactions in any series of options of the class covering Fund Shares if the value of the non-U.S. currency on which the Fund Shares are based is no longer calculated or available. The Commission believes that this change appropriately addresses the Exchange's proposed broadened definition of Fund Shares to include Fund Shares that represent interests in a trust that holds a specified non-U.S. currency.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* NYSE Arca Rule 5.3(g).

[19] For example, the Exchange's proposed rule change will permit the Exchange to list options on Euro Shares that are listed and traded on the NYSE under the symbol ''FXE.'' *See supra* note 9.

[20] The Commission notes that NYSE Arca is proposing to revise NYSE Arca Rule 5.3(g) to eliminate the current reference to trading through the facilities of a national securities association.

[21] 17 CFR 242.600(b)(47).

[22] *See supra* notes 11 and 12.

The Exchange has represented that it has an adequate surveillance program in place for options on the Fund Shares, as defined by the Exchange's proposal, and it intends to apply those same program procedures that it applies to options on Fund Shares currently traded on the Exchange. In addition, under proposed NYSE Arca Rule 5.3(g)(2)(D), before listing and trading options on Fund Shares based on a non-U.S. currency, the Exchange must have entered into an appropriate comprehensive surveillance sharing agreement with the applicable marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency. This provision means that the options exchange listing options on the Fund Shares must utilize the same comprehensive surveillance sharing arrangements utilized by the equity markets that list and trade the Fund Shares. Through its membership in the ISG, the Exchange is able to obtain trading information regarding trading of listed foreign currency derivative products from other marketplaces that are members or affiliates of the ISG. With respect to the Euro Shares, the Commission notes that the Exchange can obtain such information from the Phlx in connection with euro options trading on the Phlx and from the CME and the LIFFE in connection with euro futures trading on those exchanges.[23]

Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[24] The Exchange has requested accelerated approval of the proposed rule change. The proposal implements rules for the listing and trading of options on Fund Shares representing an interest in a specified non-U.S. currency that are substantially similar to listing standards recently adopted by the ISE.[25] Inasmuch as options on Fund Shares are already listed and traded on other exchanges, the Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Granting accelerated approval to the proposal will enable the Exchange to immediately list and trade options on ETFs holding non-U.S. currency. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[26] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and rules and regulations thereunder applicable to the national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NYSEArca-2006–04), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19418 Filed 11–16–06; 8:45 am]

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[23] *See supra* note 13.

[24] 15 U.S.C. 78s(b)(2).

[25] *See supra* note 6.

[26] 15 U.S.C. 78s(b)(2).

[27] *See id.*

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54721; File No. SR–OCC–2006–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Cash-Settled Foreign Currency Options

November 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 8, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 26, 2006, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 proposed rule change would enable OCC to accommodate a request from the Philadelphia Stock Exchange, Inc. (''Phlx'') that OCC clear and settle cash-settled foreign currency options (''Cash-Settled FCOs'').

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable OCC to accommodate a request from the Philadelphia Stock Exchange, Inc. (''Phlx'') that OCC clear and settle Cash-Settled FCOs. OCC's By-Laws and Rules currently provide for the clearance and settlement of Cash-Settled FCOs although no such options are currently traded, but changes to OCC's By-Laws are needed in connection with the Cash-Settled FCOs proposed to be traded by Phlx.[3] The first change is to reflect the different expiration date of the Cash-Settled FCOs as compared with the date provided for in OCC's By-Laws. The definition of ''expiration date'' in Article XXII, Section 1 of OCC's By-Laws provides that Cash-Settled FCOs generally expire on the Monday specified by the relevant exchange at or before trading begins. To accommodate the Cash-Settled FCOs proposed to be traded by Phlx, the definition will need to be amended to provide for an expiration date of the Saturday following the third Friday of the expiration month, which is the same as the expiration date for equity and index options. OCC is also proposing to provide for expirations on such other dates as an exchange may determine, which is consistent with the definition of ''expiration date'' applicable to index options. The next proposed change, to Article VI, Section 22 of OCC's By-Laws, is intended to make it clear that Cash-Settled FCOs will not clear through OCC's International Clearing System.[4]

[2] The Commission has modified parts of these statements.

[3] For a description of the Phlx proposed rule change, see Securities Exchange Act Release No. 54652 (October 26, 2006) 71 FR 64597 (November 2, 2006) [File No. SR–Phlx–2006–34].

[4] Interpretation .02 under Article VI, Section 22 of OCC's By-Laws currently provides, ''All classes of foreign currency options and cross-rate foreign currency options are cleared through ICS.''

OCC amended the proposed rule change on October 26, 2006, to propose amending Article XXII, Section 4 of OCC's By-Laws to conform the provisions relating to unavailability or inaccuracy of the spot price for Cash-Settled FCOs to the comparable provisions of Article XVII of OCC's By-Laws relating to the unavailability or inaccuracy of the current index value or other value or price used to determine the exercise settlement amount for index options. The primary conforming changes are the proposed addition of procedures under which the exercise settlement amount would be established by an adjustment panel in the event of the unavailability or inaccuracy of the spot price and a modification of normal expiration date exercise procedures in situations in which the adjustment panel delays the fixing of the exercise settlement amount beyond the last trading day for the affected series.

This amendment also proposes to amend Rule 2302 of OCC's Rules in connection with a change in the expiration date exercise procedures for Cash-Settled FCOs. As originally filed, the rules for Cash-Settled FCOs would have provided for true automatic exercise without the opportunity for clearing members to give non-exercise instructions. Phlx has subsequently informed OCC that Cash-Settled FCOs should be subject to the same ''exercise-by-exception'' procedures that apply to many other OCC-issued options. Under ''exercise-by-exception'' procedures, a Cash-Settled FCO would be deemed to be exercised at expiration if the exercise settlement value is at least $1.00 per contract unless the clearing member instructs OCC not to exercise it. OCC is also proposing to add an interpretation to Rule 2302 to note that the normal expiration date exercise procedures do not apply in circumstances in which the fixing of the exercise settlement amount is delayed beyond the last trading day before expiration of cash-settled foreign currency options.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it is designed to promote the prompt and accurate clearance and settlement of derivative transactions in Cash-Settled FCOs, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2006–10 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–OCC–2006–10. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com.*

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-OCC–2006–10 and should be submitted on or before December 8, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19419 Filed 11–16–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54734; File No. SR–SCCP–2006–02]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Granting Approval of a Proposed Rule Change Relating to the Definition of a Margin Member

November 9, 2006.

I. Introduction

On August 14, 2006, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–SCCP–2006–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 29, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54488, (September 22, 2006), 71 FR 57598.

granting approval of the proposed rule change.

II. Description

The rule change amends the definition of ''margin member'' in SCCP Rule 1, Definitions, to accommodate the introduction of equity market makers on the Philadelphia Stock Exchange (''Phlx'') and to reflect the introduction of Phlx's new equity trading system, XLE, which will replace Phlx's equity trading floor.[3] XLE is an electronic trading system which will provide for the entry, display, ranking, routing, and execution of orders in NMS stocks[4] for its members and member organizations (''XLE Participants''). The current equity specialists will be replaced by market makers, a type of XLE Participant, which will be liquidity providers on XLE.[5]

SCCP Rule 1, Definitions, currently defines ''margin members'' as SCCP participants that are Phlx specialists, alternate specialists, or other Phlx floor members specifically approved by the National Securities Clearing Corporation to effect trading in a margin account. Margin members that clear and settle their transactions through SCCP's ''omnibus clearance and settlement account'' at NSCC receive margin accounts from SCCP.[6] SCCP expects that many of its current margin members that are Phlx specialists, alternate specialists, or other Phlx floor members will become XLE Participants, including market makers, upon approval of XLE. This rule change amends the definition of margin member in SCCP's rules to add the term market maker[7] and to remove the word floor from the term Phlx floor member. This will allow SCCP members that are currently margin members under Rule 1 of SCCP's rules to maintain their status as margin members following Phlx's transition to XLE.

SCCP believes that the proposed rule change is consistent with Section 17A of the Act[8] because the proposed rule change is designed to allow current SCCP margin members to maintain their status as they transition from the current floor based trading environment at Phlx to the XLE electronic trading system and would thereby promote the prompt and accurate clearance and settlement of securities transactions and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance of securities transactions.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[9] SCCP is a member of NSCC and has an omnibus clearance and settlement account at NSCC through which its margin members' transactions are cleared and settled. The proposed rule change amends the definition of margin member in SCCP's rules to accommodate the Phlx rule change regarding XLE that was recently approved by the Commission. The proposed rule change neither affects the services SCCP may provide to its member nor affects SCCP's agreement with NSCC to clear and settle transactions submitted through SCCP's omnibus account. Accordingly, because the proposed rule change is designed to be consistent with the new Phlx rules for the XLE trading platform and to avoid any confusion with respect to the services SCCP's members may receive either directly from SCCP or through SCCP's omnibus clearance and settlement account at NSCC, we find that it is designed to promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–2006–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–19422 Filed 11–16–06; 8:45 am]

BILLING CODE 8011–01–P

[3] Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006) [File No. SR–Phlx–2006–43] (Order granting approval of a proposed rule change relating to Phlx's new equity trading system, XLE).

[4] 17 CFR 242.600(b)(47).

[5] Not every security on XLE will require a market maker. However, if a market maker or multiple market makers choose to register in a security, they must provide a two-sided market in that security on XLE during regular trading hours (usually 9:30 AM to 4:00 PM) of the security. Therefore, some securities on XLE may have no market makers or may have one or more market makers.

[6] SCCP Rule 9, Margin Accounts.

[7] The rule change in File No. SR–Phlx–2006–43 defines the term ''market maker'' in Phlx Rule 1, Definitions, paragraph (m). It also adds new rules 170 through 174 to set forth the registration requirements, rights, and obligations of Phlx market makers.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; FAA Antidrug And Alcohol Misuse Prevention Programs

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

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The FAA uses this information for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must provide annual MIS testing information, and communicating with entities subject to the program regulations.

DATES: Please submit comments by January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Total: FAA Antidrug And Alcohol Misuse Prevention Programs.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0535.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 7,000 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden Per Response: Approximately 5 minutes per response.

Estimated Annual Burden Hours: An estimated 22,892 hours annually.

Abstract: The FAA uses this information for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must

provide annual MIS testing information, and communicating with entities subject to the program regulations. In addition, the information is used to ensure that appropriate action is taken in regard to crew members and other safety-sensitive employees who have tested positive for drugs or alcohol, or have refused to submit to testing.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, Strategy and Investment Analysis Division, AIO–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and 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.

Issued in Washington, DC, on November 13, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Strategy and Investment Analysis Division, AIO–20.

[FR Doc. 06–9247 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Burlington International Airport, South Burlington VT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps for Burlington International Airport, as submitted by the City of Burlington under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is November 6, 2006.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA funds that the noise exposure maps submitted for Burlington International Airport are in compliance with applicable requirements of Part 150, effective November 6, 2006.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Burlington. The specific maps under consideration were ''Figure 1. 2006 Existing Condition Noise Exposure Map'' and ''Figure 2. 2011 Forecast Condition Noise Exposure Map'' in the submission. The FAA has determined that these maps for Burlington International Airport are in compliance with applicable requirements. This determination is effective on November 6, 2006.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps are available for examination at the following locations: Engineering Office, Room 295 Terminal Building, Burlington International Airport, 1200 Airport Drive, South Burlington VT, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT**.

Issued in Burlington, Massachusetts on November 6, 2006.

LaVerne Reid,

Manager, Airports Division.

[FR Doc. 06–9249 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Acceptance of Transfer Statements Under UCC 9–616, for Recording in Aircraft Records

ACTION: Notice.

SUMMARY: This notice is issued by the Federal Aviation Administration (FAA) Chief Counsel to advise interested parties of the FAA's acceptance of transfer statements filed with the FAA Aircraft Registry that are executed under the Uniform Commercial Code, section 9–619, as adopted by the various states.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, AMC–7, Federal Aviation Administration, P.O. Box 25082, Oklahoma City, OK 73125–4904, or call (405) 954–3296.

SUPPLEMENTARY INFORMATION: By Memorandum dated September 7, 2006, Mr. Dean Gerber, Vedder, Price, Kaufman & Kammholz, P.C., wrote to the FAA about a default on a secured transaction which resulted in foreclosure of the owner/lessor's interest in several aircraft. In addition to the secured transaction, the aircraft are subject to leases from the defaulting owner, as lessor to a third party certificated air carrier. The foreclosing party wants the FAA aircraft records to reflect its interest in the leases so that transfer of lessor's rights to a new owner/lessor can be accomplished. The defaulting party is unwilling to deliver an assignment of the leases to the foreclosing party. Absent an assignment of lessor's rights in the leases, the foreclosing party has been unable to cause FAA aircraft records to reflect its rights in the leases.

The Administrator of the FAA is charged in 49 U.S.C. 44107 with establishing a system for recording conveyances that affect an interest in a U.S. civil aircraft. Part 49 of the Federal Aviation Regulations—Recording of Aircraft Titles and Security Documents provides that leases are conveyances (see 49 U.S.C. 40101(a)(19), 14 CFR 49.17(a)(1)). Section 39.17(d) of the Regulations provides for recording of consensual assignments of conveyances such as security documents and leases. However, in default situations, the Regulations only provide for recording of a Certificate of Repossession, FAA Form 8050–4, or its equivalent, addressing ownership of an aircraft (14 CFR 47.11(b)). When the repossessed aircraft remains subject to a lease, there is no apparent way for a repossessing party to record its interest in the lease. To address this problem, Mr. Gerber's memorandum included a proposed transfer statement under the Uniform Commercial Code (UCC) section 9–619 as a mechanism by which a foreclosing secured party can cause the record to reflect its rights in leases.

Section 9–619 of the UCC provides that a properly presented transfer statement ''entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, * * * system * * *'' Further, section 9–619 provides that upon proper presentation, the official responsible for maintaining the system shall accept the transfer statement and promptly amend its records to reflect the transfer. That ''official'' in the context of Mr. Gerber's request would be the FAA Aircraft Registry.

The FAA has determined that in appropriate circumstances, transfer statements may be recordable instruments. However, users are reminded that the validity of transfer statements is determined under the applicable state law, i.e., State adoptions of Section 9–619 of the UCC.

Accordingly, the FAA publishes, as an attachment, its response to Mr. Gerber.

Issued in Washington, DC, on November 13, 2006.

Rebecca MacPherson,

Assistant Chief Counsel for Regulations.

Attachment

October 6, 2006.

Dean A. Gerber, Esq.
Vedder, Price, Kaufman & Kammholz, P.C., 222 North LaSalle Street, Chicago, IL 60601.

Dear Mr. Gerber:

Legal Opinion—Lease Assignments Through the Use of Transfer Statements

This responds to your request for an opinion whether the Federal Aviation Administration (FAA) will consider utilization of a transfer statement for purposes of assigning (on the record) the rights of the aircraft owner in existing leases to the Indenture Trustee; and whether a transfer statement under Uniform Commercial Code section 9–619 is eligible for recording as a stand-alone document.

As an attachment to your request, you provided a draft proposed Transfer Statement and its Attachment A. The proposed Transfer Statement appears to contain all of the provisions required by Uniform Commercial Code Section 9–619 including the statement ''By reason of such past-default remedies, the Indenture Trustee has acquired the rights of the Owner Trustee as lessor under the Existing Lease and is now considered the 'Lessor' under the Existing Lease * * *.''

Briefly, the facts underlying your request are as follows: The registered owner of the aircraft has defaulted under a recorded security agreement. The collateral under that security agreement is the aircraft and various leases of the aircraft to a certificated air carrier, as lessee. You acknowledge that ownership of the aircraft can be affected by repossession and foreclosure evidenced by the filing of a Certificate of Repossession under 14 CFR § 47.11. However, your client seeks a way to evidence of record its accession to the rights of the registered owner (the Lessor) in the leases and subsequently be able to record an assignment of that interest from the Indenture Trustee to the new aircraft owner.

By way of background, the Administrator of the Federal Aviation Administration is charged with establishing a system for recording conveyances, including leases that affect an interest in a U.S. civil aircraft. (*See* 49 U.S.C. 40102(a)(19), 44107; 14 CFR 49.17(a)(1).)

Part 49 of the Federal Aviation Regulations contains provisions for recording assignments of those conveyances. However, where such assignment is not feasible as sometimes occurs in a default situation, there are no regulatory provisions to provide notice to system users of the transfer when the collateral involved is a lease. Although a transfer statement has definite structure and effect it is not the type of assignment contemplated by 14 CFR 49.17(d)(3).[1]

Recognizing that dilemma, the drafters of the Uniform Commercial Code (UCC) introduced a mechanism by which a repossessing party can evidence its rights in collateral such as leases. UCC section 9–619 *Transfer of Record or Legal Title*,[2] introduces the transfer statement as follows:

(a) [''Transfer statement.''] In this section, ''transfer statement'' means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; (emphasis added) and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) [Effect of transfer statement.] A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to

[1] 14 CFR 49.17(d)(3)—The following rules apply to conveyances executed for security purposes and assignments thereof: An assignment of an interest in a security agreement must be signed by the assignor and, unless it is attached to and is a part of the original agreement, must describe the agreement in sufficient detail to identify it, including its date, the names of the parties, the date of FAA recording, and the recorded conveyance number.

[2] The 2000 revisions to Article 9 have been adopted by all 50 states, the District of Columbia and the Virgin Islands (ULA UCC Refs & Annos, Westlaw).

the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; (emphasis added) and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) [Transfer not a disposition; no relief of secured party's duties.] A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

I have also considered the Official Comments of the UCC drafters wherein they explain the intent of UCC 9–916:

Transfer of Record or Legal Title. Potential buyers of collateral that is covered by a certificate of title (e.g., an automobile) or is subject to a registration system (e.g., a copyright) typically require as a condition of their purchase that the certificate or registry reflect their ownership. In many cases, this condition can be met only with the consent of the record owner. If the record owner is the debtor and, as may be the case after the default, the debtor refuses to cooperate, the secured party may have great difficulty disposing of the collateral. (emphasis added)

Subsection (b) provides a simple mechanism for obtaining record or legal title, for use primarily when other law does not provide one. (emphasis added) Of course, use of this mechanism will not be effective to clear title to the extent that subsection (b) is preempted by federal law. Subsection (b) contemplates a transfer of record or legal title to a third party, following a secured party's exercise of its disposition or acceptance remedies under this Part, as well as a transfer by a debtor to a secured party prior to the secured party's exercise of those remedies. Under subsection (c), a transfer of record or legal title (under subsection (b) or under other law) to a secured party prior to the exercise of those remedies merely puts the secured party in a position to pass legal or record title to a transferee at foreclosure. A secured party who has obtained record or legal title retains its duties with respect to enforcement of its security interest, and the debtor retains its rights as well.

3. Title-Clearing Systems Under Other Law. Applicable non-UCC law (e.g., * * *, federal registry rules, or the like) (emphasis added) may provide a means by which the secured party may obtain or transfer record or legal title for the purpose of a disposition of the property under this Article. The mechanism provided by this section is in addition to any title-clearing provision under law other than this Article.

After due consideration of these facts, provisions and comments, it is my opinion that the FAA will consider utilization of a transfer statement as contemplated by Section 9–619 of the Uniform Commercial Code for purposes of transferring the rights of the aircraft owner, as Lessor, to the Indenture Trustee in existing leases.

Further, your proposed transfer statement is eligible for recording as a stand-alone document because it is a conveyance affecting an interest in a civil aircraft of the United States in that it affects an interest in a recorded lease between Wells Fargo Bank and Northwest Airlines concerning operational control of aircraft.

Be advised that for purposes of transferring ownership of an aircraft FAA will not consider a transfer statement a substitute for a Certificate of Repossession or its equivalent under 14 CFR 47.11

Sincerely,

Joseph R. Standell

Aeronautical Center Counsel

[FR Doc. 06–9250 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–25886]

State Enforcement of Household Goods Consumer Protection

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice.

SUMMARY: The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) gives State household goods regulatory authorities and State attorneys general the right to enforce certain consumer protection provisions that apply to individual shippers and are related to interstate movement of the goods. This notice specifies the Federal statutory and regulatory provisions that States may enforce.

DATES: The policy in this notice is effective as of the enactment of SAFETEA–LU, August 10, 2005. State household goods regulatory authorities and State attorneys general may enforce the statutory provisions and FMCSA regulations identified in this notice for actions on or after that date.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, Household Goods Team, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh St., SW., Room 8310, Washington, DC 20590–0001. (202) 385–2400. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On August 10, 2005, the President signed the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Public Law 109–59). Section 4206 of SAFETEA–LU amends Title 49 of the United States Code (U.S.C.) by adding two new sections, 14710 and 14711, to address the enforcement of the consumer protection provisions of Title 49 and related regulations applicable to the delivery and transportation of household goods in interstate or foreign commerce. Before the passage of SAFETEA–LU, the Federal government was responsible for enforcing these statutes and regulations. Section 14710 extends to State agencies that regulate the movement of intrastate household goods the authority to ''enforce the consumer protection provisions of this title [Title 49] that apply to individual shippers, as determined by the Secretary [of the U.S. Department of Transportation], and are related to the delivery and transportation of household goods in interstate commerce.'' Section 14711 gives State attorneys general the authority to bring a civil action or impose civil penalties in the U.S. district courts to enforce the consumer protection provisions that apply to individual shippers and are related to the delivery and transportation of household goods in interstate or foreign commerce.

Section 4202 of SAFETEA–LU amended 49 U.S.C. 13102 to define ''individual shipper'' as follows:

> The term ''individual shipper'' means any person who—
>
> (A) Is the shipper, consignor, or consignee of a household goods shipment;
>
> (B) Is identified as the shipper, consignor, or consignee on the face of the bill of lading;
>
> (C) Owns the goods being transported; and
>
> (D) Pays his or her own tariff transportation charges.

FMCSA has determined that the States, under sections 14710 and 14711, may enforce the following statutory provisions and FMCSA regulations [1] immediately:

Statutes

1. Tariff requirement for certain transportation, 49 U.S.C. 13702.

Household goods (HHG) carriers must have tariffs covering transportation and related services and must charge in accordance with their tariff. (Tariffs are the rates charged for services and the service terms.) The carrier must give notice of availability of the tariff to individual shippers and must make it available for inspection to shippers upon reasonable request.

[1] The brief description accompanying each item listed below is for informational purposes only and is not intended to be a definitive interpretation of legal requirements.

2. Household goods rates—estimates; Guarantees of service, 49 U.S.C. 13704.

Rates for transportation of household goods moving on a written binding estimate must be available to shippers on a non-preferential basis and must not result in charges that are predatory.

3. Payment of rates; Exceptions, 49 U.S.C. 13707(b).

HHG carriers must give up possession of a shipment upon payment of 100 percent of a binding estimate or 110 percent of a non-binding estimate, but may collect all charges related to post-contract services and impracticable operations at delivery (with some limitations as to the latter).

4. Requirement for registration, 49 U.S.C. 13901; General civil penalties, 49 U.S.C. 14901(d)(3).

FMCSA registration is required to provide transportation or brokerage services subject to FMCSA jurisdiction. Transportation or brokering of HHG goods without FMCSA registration is punishable by a minimum civil penalty of $25,000 per violation.

5. Household goods carrier operations; Estimates, 49 U.S.C. 14104(b).

HHG carriers must comply with certain estimating requirements and provide individual shippers with prescribed informational publications.

6. Liability of carriers under receipts and bills of lading; Limiting liability of household goods carriers to declared value, 49 U.S.C. 14706(f).

HHG carriers are liable for the replacement value of goods unless the individual shipper waives full value protection in writing.

7. Dispute settlement program for household goods carriers, 49 U.S.C. 14708.

HHG carriers must provide binding arbitration upon shipper request for disputes up to $10,000 involving loss and damage and payment of charges in addition to those collected at delivery. The arbitration program must contain several required elements.

8. General civil penalties; Estimate of broker without carrier agreement, 49 U.S.C. 14901(d)(2).

HHG brokers making estimates before entering into an agreement with a carrier are liable for a minimum civil penalty of $10,000 per violation.

9. General civil penalties; Violation relating to transportation of household goods, 49 U.S.C. 14901(e).

Any person falsifying documents relating to HHG shipment weight or charging for accessorial services that are not performed or are not reasonably necessary for the safe and adequate movement of the shipment is subject to a minimum civil penalty of $2,000 for the first violation and $5,000 for each subsequent violation.

10. Civil penalty procedures, 49 U.S.C. 14915.

Holding a HHG shipment hostage is punishable by a minimum civil penalty of $10,000 per violation.

Regulations

1. Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations, 49 CFR part 375.

Contains consumer protection regulations governing transportation of household goods for individual shippers in interstate commerce.

2. Bills of lading for freight forwarders, 49 CFR 373.201.

All HHG freight forwarders must issue a shipper a thorough bill of lading covering transportation from origin to destination.

3. Designation of process agent; required States, 49 CFR 366.4.

All carriers and brokers must designate agents for service of court process in States of operation.

4. Principles and practices for the investigation and voluntary disposition of loss and damage claims, 49 CFR 370.3 through 370.9.

Contains regulations governing voluntary disposition of loss and damage claims. The regulations protect individual shippers (as well as business shippers) by ensuring that motor carriers investigate claims and process them in accordance with prescribed procedures.

5. Records to be kept by brokers; right of review, 49 CFR 371.3(c).

Brokers must provide access to transaction records by each party to a brokered transaction.

6. Records to be kept by brokers; misrepresentation, 49 CFR 371.7.

Brokers must not misrepresent their name or broker status.

7. Procedures governing the processing, investigation, and disposition of overcharge, duplicate payment, or over-collection claims, 49 CFR 378.3 through 378.9.

Contains regulations governing processing of overcharge claims (where the carrier has collected payments exceeding what is permitted by its tariff). Like part 370, designed to ensure claim is investigated and disposed of in accordance with prescribed procedures.

8. Surety bond, certificate of insurance, or other securities; Cargo insurance, 49 CFR 387.301(b).

HHG carriers must obtain cargo insurance in prescribed amounts and file evidence of such insurance with FMCSA.

9. Property broker surety bond or trust fund, 49 CFR 387.307.

All brokers (including HHG brokers) must obtain and file a surety bond or trust fund to pay shippers or motor carriers if the broker fails to carry out its contracts for the arrangement of transportation.

10. General requirements, 49 CFR 387.403.

All freight forwarders (including HHG freight forwarders) must obtain and file the same level of cargo insurance required of motor carriers.

Future Applicable Rulemaking

Additionally, section 4212 of SAFETEA–LU directs the Secretary to establish regulations requiring HHG brokers to provide individual shippers with certain specific information. FMCSA is developing a notice of proposed rulemaking under regulatory identification number 2126–AA84 *Brokers of Household Goods Transportation by Motor Vehicle* to propose regulations that would require HHG brokers to provide individual shippers with the specific information required by section 4212. When this rule becomes final, it will be added to the regulations list above.

Issued on: November 9, 2006.

John H. Hill,

Administrator.

[FR Doc. E6–19411 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2006–25808, Notice No. 1]

Establishment of an Emergency Relief Docket for Calendar Year 2006

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of establishment of public docket.

SUMMARY: On August 30, 2006, FRA published an Interim Final Rule (IFR) addressing the establishment of emergency relief dockets (ERD) and the procedures for handling petitions for emergency waivers of safety regulations, 71 FR 51517. The IFR provided that each year, FRA will establish an ERD for that year and publish a notice in the **Federal Register** identifying the docket number of the ERD for that year. This Notice announces the establishment of FRA's ERD for the current year (calendar year 2006). The designated ERD for calendar year 2006 is docket number FRA–2006–25808.

ADDRESSES: See Supplementary Information section for further

information regarding submitting petitions and/or comments to Docket No. FRA–2006–25808.

SUPPLEMENTARY INFORMATION: On August 30, 2006, FRA published an IFR addressing the establishment of ERD and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event, 71 FR 51517. As noted in the IFR, FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. The IFR added § 211.45 to Subpart C of 49 CFR part 211 (49 CFR 211.45). Section 211.45(b) provides that each calendar year FRA will establish an ERD in the publicly accessible DOT Document Management System (DMS) and that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. This Notice No. 1 announces that the designated ERD for calendar year 2006 is docket number FRA–2006–25808.

As detailed in the IFR, if the FRA Administrator determines that an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect, 70 FR 51518. In such an event, the FRA Administrator will issue a statement in the ERD indicating that the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its Web site *http://www.fra.dot.gov/.* In addition, FRA will publish a notice in the **Federal Register** alerting interested parties that the emergency waiver procedures will be utilized. Any party desiring relief from FRA regulatory requirements as a result of the emergency situation should submit a petition for emergency waiver in accordance with 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers in accordance with 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are found at 49 CFR 211.45(h).

Privacy

Anyone is able to search all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 665, Number 7, Pages 19477–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 13, 2006.

Grady C. Cothen,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–19447 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–25764]

Petition for Waiver of Compliance

In accordance with Part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain Federal railroad safety requirements. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

On November 6, 2006, Union Pacific Railroad Company (UP), amended its original petition (Docket Number FRA–2006–25764) for a waiver of compliance with certain requirements of 49 CFR 232.205 (Class I Brake Test—Initial Terminal Inspection, published January 17, 2001) and 49 CFR 215 (Railroad Freight Car Safety Standards, published April 21, 1980), for freight cars received in interchange from the Ferrocarriles Nacionales de Mexico Railroad (FXE) at Calexico, California. Specifically, UP amended its petition to request that freight cars be allowed to move from the FXE interchange point at Calexico to Heber and/or to El Centro, California, a distance of 5.5 and 10.1 miles, respectively. A Class III brake test-trainline continuity inspection per 49 CFR 232.211 would be performed prior to departing Calexico, and cars would be moved at a speed not to exceed 20 miles per hour. The train would be equipped with an operable ''end-of-train'' device, and any bad order freight cars would be switched out at Heber or El Centro, California, for repair by mechanical forces.

Interested parties are invited to participate in these proceedings by submitting written data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning this petition should identify the appropriate docket number (FRA–2006–25764) and may be submitted by one of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001; or
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communication received within 20 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 13, 2006.

Grady C. Cothen, Jr.

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. E6–19448 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss Marine Transportation System (MTS) data and system measurement, actions on the Intermodal Report public/private recommendations, the impact of proposed Panama Canal expansion on the MTS, and the Council's workplan for the upcoming year. A public comment period is scheduled for 8:30 a.m. to 9 a.m. on Wednesday, December 6, 2006. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by November 29, 2006. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by December 14, 2006.

DATES: The meeting will be held on Tuesday, December 5, 2006, from 8:30 a.m. to 5 p.m. and Wednesday, December 6, 2006 from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will be held in the Hyatt Regency Jacksonville Riverfront Hotel, 225 Coast Line Drive East, Jacksonville, FL 32202. The hotel's phone number is 904–588–1234.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–7678; Maritime Administration, MAR–830, Room 7201, 400 Seventh St., SW., Washington, DC 20590; *richard.lolich@dot.gov.*

(Authority: 49 CFR 1.66)

Dated: November 14, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–19445 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Application Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
X—Renewal.
PM—Party to application with modification request.

Issued in Washington, DC, on November 13, 2006.

Delmer F. Billings,

Director, Office of Hazardous Materials Safety Special Permits & Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Special Permit Applications		
14229–N	Senex Explosives, Inc., Cuddy, PA	4	11-30-2006
14237–N	Advanced Technology Materials, Inc., (ATMI), Danbury, CT	1	11-31-2006
14257–N	Origin Energy American Samoa, Inc., Pago Pago, AS	4	11-30-2006
14266–N	NCF Industries, Inc., Santa Maria, CA	3	11-30-2006
14316–N	VOTG North America, Inc., West Chester, PA	4	12-31-2006
14314–N	North American Automotive Hazmat Action Committee	4	11-30-2006
14330–N	Chemical & Metal Industries, Inc., Hudson, CO	4	12-31-2006
14337–N	NKCF Co., Ltd., Jisa-Dong, Kangseo-Gu Busan	4	11-30-2006
14343–N	Valero St. Charles, Norco, LA	4	12-31-2006
14318–N	Lockheed Martin Technical Operations, Vandenberg AFB, CA	4	12-31-2006
14277–N	Ascus Technologies, Ltd., Cleveland, OH	3,4	12-31-2006
	Modification to Special Permits		
12677–M	Austin Powder Illinois Company, Cleveland, OH	4	11-30-2006
12405–M	Air Products and Chemicals, Inc.	4	11-30-2006
3121–M	Department of Defense, Ft. Eustis, VA	4	10-31-2006
12277–M	Indian Sugar and General Engineering Corporation, Haryana	4	12-31-2006
5749–M	E.I. DuPont de Nemours, Wilmington, DE	4	12-31-2006
10481–M	M-1 Engineeering Limited, Bradford, West Yorkshire	4	12-31-2006

[FR Doc. 06–9233 Filed 11–16–06; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 18, 2006.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 13, 2006.

Delmer F. Billings,

Director, Office of Hazardous Materials Safety Special Permits & Approvals.

NEW SPECIAL PERMIT

Application No.	Docket No.	Applicant	Regulation(s) Affected	Nature of Special Permit Thereof
14420–N		Garden State Tobacco d/b/a H.J. Bailey Co., Neptune, NJ.	49 CFR 173.186(c)	To authorize the transportation in commerce of strike anywhere matches in non-DOT specification packages not exceeding 50 pounds each by private motor carrier not subject to the Hazardous Materials Regulations, except for marking. (mode 1).
14422–N		Patterson Logistics, Boone, IA.	49 CFR 172.101 Hazardous Materials Table, column 8A.	To authorize the transportation in commerce of 4 ounces or less of ethyl chloride as a consumer commodity. (modes 1, 2, 3, 4, 5).
14423–N		Accutest Laboratories, Dayton, NJ.	49 CFR 173.4	To authorize the transportation in commerce of Nitric acid other than red fuming with 50% or less nitric acid as small quantities under the provision of 49 CFR 173.4. (mode 4).
14424–N		Chart Industries, Inc., Ball Ground, GA.	49 CFR 172.203(a); 177.834(h).	To authorize filling and discharging of a DOT Specification 4L cylinder with carbon dioxide, refrigerated liquid without removal from the vehicle. (mode 1).
14427–N		The Procter & Gamble Company, Cincinnati, OH.	49 CFR 173.306(a) and 173.306(a)(3)(v).	To authorize the transportation in commerce of Division 2.2 aerosols in non-DOT specification plastic containers not subject to the hot water bath test. (modes 1, 2, 3, 4, 5).
14429–N		Schering-Plough, Union, NJ.	49 CFR 173.306(a)(3)(v)	To authorize the manufacture, marking, sale and use of a bag-on-valve spray packaging similar to an aerosol container without requiring the hot water bath test. (modes 1, 2, 3, 4, 5).
14430–N		Prometheus International, Inc., Commerce, CA.	49 CFR 173.306	To authorize the transportation of a gas fuel tank for a lighter packaged in a special travel container in checked luggage on commercial passenger aircraft. (mode 5).

[FR Doc. 06–9234 Filed 11–16–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of Applications for Modification of Special Permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice.

Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from

the new applications for special permits to facilitate processing.

DATES: Comments must be received on or before December 4, 2006.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of special permits is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 13, 2006.

Delmer F. Billings,

Director, Office of Hazardous Materials Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
6530–M		Air Products & Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To modify the special permit to authorize an increase in the maximum age of certain DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders and authorize cargo vessel as a mode of transportation.
6610–M		Degussa Initiators, LLC, Elyria, OH.	49 CFR 173.225(e)	To modify the special permit to authorize the transportation in commerce of an additional Division 5.2 Type F material.
10019–M		Structural Composites Industries, Pomona, CA.	49 CFR 173.302(a)(1); 175.3.	To modify the special permit to change the retest period from 3 to 5 years for non-DOT specification fiber reinforced plastic full composite cylinders used for the transportation of Division 2.2 materials.
10143–M		Eurocom, Inc., Irving, TX	49 CFR 173.306(a); 178.33a.	To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-refillable non-DOT specification inside metal container.
10590–M		ITW/Sexton, Decatur, AL	49 CFR 173.304(d)(3)(ii); 178.33.	To modify the special permit to authorize the transportation in commerce of certain Division 2.1 gases in non-DOT specification cylinder with a smaller diameter and wall thickness than currently authorized.
11379–M		TRW Occupant Safety Systems, Washington, MI.	49 CFR 173.301(h); 173.302.	To modify the special permit for consistency with other air bag special permits.
11380–M		Baker Atlas (a division of Baker Hughes, Inc.), Houston, TX.	49 CFR 173.34(d); 178.37–5; 178.37–13; 178.37–15.	To modify the special permit to authorize a new non-DOT specification tank assembly design.
11494–M		ARC Automotive, Inc. (Former Grantee: Atlantic Research Corp. Automotive Products Group), Knoxville, TN.	49 CFR 173.301(h); 173.302; 173.306(d)(3).	To modify the special permit for consistency with other air bag special permits.
11506–M		Autoliv ASP, Inc., Ogden, UT.	49 CFR 173.301(h); 173.302.	To modify the special permit for consistency with other air bag special permits.
11650–M		Autoliv ASP, Inc., Ogden, UT.	49 CFR 173.301; 173.302; 178.65–9.	To modify the special permit for consistency with other air bag special permits.
11777–M	RSPA–15902	Autoliv ASP, Inc., Ogden, UT.	49 CFR 173.301(h); 173.302.	To modify the special permit for consistency with other air bag special permits.
11993–M	RSPA–3100	Key Safety Systems, Inc. (formerly BREED Tech.), Lakeland, FL.	49 CFR 173.301(a)(1); 173.302a.	To modify the special permit for consistency with other air bag special permits.
12122–M	RSPA–4313	ARC Automotive, Inc., Knoxville, TN.	49 CFR 173.301(h); 173.302; 173.306(d)(3).	To modify the special permit for consistency with other air bag special permits.
12124–M	RSPA–4309	TOTAL Petrochemicals USA Inc., Pasadena, TX.	49 CFR 173.242; 178.245–1(c); 178.245–1(d)(4).	To modify the special permit to authorize a new non-DOT specification portable tank comparable to a specification DOT 51 portable tank equipped with vertical outlet and no internal shutoff valve for use in transporting Division 4.2 and 4.3 hazardous materials.
12844–M	RSPA–10753	Delphi Corporation, Vandalia, OH.	49 CFR 173.301(a)(1); 173.302a(a)(1); 175.3.	To modify the special permit for consistency with other air bag special permits.
13270–M	RSPA–16489	Takata Corporation, Minato-Ku Tokyo 106–8510.	49 CFR 173.301(a); 173.302(a); 175.3.	To modify the special permit for consistency with other air bag special permits.

MODIFICATION SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14152–M	PHMSA–20467	Saes Pure Gas, Inc., San Luis Obispo, CA.	49 CFR 173.187	To modify the special permit to authorize a change in the minimum and maximum pressures authorized in a non-DOT specification packaging for transporting certain quantities of metal catalyst, classed as Division 4.2.
14167–M	PHMSA–20669	Trinityrail, Dallas, TX	49 CFR 173.26; 173.314(c); 179.13 and 179.100–12(c).	To modify the special permit to authorize an alternative fitting design on DOT 105J600W specification tank cars.
14232–M	PHMSA–22248	Luxfer Gas Cylinders—Composite Cylinder Division, Riverside, CA.	49 CFR 173.302a(a); 173.304a(a); and 180.205.	To modify the special permit to authorize an increase in service life to 30 years for certain carbon composite cylinders for transporting certain Division 2.1 and 2.2 gases.

[FR Doc. 06–9235 Filed 11–16–06; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: PHMSA and FRA are conducting a comprehensive review of design and operational factors that affect rail tank car safety. The two agencies invite interested persons to participate in a public meeting to address potential improvements to the design of hazardous materials tank cars that would enhance overall safety and security.

DATES: *Public meeting:* December 14, 2006, starting at 9 a.m. and ending at 5 p.m.

ADDRESSES: *Public meeting:* The meeting will be held at the Hilton Garden-Franklin Square Hotel, 815 14th Street, NW., Washington, DC 20005. For information on the facilities or to request special accommodations at the meeting, please contact Ms. Michele M. Sampson by telephone or e-mail as soon as possible.

Written Comments: Written comments, identified by Docket Number FRA–2006–25169, may be submitted by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 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.
- 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.

Instructions: All submissions must include the agency name and docket number for this notice. Internet users may access comments received by DOT at. Note that comments received may be posted without change to *http://dms.dot.gov* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Michele M. Sampson (*Michele.Sampson@dot.gov*), Railroad Safety Specialist, Federal Railroad Administration, 1120 Vermont Ave., NW., Washington, DC 20590 (202–493–6475) or Lucinda Henriksen (*Lucinda.Henriksen@dot.gov*), Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Washington, DC 20590 (202–493–1345).

SUPPLEMENTARY INFORMATION: The Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 *et seq.,* as amended by section 1711 of the Homeland Security Act of 2002, Public Law 107–296 and Title VII of the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act-A Legacy for Users (SAFETEA–LU)) authorizes the Secretary of the Department of Transportation (DOT) to ''prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.'' The Secretary has delegated this authority to the Pipeline and Hazardous Materials Safety Administration (PHMSA).

The Secretary of Transportation also has authority over all areas of railroad safety (49 U.S.C. 20101 *et seq.*), and has delegated this authority to the Federal Railroad Administration (FRA). FRA has issued a comprehensive set of Federal regulations governing the safety of all facets of freight and passenger railroad operations (49 CFR parts 200–244). FRA inspects railroads and shippers for compliance with both FRA regulations and Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). FRA also conducts research and development to enhance railroad safety.

On May 24, 2006, PHMSA and FRA published a notice of public meeting (71 FR 30019) announcing initiation of a comprehensive review of design and operational factors that affect the safety of railroad tank car transportation of hazardous materials. As indicated in the notice, PHMSA and FRA are utilizing a risk management approach to identify ways to enhance the safe transportation of hazardous materials in tank cars, including tank car design, manufacture, and requalification; operational issues such as human factors, track conditions and maintenance, wayside hazard detectors, and signals and train control systems; and emergency response. Initially, PHMSA and FRA did not intend for the review to consider security issues, in part because PHMSA and FRA have been working closely with the Transportation Security Administration on developing proposed regulations to enhance the security of rail shipments of hazardous materials. Upon further consideration, PHMSA and FRA have decided to slightly expand the topics under review to consider enhancements and improvements to railroad tank cars transporting hazardous materials that may enhance the security of these cars.

To facilitate public involvement in this review, PHMSA and FRA held a public meeting on May 31 and June 1, 2006 (see 71 FR 30019). The primary purpose of the public meeting was to surface and prioritize issues relating to the safe transportation of hazardous materials by railroad tank car. Subsequent to the meeting, FRA

established a public docket (Docket No. FRA–2006–25169) to provide all interested parties with a central location to both send and review relevant information concerning the safety of railroad tank car transportation of hazardous materials (July 3, 2006; 71 FR 37974).

PHMSA and FRA have scheduled a second public meeting as part of DOT's comprehensive review. The meeting will be held on the date specified in the **DATES** section of this document and at the location specified in the **ADDRESSES** section of this document. Although DOT's review includes both tank car design and operational factors that affect railroad tank car safety, this public meeting is intended to focus on the issue of potential improvements to hazardous materials tank cars themselves.

PHMSA and FRA encourage all interested persons to participate in this meeting. The agencies intend that this meeting will provide an opportunity to build upon several issues raised in the initial public meeting. Additionally, through this meeting, the agencies intend to solicit any relevant comments, information, or data interested parties may be able to provide regarding potential enhancements or modifications to hazardous materials tank cars in order to improve the overall safety and security of hazardous materials shipments via railroad tank car. Although the agencies are interested in any comments, information, or data relevant to improving tank car design, manufacture, or requalification, the agencies specifically request data related to the following questions:

1. What new designs, materials, or structures should DOT be investigating for improved accident/derailment survivability of hazardous materials tank cars?

2. Regarding tank car top fittings—are there any design changes that would enhance the survivability of the top fittings (e.g., modifications to height or placement of valves or modifications to the protective structure that surrounds the valves)?

3. Regarding tank car puncture resistance (including the puncture resistance of the head and shell of tank cars)—are there any design, material, or manufacturing changes that could lead to improved tank car puncture resistance?

4. In addition to accident survivability, are there any other aspects of the tank cars (e.g., improved security of operating fittings, or an ability to locate cars beyond current car movement reporting systems), that could improve the overall safety and security of hazardous materials shipments via railroad tank car?

5. In addition to accident survivability, should tank cars be designed to withstand other types of extraordinary events (e.g., ballistic attack or unauthorized access to tank car valving)?

6. The hazardous materials regulations now include performance standards for coupler vertical restraint systems, pressure relief devices, tank-head puncture-resistance systems, thermal protection systems, and service equipment protection. In addition to, or instead of any other improvement made to future tank cars, are these standards adequate for future tank cars? If not, in what areas and aspects are improvements needed?

7. How should PHMSA and FRA consider risk factors in determining whether to require tank car safety and security enhancements? For example, should PHMSA and FRA consider the risk of the car/commodity pair so that improvements would first apply to the car/commodity pairs considered to have the greatest risk or for which the car/commodity pair will benefit most from the improvement? What other risk factors should be considered?

8. Would installation of bearing sensors or other on-board tracking/monitoring systems capable of monitoring, for example, tank car pressure, temperature, and safety conditions, improve the safety and security of hazardous materials shipments by railroad tank car? If so, what is the feasibility of implementing such a system on hazardous materials tank cars?

9. Would installation of electronically controlled pneumatic brake systems on tank cars improve the safety of hazardous materials shipments by railroad tank car by, for example, helping to prevent derailments and shortening stopping distances? If so, what is the feasibility of implementing such brake systems on hazardous materials tank cars?

Although PHMSA and FRA are specifically requesting comments in response to the above questions, we invite persons to comment and/or provide specific data on any other potential improvements to railroad tank cars that could lead to improving the overall safety and security of the transportation of hazardous materials by tank car. The agencies ask that commenters provide data in the most detail possible, including costs of design, installation, and maintenance. We also specifically solicit expert discussion of the issues surrounding construction of new tank cars and implementation of a retrofit requirement for any potential new requirements on the design, manufacture, or maintenance of existing tank cars.

The agencies also invite interested parties who are unable to attend the public meeting, or who otherwise desire to submit written comments or data responsive to the questions raised above, to submit any relevant information, data, or comments to the DOT Docket Management System Docket Number FRA–2006–25169. Comments may be submitted by any method noted in the **ADDRESSES** section above.

Issued in Washington, DC on November 13, 2006, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E6–19413 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 4:30 p.m. to 5:30 p.m. on Tuesday, December 5, 2006, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh Street, SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than November 28, 2006, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 13, 2006.

Collister Johnson, Jr.,

Administrator.

[FR Doc. 06–9238 Filed 11–16–06; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34866 (Sub-No. 2)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Kansas City Southern Railway Company

The Kansas City Southern Railway Company (KCS), pursuant to a written trackage rights agreement entered into between KCS and Union Pacific Railroad Company (UP), has agreed to grant UP temporary overhead trackage rights, to expire on December 1, 2006, over KCS's trackage between milepost 482.0 on KCS's Mexico Subdivision at Kansas City, MO, and milepost 252.1 on KCS's East St. Louis Terminal Subdivision at Godfrey, IL, a distance of approximately 285 miles. The original grant of temporary overhead trackage rights exempted in *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Kansas City Southern Railway Company*, STB Finance Docket No. 34866 (STB served on May 2, 2006), cover the same line. Those trackage rights were due to expire on July 31, 2006, but were extended to October 31, 2006, in a decision served on July 20, 2006, in the (Sub-No. 1) proceeding in this docket. The purpose of this transaction is to modify the temporary overhead trackage rights previously exempted by extending the expiration date from October 31, 2006, to December 1, 2006.

The transaction was scheduled to be consummated on November 6, 2006, the effective date of the exemption. The purpose of the temporary overhead trackage rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34866 (Sub-No. 2), must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gabriel S. Meyer, Assistant General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 9, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–19407 Filed 11–16–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Beazley Insurance Company, Inc

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570, 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company: Beazley Insurance Company, Inc. (NAIC #37540). *Business Address:* 20 Stanford Drive, Farmington, Connecticut 06032. *Phone:* (860) 677–3700. *Underwriting Limitation* b/: *Surety Licenses* c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, PA, RI, SD, TX, UT, VT, VA, WA, WV, WI, WY. *Incorporated in:* Connecticut.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2006 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1 in the Circular, which outlines details as to underwriting limitations, ares in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: November 9, 2006.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–9241 Filed 11–16–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8831

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8831, Excise Taxes on Excess Inclusions of REMIC Residual Interests.

DATES: Written comments should be received on or before January 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions

should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests.

OMB Number: 1545–1379.

Form Number: 8831.

Abstract: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Internal Revenue Code sections 860e(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 94,717.

Estimated Time Per Response: 4 hours, 9 minutes.

Estimated Total Annual Burden Hours: 392,971.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–19414 Filed 11–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 976

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

DATES: Written comments should be received on or before January 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Application for United States Residency Certification.

OMB Number: 1545–0045.

Form Number: Form 976.

Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to use the payment of dividends to reduce taxes imposed after the tax return is filed. The IRS uses Form 976 to determine if shareholders have included the dividend amounts in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 94,717.

Estimated Time Per Respondent: 4 hours, 9 minutes.

Estimated Total Annual Burden Hours: 392,971.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 7, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–19416 Filed 11–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[(LR–58–83)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–58–83 (T.D. 7959), Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations (§§ 1.955A–2, and 1.955A–3).

DATES: Written comments should be received on or before January 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.

OMB Number: 1545–0755.

Regulation Project Number: LR–58–83.

Abstract: This regulation concerns the election made by a related group of controlled foreign corporations to determine foreign base company shipping income and qualified investments in foreign base company shipping operations on a related group basis. The information required is necessary to assure that the U.S. shareholder correctly reports any shipping income of its controlled foreign corporations which is taxable to the shareholder.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours, 3 minutes.

Estimated Total Annual Burden Hours: 205

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 7, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–19417 Filed 11–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2758

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2758, Application for Extension of Time To File Certain Excise, Income, and Other Returns.

DATES: Written comments should be received on or before January 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, Room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns.

OMB Number: 1545–0148.

Form Number: Form 2758.

Abstract: Internal Revenue Code section 6081 allows a reasonable extension of time for filing any return, declaration, statement, or other document. Form 2758 is used by fiduciaries, trustees, and certain other organizations to request an extension of time to file their returns. The information is used to determine whether the extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and not-for-profit institutions.

Estimated Number of Respondents: 94,717.

Estimated Time Per Respondent: 4 hours, 9 minutes.

Estimated Total Annual Burden Hours: 392,971.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 7, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–19420 Filed 11–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–97, Taxation and Reporting of REIT Excess Inclusion Income. 2006–97, Taxation and Reporting of REIT Excess Inclusion Income.

DATES: Written comments should be received on or before January 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Taxation and Reporting of REIT Excess Inclusion Income.

Notice Number: 1545–2036.

Abstract: This notice requires certain REITs, partnerships and other entities that have excess inclusion income to disclose the amount and character of such income allocable to their record interest owners. The record interest owners need the information to properly report and pay taxes on such income.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: OMB approval.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 minutes.

Estimated Total Annual Reporting Burden Hours: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–19421 Filed 11–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040EZ–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040EZ–T, Claim for Refund of Federal Telephone Excise Tax.

DATES: Written comments should be received on or before January 16, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Federal Telephone Excise Tax.

OMB Number: 1545–2039.

Form Number: 1040EZ–T.

Abstract: Form 1040EZ–T was developed as a result of Notice 2006–50. The purpose of the form is to allow individuals that are not required to file an individual income tax return to claim a refund of the federal telephone excise taxes paid. The taxes must have been paid after February 28, 2003 and before August 1, 2006.

This form can only be filed once.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 2 hours, 26 minutes.

Estimated Total Annual Burden Hours: 2,430,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start–up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 2, 2006.

Glenn Kirkland,

IRS Reports Clearance Office.

[FR Doc. E6–19423 Filed 11–16–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Friday,
November 17, 2006

Part II

Department of Labor

Secretary's Order 16–2006; Invoking Governmental Privileges; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 16–2006; Invoking Governmental Privileges

1. *Purpose.* To delegate authority and assign responsibility to particular U.S. Department of Labor (DOL) officers to invoke claims of Governmental privileges arising from the functions of their respective agencies.

2. *Authority and Directives Affected.* This Order is issued pursuant to 29 U.S.C. 551, *et seq.*; 5 U.S.C. 301; 5 U.S.C. 552(b).

All prior agency delegations and assignments in conflict with this Order and its Attachment are hereby superseded.

3. *Background.* Governmental, or executive, privileges are founded upon the public interest in the effective performance of the constitutional powers and responsibilities assigned to the Executive Branch. They rest largely upon common-law tradition, and have been reinforced by courts with references to the Constitution (particularly the separation of powers doctrine and the provisions on executive authority), and may also be rooted in statute. Unlike such privileges as the attorney-client or marital privilege, which are available to all litigants in a court of law, Governmental privileges may be invoked only by the Government, and solely for the purpose of preventing particular confidential information from being disclosed.

Since Governmental privileges are designed to limit information available to litigants and the public, thereby limiting ''the search for truth,'' they are applied narrowly by the courts and invoked only in accordance with specific procedures. In order to properly assert a Governmental privilege before a court, a formal claim of privilege must be filed by affidavit or declaration. The formal claim must: (1) Be made by a high-level agency official to whom such authority has been properly delegated under this Order; (2) contain a description of the privileged material sufficient to permit a determination as to whether the claim of privilege is properly asserted; (3) state the reasons disclosure of the materials would cause harm; and (4) state that the invocation of the privilege is based on personal consideration by the delegated official.

This Order effectuates the formal delegation of authority by the Secretary to particular DOL officers for the invocation of Governmental privileges. Further redelegations of authority are not permitted.

4. *Delegation of Authority and Assignment of Responsibility to DOL Officers to Invoke Governmental Privileges.*

A. Each DOL official specified in the attached Memorandum is hereby delegated authority and assigned responsibility to invoke all appropriate claims of the following Governmental privileges arising from the functions of his/her respective agency, following his/her personal consideration of the matter:

(1) *Informant's Privilege* (to protect from disclosure the identity of any person who has provided information to the particular agency in cases arising under an authority delegated or assigned to the agency). A claim of privilege may be asserted where the official has determined that disclosure of the privileged matter would: (1) Interfere with an investigative or enforcement action taken by the agency under an authority delegated or assigned to it; (2) adversely affect persons who have provided information to the agency; or (3) deter other persons from reporting a violation of law or other authority delegated or assigned to the agency.

(2) Deliberative Process Privilege (to withhold information that may disclose predecisional intra-agency or inter-agency deliberations, including the analysis and evaluation of facts; written summaries of factual evidence that reflect a deliberative process; and recommendations, opinions, or advice on legal or policy matters in cases arising under statutory provisions or other authorities that are delegated or assigned to the agency). A claim of privilege may be asserted where the official has determined that: (1) The information was generated prior to and in contemplation of a decision by a part of the Department; (2) the information is not purely factual and does not concern recommendations that the Department expressly adopted or incorporated by reference in its ultimate decision; and (3) disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(3) *Privilege for Investigative Documents Compiled for Law Enforcement Purposes* (to withhold information that may reveal the agency's confidential investigative techniques and procedures). A claim of privilege may be asserted where the official has determined that disclosure of the privileged matter would have an adverse impact upon the agency's enforcement of statutory provisions or other authorities that have been delegated or assigned to the agency by: (1) Disclosing investigative techniques and methodologies; (2) deterring persons from providing information to the agency; (3) prematurely revealing the facts of the agency's case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

B. In addition to the privileges identified above, the Commissioner of the Bureau of Labor Statistics and the Deputy Commissioner are hereby delegated authority and assigned responsibility to invoke all appropriate claims of the following Governmental privileges arising from the functions of his/her agency, following his/her personal consideration of the matter:

(1) *Privilege for Information Provided to the Government on a Pledge of Confidentiality* (to protect from disclosure information provided to the Government under a pledge of confidentiality). A claim of privilege may be asserted where the official has determined that the information: (1) Was given to the Government on a pledge of confidentiality; and (2) disclosure of the information would hamper the efficient operation of a Government program.

(2) *Confidential Report Privilege* (to protect from disclosure information required to be provided to the Government). A claim of privilege may be asserted where the official has determined that: (1) There is a statutory basis for maintaining confidentiality of the information sought to be protected from disclosure; and (2) disclosure of the information would be harmful to a governmental interest.

5. *Procedure for Invoking Claims of Governmental Privileges.*

A. Prior to filing a formal claim of privilege, the official delegated authority to invoke a claim of privilege under this Order shall personally review: (1) All the documents sought to be withheld (or, in cases where the volume is so large that all of the documents cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents); and (2) a description or summary of the litigation in which the disclosure is sought.

B. The official delegated authority to invoke a claim of privilege under this Order shall consult with the Solicitor of Labor or his/her designee(s) prior to formally invoking such a claim. In addition, the particular official may ask the Solicitor of Labor or his/her designee(s) to file any necessary legal papers or documents related to the formal invocation of a privilege. The Solicitor of Labor or his/her designee(s) will also provide legal advice and assistance to all officials of the

Department relating to the authorities of this Order.

C. The official delegated authority to invoke a claim of privilege under this Order shall consult with the Assistant Secretary for Congressional and Intergovernmental Affairs or his/her designee(s) prior to formally invoking a claim of privilege if the source of the request is a Member of Congress.

6. *Miscellaneous.*

A. Nothing in this Order or the attached Memorandum shall: (1) Be construed to override any applicable laws or statutes; (2) apply to the Office of Inspector General; or (3) limit the Secretary's authority to perform or redelegate and/or reassign such authority and responsibility of DOL officials unless otherwise precluded by law.

B. The attached Memorandum shall be published in the **Federal Register**. It is also subject to periodic revision by the Secretary, as necessary, and is effective immediately.

C. Redelegations of authority by the DOL officer positions specified in the attached Memorandum are not permitted.

7. *Effective Date.* This Order is effective immediately.

Dated: November 9, 2006.

Elaine L. Chao,

Secretary of Labor.

Memorandum for Department of Labor Executive Staff

November 9, 2006.

From: Elaine L. Chao

Subject: Delegation of Authority and Assignment of Responsibility to Department Officers to Invoke Governmental Privileges.

This Memorandum is issued pursuant to Secretary's Order 16–2006 and the authorities cited therein, in order to designate specific Department (DOL) officers who are delegated authority and assigned responsibility to invoke all appropriate claims of Governmental privileges arising from the functions of their respective agencies. The specific delegations are listed below. In general, the delegation is to all presidentially-appointed, Senate-confirmed heads of agencies within the Department and to certain other officials. Moreover, in the case of larger agencies more likely to face the need to invoke such privileges, generally a delegation is made to the respective first assistant, as derived from Secretary's Order 4–2003 on Order of Succession to the Secretary of Labor and Continuity of Executive Direction.

Governmental, or executive, privileges are founded upon the public interest in the effective performance of the constitutional powers and responsibilities assigned to the Executive Branch. They rest largely upon common-law tradition, and have been reinforced by courts with references to the Constitution (particularly the separation of powers doctrine and the provisions on executive authority), and may also be rooted in statute. Unlike such privileges as the attorney-client or marital privilege, which are available to all litigants in a court of law, Governmental privileges may be invoked only by the Government, and solely for the purpose of preventing particular confidential information from being disclosed. Since Governmental privileges are designed to limit information available to other litigants and the public, thereby limiting ''the search for truth,'' they are applied narrowly by the courts and invoked subject to specific procedures.

At the Department of Labor, in order to assert a Governmental privilege before a court, a formal claim of privilege must be filed by affidavit or declaration. The formal claim must: (1) Be made by a high-level agency official to whom such authority has been properly delegated under this Order; (2) contain a description of the privileged material sufficient to permit a determination as to whether the claim of privilege is properly asserted; (3) state the reasons disclosure of the materials would cause harm; and (4) state that the invocation of the privilege is based on personal consideration by the delegated official.

This Memorandum supersedes all prior inconsistent agency delegations and assignments. Agency heads shall assure that agency position descriptions and other pertinent documents are maintained consistently with the designations provided below. Any modifications to the delegation of authority and assignment of responsibility specified in this memorandum are reserved to the Secretary.

This Memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. This Memorandum is subject to periodic revision by the Secretary, as necessary, and is effective on the date indicated above.

Designation of Agency Officers Delegated Authority and Assigned Responsibility To Assert Governmental Privileges

Office of the Secretary, and any other DOL component not listed below: Deputy Secretary of Labor.

Office of the Assistant Secretary for Administration and Management: Assistant Secretary for Administration and Management; Deputy Assistant Secretary for Operations.

Office of the Solicitor: Solicitor of Labor; Deputy Solicitor.

Employee Benefits Security Administration: Assistant Secretary for the Employee Benefits Security Administration; Deputy Assistant Secretary for Policy.

Employment Standards Administration: Assistant Secretary for the Employment Standards Administration; Deputy Assistant Secretary.

Wage and Hour Division: Administrator.

Office of Labor-Management Standards: Deputy Assistant Secretary.

Federal Contract Compliance Programs: Deputy Assistant Secretary.

Office of Workers' Compensation Programs: Director.

Employment and Training Administration: Assistant Secretary for the Employment and Training Administration; Deputy Assistant Secretary for Employment and Training (organizationally, position known as Deputy Assistant Secretary for the Workforce Investment System).

Mine Safety and Health Administration: Assistant Secretary for the Mine Safety and Health Administration; Deputy Assistant Secretary for Mine Safety and Health (organizationally, position known as Deputy Assistant Secretary for Policy).

Occupational Safety and Health Administration: Assistant Secretary for the Occupational Safety and Health Administration; Deputy Assistant Secretary (position primarily responsible for Congressional and Intergovernmental liaison activity).

Veterans' Employment and Training Service: Assistant Secretary for the Veterans' Employment and Training Service; Deputy Assistant Secretary.

Office of the Assistant Secretary for Policy: Assistant Secretary for the Office of the Assistant Secretary for Policy.

Office of Congressional and Intergovernmental Affairs: Assistant Secretary for the Office of Congressional and Intergovernmental Affairs.

Office of Disability Employment Policy: Assistant Secretary for the Office of Disability Employment Policy.

Office of Public Affairs: Assistant Secretary for the Office of Public Affairs.

Bureau of Labor Statistics: Commissioner of the Bureau of Labor Statistics; Deputy Commissioner.

Office of the Chief Financial Officer: Chief Financial Officer; Deputy Chief Financial Officer.

Women's Bureau: Director of the Women's Bureau.

Bureau of International Labor Affairs: Deputy Under Secretary for International Affairs.

Office of the Chief Information Officer: Chief Information Officer.

Office of the Chief Acquisition Officer: Chief Acquisition Officer.

Office of the Chief Human Capital Officer: Chief Human Capital Officer.

[FR Doc. 06–9239 Filed 11–16–06; 8:45 am]

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Federal Register

Friday,
November 17, 2006

Part III

The President

Memorandum of November 14, 2006—Assignment of Reporting Function Under the Intelligence Reform and Terrorism Prevention Act of 2004

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Presidential Documents

Title 3—

The President

Memorandum of November 14, 2006

Assignment of Reporting Function Under the Intelligence Reform and Terrorism Prevention Act of 2004

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and laws of the United States, including section 301 of title 3, United States Code, the reporting function of the President under section 1016(e) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458, 118 Stat. 3638) is hereby assigned to the Director of National Intelligence (Director).

The Director shall perform such function in a manner consistent with the President's constitutional authority to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

Any reference in this memorandum to the provision of any Act shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the **Federal Register**.

[FR Doc. 06–9304
Filed 11–16–06; 11:52 am]
Billing code 3910–A7–M

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